Statement for the Record of the

Public Defenders Coalition for Immigrant Justice

For House Judiciary Committee Subcommittee on Immigration and Citizenship

Hearing on Barriers to Legal Immigration

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Washington, DC 20515

I. Introduction

The Public Defenders Coalition for Immigrant Justice provides this statement to address how current immigration law excludes countless individuals from ever obtaining lawful status because of contact with the criminal legal system. Existing criminal bars disproportionately and unfairly exclude Black, Latinx, and other minorities from obtaining lawful status. We urge Congress to repeal these bars, and to repeal their core triggers, the broad and punitive criminal grounds of inadmissibility and deportability.

The Public Defenders Coalition for Immigrant Justice is a growing coalition with public defender member offices in Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Nebraska, New York, Oregon, Texas, and Washington. As advocates who represent noncitizens in criminal and immigration proceedings, we are deeply aware of the devastating impact of criminal and immigration laws that disproportionately punish noncitizens and separate immigrant families by incarceration and deportation. The coalition seeks to disentangle the criminal and immigration legal systems and support policies that promote family reunification, decarceration, and due process protections for immigrant communities.

II. Criminal Bars Within the Immigration & Nationality Act

The criminal bars within the INA must be understood in relation to the systemic racism and inequities within the criminal legal system. In conjunction with the failed "tough on crime" policies that have long resulted in poverty and incarceration, traumatizing generations of immigrants and their families, the criminal bars operate to prevent Black, Latinx, and other minorities and those of limited means from legalizing their status.

In fact, the United States' immigration laws have long operated to exclude or deport those deemed "undesirable" or "undeserving" due to their race, religion, ethnicity, class, or some perceived defect. The Immigration Act of 1917, for example, excluded individuals from certain Asian countries, those suffering from mental illness or limited mental capacity, and those who had admitted to or been convicted of a felony or any crime involving moral turpitude.[1] Today's criminal bars in the INA have their roots in these discriminatory bars from over a century ago.

Criminal bars are found throughout the INA. They exist within the grounds of inadmissibility at INA § 212(a)(2), the grounds of deportability at INA § 237(a)(2), the "good moral character" definition at INA § 101(f), and elsewhere. These bars are extremely broad and prohibit countless individuals who would otherwise qualify for lawful status - including longtime spouses and parents of U.S. citizens - from moving forward with their applications. Inadmissibility grounds include all controlled substance offenses and any crime involving moral turpitude ("CIMT") aside from a single conviction for a misdemeanor

[1] *See Immigration Act of 1917*, available at https://www.loc.gov/law/help/statutes-at-large/64th-congress/session-2/c64s2ch29.pdf.

with minimal jail time.[2] An individual who would otherwise be eligible to adjust their status to lawful permanent residence through their U.S. citizen spouse is permanently barred from doing so if they have any controlled substance conviction or admission to a controlled substance offense on their record aside from one offense related to possessing a small amount of marijuana. An individual with a minor marijuana possession offense or two petty theft convictions can overcome their crime only by demonstrating that their U.S. citizen or lawful permanent resident spouse, parent, or child would suffer extreme hardship without them.[3] An individual with two marijuana possession offenses - or who cannot meet this hardship standard - is out of luck.[4]

The CIMT ground of inadmissibility is both nebulous and extremely broad. Very minor offenses can be categorized as CIMTs, since the definition turns on the character of the crime rather than its severity. Anything that might be considered "vile or depraved" may be deemed a CIMT. Retail theft, giving a false name to a police officer, and writing a bad check are a few examples of CIMTs. Sex work, despite being legal in parts of the country and decriminalized elsewhere,[5] remains a CIMT and also triggers a separate ground of inadmissibility.[6]

Moreover, some criminal grounds of inadmissibility do not require a conviction. A mere admission even without a conviction to certain crimes (*e.g.*, controlled substance offenses or CIMTs) is enough to render someone inadmissible[7]. Additionally, if the Department of Homeland Security has "reason to believe" someone is a drug trafficker, that person may be unable to ever gain lawful status, even absent any criminal convictions[8]. The "reason to believe" standard is akin to a probable cause standard, requiring far less evidence than would be required to sustain a criminal conviction.

Likewise, individuals placed into removal proceedings are disqualified from asserting strong defenses to deportation such as cancellation of removal or asylum under the existing criminal bars. Undocumented individuals who have lived in the U.S. for over ten years and who could prove that their deportation would inflict exceptional and extremely unusual hardship on their United States citizen or permanent resident spouse, parent, or child are denied recourse to protect their family members if they fall within any criminal ground of inadmissibility or deportability.[9] This means, for example, that a father who is the caregiver and financial support of his autistic child could not ask an immigration judge to permit him to stay in the United States if, even decades earlier, he had been convicted of a single, minor drug possession offense or a single, non-petty crime involving moral turpitude such as using a false identification to work. Similarly, an asylum applicant who has been convicted of an aggravated felony

[2] INA § 212(a)(2).
[3] *See* INA § 212(h).
[4] *Id.*
[5] ABC News, *NYC Judge Agrees to Dismiss Thousands of Prostitution Cases* (Apr. 21, 2021), available at https://abcnews.go.com/US/wireStory/nyc-judge-agrees-dismiss-thousands-prostitution-cases-77217629
[6] INA § 212(a)(2)(D)
[7] INA § 212(a)(2)(A)(i)
[8] INA § 212(a)(2)(C)
[9] INA § 240A(b)(1)

cannot pursue their application, no matter how compelling its merits. Since the 1996 amendments to the INA, aggravated felonies have included minor offenses, particularly in states that utilize suspended jail sentences. In fact, a misdemeanor theft offense where the convicted individual never even steps foot in a jail is an aggravated felony if the sentence is 365 days suspended.

III. Criminal Bars in the Context of Our Biased Criminal Legal System

As public defenders who represent noncitizens in criminal and immigration proceedings, we recognize the pernicious connection between the criminal and civil immigration legal systems. Every day our offices fight against the devastating impact of criminal and immigration laws that disproportionately punish noncitizens. We witness how the criminal legal system, especially its "War on Drugs," "broken windows," and "stop and frisk" policing, has long targeted Black people and other communities of color. These are the same communities that are the most susceptible to immigration enforcement and deportation. In fact, our immigration system relies on state and local criminal legal systems to find noncitizens, detain them, and subject them to the civil deportation process. And noncitizens who avoid detention and deportation often find out that their contact with the criminal legal system still has immigration consequences, preventing them from legalizing their status even after years or decades have passed since their criminal arrest.

IV. Conclusion

We have an opportunity to lift up immigrant communities by building pathways to legal status and citizenship that are free of the inequities in our criminal legal system. To do so, we need to rethink the existing criminal bars that operate to exclude people because the color of their skin or the neighborhood of their residence brought them into contact with the police. Sweepingly excluding those with police contact from immigration reform ignores that systemic racism in the criminal legal system triggered those contacts, the ensuing prosecutions, and the convictions and sentences that then are used to vilify and deport immigrants of color.

We urge Congress to end the practice of categorically labeling and excluding certain immigrants - a practice that has its roots in nativist ideology from the 1800's and early 1900's - and to instead build stable, prosperous, and vibrant communities for immigrants, their families, and for all of us by giving these individuals a chance at a life in lawful status. It is time for immigrants to stop having to live under the constant fear of incarceration, separation, and deportation. We must break from the unjust and outdated practice of granting immigration status for some in exchange for harsher punishments and criminalization of others.