

12 May 2004

Dear Senator:

The undersigned organizations urge you to oppose Section 206 of S. 1735, Gang Prevention and Effective Deterrence Act of 2003. The stated purpose of this comprehensive bill is to increase gang prosecution and prevention efforts. However, Section 206 would have a dramatic and unwise effect under currently controversial immigration laws that would run counter to American values of fairness and justice, would overturn the decisions of the majority of federal courts, and would interfere with litigation pending before the Supreme Court.

Section 206 of S. 1735 would greatly expand the number of lawful permanent residents who would face mandatory detention and deportation under currently controversial immigration laws. Current law defines a crime of violence as one that involves a substantial risk that physical force will be used against a person or property. Section 206 would expand the definition of “crime of violence” in 18 U.S.C. Sec. 16 to include nonviolent, negligent acts or omissions that place another person or property at risk of injury, even if no injury actually occurs. Since 1996, immigration laws have required that lawful permanent residents who are convicted of “crimes of violence” with a one year sentence, even if suspended, must be detained and deported. This detention and deportation is mandatory, without consideration of any equities, such as the residents’ rehabilitation, service in the military, length of their residence in the U.S., the effect on U.S.-citizen family members, or the threat of persecution abroad. Legal permanent residents who never served a day in jail for the underlying criminal offense, who were convicted years before the laws were changed, or who were convicted for offenses that were misdemeanors under state laws are also subject to this penalty.

Unlike in criminal cases, where people who are convicted of crimes based on negligent or reckless conduct are treated differently from those who have acted with intent to injure, immigration penalties are identical for minor and major crimes meeting the “crime of violence” definition – mandatory detention and deportation. Citizens convicted under a new definition of crime of violence will receive a criminal sentence based upon the facts of their case, will serve their time, and then will return to their homes and families. Lawful permanent residents convicted under the new definition will also receive a criminal sentence and serve their time—but then will be permanently removed from their homes and families, no matter how minor the underlying crime. Americans believe the punishment should fit the crime—don’t expand the range of those permanently deported from their homes and families under a “one size fits all” rule that treats those guilty of recklessness and negligence with the same severity as those who intend to commit violence.

Section 206 would overturn the decisions of the majority of federal courts and interfere with litigation pending before the Supreme Court. The majority of courts have ruled that a crime is not a crime of violence if it was negligent. The Supreme Court has agreed to decide whether a negligent crime can be a crime of violence and will decide this question next term [*Josue Leocal v. Attorney General* No.03-583]. Congress should not make extreme changes to the definition without hearings while the issue is pending before the Supreme Court.

Lawmakers from both Republican and Democratic parties have recognized for some time now that these mandatory immigration laws went too far. For example, H.R. 1485 garnered over 80 cosponsors from both parties in the 106th Congress; H.R. 5062 passed the House unanimously in the fall of 2000; H.R. 1452 reported out of the Judiciary Committee with bipartisan support in the

107th Congress. These bills proposed reforms to allow lawful permanent residents who were convicted of minor crimes to plead the equities of their cases before an immigration judge, who would then exercise discretion regarding the resident's deportation. In light of these bipartisan efforts to *limit* the reach of mandatory detention and deportation laws, Congress should not *expand* the application of these immigration laws through changes to the criminal code.

Some examples of offenses that could result in mandatory detention and permanent deportation of long-time legal residents—no matter what the individual circumstances—if Section 206 becomes the law.

- A working parent leaves a child unattended, carelessly putting the child at risk of injury, such as leaving child alone in a bathtub or unaccompanied near a pool. On top of possible injury to the child and the conviction of parent for recklessness or negligence, the parent could face mandatory detention and deportation—even if deportation of the parent is distinctly not in the best interests of the U.S. citizen child.
- A victim of spousal abuse flees home after her husband beats her and her child. She takes her injured child with her, but does not go to the hospital for fear that her husband will find them there. In addition to the trauma of domestic violence for both parent and child and the possible conviction of abused parent for recklessness or negligence, the mother could face mandatory detention and deportation—even if deportation of the mother leaves the U.S. citizen child with an abusive father as the sole resident parent.
- A legal permanent resident who is granted asylum in U.S. after fleeing torture for his political views develops alcoholism as he deals with post traumatic stress and is convicted of driving while intoxicated. He could face deportation without an immigration judge considering the circumstances leading to his alcohol problem, evidence of counseling and treatment, and consideration of the hardship of returning him to the place where he escaped political persecution.

