



DECONSTRUCTING THE MYTH OF THE CRIMINAL IMMIGRANT

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Donald Trump began his presidential campaign last year by accusing Mexican immigrants who cross the border as being criminals and rapists, and ended with the same sentiment in his acceptance speech of the Republican nomination by thundering that “nearly 180,000 people with criminal records ordered deported from our country are tonight roaming free to threaten peaceful citizens.”

While every prior Republican nominee in recent times has spoken in glowing terms about immigrants being an asset to America, Trump [emphasized only on the dark aspects](#), and hyped up fears of immigrants being a threat to the American people. This is despite the fact that studies have proved that [newcomers are less likely to commit crimes](#) than the native population.

Still, even if immigrants commit crimes in lesser proportion to native born Americans, as long as they have not become citizens, they pay a greater penalty than US citizens when they commit the same crime. While both may be punished under the criminal justice system, the immigrant after serving his or her sentence is likely to face deportation. It would seem fair that once a person has been punished and reformed, there should be no further penalty. Unfortunately, that is not the case with the non-citizen. Even a long term legal immigrant with a green card can get deported from the United States after serving a sentence. The sentence may be relatively minor or inconsequential under the criminal justice system, but can be consequential for the immigrant. For instance, an immigrant who is convicted of a misdemeanor theft but received a one year sentence that was suspended would still be considered to have been convicted of an aggravated felony. When an immigrant is convicted of an aggravated felony, there are fewer opportunities for defending oneself

against removal proceedings, and often times one is also not eligible for waivers.

So when Trump spoke about immigrants roaming free with criminal backgrounds, he sought to stereotype and dehumanizes all immigrants. Some of these immigrants may have committed minor crimes from years ago, such as driving without a license, and may be the subject of prosecutorial discretion because they have family members who are US citizens. A significant percentage of their so called crimes involve civil immigration violations and nonviolent offenses, and thus it was patently false to suggest that they "threaten peaceful citizens." Even the U.S. Supreme Court has recognized that a non-citizen with a removal order cannot be indefinitely detained. In [*Zadvydas v. Davis*](#), for example, the U.S. Supreme Court held that it was unconstitutional to indefinitely detain a non-citizen who has been ordered removed beyond a six month period. Some persons in the group that Trump demonized may have orders of removal that are under judicial review, and ICE has decided that it doesn't make sense for them to be locked up indefinitely while the petition for review is pending. Another possibility is that in some cases the "criminal record" is a single nonviolent misdemeanor which does not render the person a removal priority. Trump might also have been counting people whom an IJ has ordered removed, but who have an appeal pending with the Board of Immigration Appeals, and who are out on bond.

When we as a nation accept immigrants, and America's greatness is because it is a nation of immigrants, it is inevitable that a small group within the immigration population will commit crimes, both major and innocuous. A college student who is an immigrant may be convicted of possession of marijuana joint (outside Colorado of course), and when she travels and returns, she may be found inadmissible and put into removal proceedings. It would be unfair to demonize her by branding her as a "criminal alien" and being a threat to "peaceful citizens." Immigrants should face the same penalty as a U.S. citizen when they are convicted of crimes. If the purpose of punishment is deterrence or reformation, and that is sufficient for the citizen, there is no need to subject the non-citizen immigrant to the additional draconian penalty of deportation, which can potentially result in the permanent banishment of that individual from America.

Finally, Trump in true demagogic fashion only focused on the anxieties and fears caused by immigrants. There was scant mention of their achievements

and how they have benefited America in every sphere. Where was the sunny optimism about America being a welcoming country to people who can only benefit it? Or America even being kind and forgiving – especially to the immigrant who may have committed a crime, but has long ties and family here, and has completely rehabilitated after serving his sentence? If Trump may have been successful in stoking fears in a few people, he also succeeded in galvanizing many more people to vote to throw him out so that America can continue to be this sunny, optimistic and welcoming country.