

July 5, 2005

Dear Senator:

The undersigned organizations urge you to oppose Senate or Congressional passage of any proposed legislation similar to Section 112 of H.R. 1279, Gang Deterrence and Community Protection Act of 2005 (as referred to the Senate after being received from the House). The stated purpose of this comprehensive bill is to increase gang prosecution and prevention efforts. However, Section 112 would have a dramatic and unwise effect under currently controversial immigration laws that would run counter to American values of fairness and justice, and would overturn the decisions of the majority of federal courts, including a unanimous decision this term of the Supreme Court.

Section 112 of H.R. 1279 would greatly expand the number of lawful permanent residents, refugees fleeing persecution abroad, survivors of domestic violence, and other immigrants 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 112 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 (see examples below). 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. In addition, legal residents are rendered permanently ineligible for citizenship even if the government does not deport them, domestic violence survivors are rendered ineligible to obtain lawful permanent residence under the special VAWA provisions created by Congress, and refugees fleeing persecution abroad are rendered permanently ineligible for asylum. Legal permanent residents and others 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 these penalties.

Section 112 would overturn the decisions of the majority of federal courts, including the unanimous decision just this term of the Supreme Court in *Josue Leocal v. Attorney General*, 125 S. Ct. 377 (issued on November 9, 2004). The Supreme Court ruled that an offense should not be deemed a crime of violence if any injury or risk of injury is a result only of accidental or negligent conduct. As Chief Justice Rehnquist pointed out, writing for the entire Court, "[t]he ordinary meaning of this [crime of violence] term . . . suggests a category of violent, active crimes Interpreting § 16 to encompass accidental or negligent conduct would blur the distinction between the 'violent' crimes Congress sought to distinguish for heightened punishment and other crimes." At the very least, Congress should not undermine the ordinary meaning of the crime of violence term without hearings and careful deliberation on Section 112's extreme broadening of the term to cover offenses where the individual has no intention to cause injury. This is especially true given that this provision has nothing to do with the purpose of the purported overall legislation (addressing gang-related crime), and, yet, the severe consequences of this provision will be borne by immigrants and their U.S. citizen families who also have nothing to do with gangs.

Unlike in criminal cases, where people who are convicted of crimes based on negligent or accidental 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, mandatory and permanent ineligibility for U.S. citizenship, and mandatory and permanent ineligibility for asylum. 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. Immigrants -- including those serving in the U.S. military, domestic violence survivors, and other hard-working immigrants who made one negligent or accidental mistake -- 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 and no matter what the circumstances. 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.

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 (Family Reunification Act of 1999) 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 (Family Reunification Act of 2002) 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, permanent ineligibility for citizenship, and permanent ineligibility for asylum—no matter what the individual circumstances—if Section 112 becomes the law.

- A long-time legal permanent resident 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.
- An immigrant 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 or refugee 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 Senate or Congressional passage of any proposed legislation similar to Section 112 of H.R. 1279, Gang Deterrence and Community Protection Act of 2005.

Sincerely,

NATIONAL

American Civil Liberties Union
American Immigration Lawyers Association
American Jewish Committee
American-Arab Anti-Discrimination Committee
Arab American Institute
Asian and Pacific Islander American Health Forum
Cambodian American National Council
Center for Constitutional Rights
Center for National Security Studies
FaithAction
Immigrant Legal Resource Center
Immigration Equality (formerly known as Lesbian and Gay Immigration Rights Task Force)
Labor Council for Latin American Advancement
Leadership Conference on Civil Rights
Mexican American Legal Defense and Education Fund
National Asian Pacific American Legal Consortium
National Association of Criminal Defense Lawyers
National Association of Muslim 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 Immigration Project of the National Lawyers Guild
National Korean American Service and Education Consortium
Sikh American Legal Defense and Education Fund
Sikh Coalition
South Asian American Leaders of Tomorrow
Southeast Asia Resource Action Center
Unitarian Universalist Association of Congregations
Washington Lawyers' Committee for Civil Rights and Urban Affairs
YWCA USA

LOCAL / REGIONAL

Arab American Community Coalition - Seattle, WA
Arab Community Center for Economic and Social Services - Dearborn, MI
Asian American Institute - Chicago, IL
Asian American Resource Workshop - Boston, MA
Asian Counseling & Referral Service - Seattle, WA
Asian Law Caucus - San Francisco, CA
Asian Pacific American Legal Center of Southern California - Los Angeles, CA

Bay Area Immigrant Rights Coalition - Oakland, CA
Berkshire Immigrant Center - Berkshire County, MA
Capital Area Immigrants' Rights (CAIR) Coalition - Washington, D.C.
Centro Campesino - Owatonna, MN
Centro de Amigos - North Carolina
Filipinos for Affirmative Action - Oakland, CA
Greater Cleveland Immigrant Support Network - Cleveland, OH
Hate Free Zone Washington - Seattle, WA
Heartland Alliance for Human Needs & Human Rights - Chicago, IL
Illinois Coalition for Immigrant and Refugee Rights - Chicago, IL
Immigration Defense & Expert Assistance - Rockville, MD
Immigration Project, The - Illinois
International Institute of the East Bay - Oakland, CA
Iowa Coalition Against Domestic Violence - Des Moines, IA
Korean American Resource and Cultural Center - Chicago, IL
Korean Resource Center - Los Angeles, CA
La Crosse Area Hmong Mutual Assistance Association, Inc. - La Crosse, WI
Labor Council for Latin American Advancement, MA State Chapter - MA
Mari Bersatu Indonesian Community Center - Plainfield, NJ
Midwest Immigrant & Human Rights Center - Chicago, IL
Minnesota Advocates for Human Rights - Minneapolis, MN
Na Loio: Immigrant Rights and Public Interest Legal Center - Honolulu, HI
National Asian Pacific American Women's Forum, Seattle Chapter - Seattle, WA
New York State Defenders Association: Immigrant Defense Project - NY
Northwest Immigrant Rights Project - Seattle, WA
ONE Lowell - Lowell, MA
Parker, Bush & Lane - Portland, OR
Presbyterian Church (USA), Washington Office - Washington, D.C.
Refugee Resource Project - Reading, PA
South Asian Progressive Action Collective - Chicago, IL
South Asian Youth Action - Elmhurst, NY
Southern Poverty Law Center - Birmingham, Alabama
Tekiah: A Jewish Call to Action - Boston, MA
Texas Civil Rights Project - Austin, TX
UNIDOS Against Domestic Violence - Madison, WI
Urban Justice Center Human Rights Project - New York, NY
Washington Asian Pacific Islander Families Against Substance Abuse - Seattle, WA
Washington Defender Association's Immigration Project - Seattle, WA
Young Korean American Service and Education Center - Flushing, NY