As these examples show, acts that are a far cry from the type of crimes the present anti-gang bill seeks to target could result in harsh and irreversible consequences that are distinctly disproportionate to the offense or that do not balance the equities through an individualized inquiry. We urge you to oppose Section 206 of S. 1735, Gang Prevention and Effective Deterrence Act of 2003.

Sincerely,

American Civil Liberties Union
American Civil Liberties Union of Southern California
American Immigration Lawyers Association
American-Arab Anti-Discrimination Committee
Asian & Pacific Islander American Health Forum
Asian Bar Association of Washington
Asian Counseling & Referral Service
Asian Law Caucus
Asian Pacific Islander Legal Outreach
Cambodian American National Council
Cambodian American Resource Agency
Cambodian Association of Greater Philadelphia
Cambodian Community Development, Inc.

Catholic Charities Archdiocese of New Orleans
Catholic Charities Immigration Services, Springdale
Centro Legal, Inc.
Defending Immigrants Partnership
East Bay Asian Local Development Corporation
El Centro, Inc., Latino Domestic Violence Intervention Project
Families for Freedom
Family Violence Prevention Fund
Florence Immigrant and Refugee Rights Project
Florida Immigrant Advocacy Center
Golden Vision Foundation - York, Pa.
Hate Free Zone Campaign of Washington
Heartland Alliance for Human Needs & Human Rights
Hebrew Immigrant Aid Society
Hmong National Development, Inc.
Hmong-Lao Assistance Association, Inc.
Human Rights Project
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Law Center of Minnesota
Immigrant Legal Resource Center
Immigration & Human Rights Clinic, St. Mary's University School of Law
Immigration Equality (formerly known as Lesbian and Gay Immigration Rights Task Force)
Indo-American Friendship Forum
Interfaith Coalition for Immigrant Rights
International Institute of the East Bay
Iowa Coalition Against Domestic Violence
Justice Conference of Women Religious
Korean American Resource & Cultural Center
Korean Resource Center
La Crosse Area Hmong Mutual Assistance Association, Inc.
La Esperanza, Inc.
Leadership Conference on Civil Rights
Leadership Education for Asian Pacifics
Legal Momentum: Advancing Women's Rights (formerly NOW Legal Defense and Education Fund)
Lutheran Immigration and Refugee Service
Mexican American Legal Defense and Educational Fund
Minnesota Advocates for Human Rights
Multi-Cultural Legal Center
Na Loio - Immigrant Rights and Public Interest Legal Center
Nashville Task Force on Refugees & Immigrants
National Alliance of Vietnamese American Service Agencies
National Asian Pacific American Legal Consortium
National Association of Criminal Defense Lawyers
National Coalition for Asian Pacific American Community Development
National Congress of Vietnamese Americans
National Council of La Raza
National Federation of Filipino American Associations
National Immigration Forum
National Immigration Law Center
National Korean American Service & Education Consortium

New York State Defenders Association
Northwest Immigrant Rights Project
Pennsylvania Immigration Resource Center
Political Asylum/Immigration Representation Project
Public Counsel Law Center
Sikh Coalition
Somos Un Pueblo Unido
Southeast Asia Resource Action Center
Southeast Asian Assistance Center
St. Charles Borromeo Catholic Church, Arlington, VA
Tahirih Justice Center
United Cambodian Association of Minnesota, Inc.
United Hmong Association of North Carolina
Washington Asian Pacific Islander Families Against Substance Abuse
Washington Defender Association's Immigration Project
Washington Lawyers' Committee for Civil Rights and Urban Affairs, Immigrant and Refugee
Rights Project
Young Korean American Service and Education Center