"Passed Beyond Our Aid:" U.S. Deportation, Integrity, and the Rule of Law

Daniel Kanstroom

Shortly before the enactment of the harshest package of U.S. deportation laws since the Alien & Sedition Acts of 1798, Barbara Jordan—then Chair of the U.S. Commission on Immigration Reform—said, "We are a nation of immigrants, dedicated to the rule of law…."[1] The following year, in the aftermath of the Oklahoma City bombing, laws were passed that raised serious questions about both clauses in her statement.

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Known by their acronyms AEDPA and IIRIRA,[2] the 1996 laws reflected a strong "national security"[3] and "crime control" orientation that radically changed and expanded the U.S. deportation system. Among other features, they dramatically (and retroactively) expanded many grounds for exclusion and deportation, creating mandatory detention for many classes of non-citizens; inventing new "fast-track" deportation systems; eliminating judicial review of certain types of deportation (removal) orders; discarding some and limiting other discretionary "waivers" of deportability; vastly increasing possible state and local

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law enforcement involvement in deportation; and even permitting the use of secret evidence for non-citizens accused of "terrorist" activity. As a direct result of these laws, hundreds of thousands of people have been excluded and deported from the United States who—under prior laws—would have been allowed to become legal permanent residents and (probably) naturalized citizens. Moreover, the rule of law itself was changed in ways that are worthy of the most serious consideration.

These legal features remain part of U.S. deportation policy today, applauded by some, but increasingly criticized by observers ranging from human rights advocates to the American Bar Association and even the U.S. Supreme Court.[4] Still, in public debate over immigration policy, one might get the peculiar impression that enforcement has faded over the years. For example, Louis Barletta, the mayor of Hazelton, Pennsylvania, justified his town's now-overturned attempt to regulate the conduct of undocumented non-citizens by asserting, "We are targeting illegals. When the quality of life of the city is being destroyed right before your eyes, I cannot sit back and watch it happen to my city."

Lou Dobbs, the right-leaning news anchor formerly affiliated with CNN and known for his anti-immigration stance, responded with equal ardor. "I wonder if the ACLU and these activist organizations then would recommend and participate in lawsuits against federal officials who are refusing to uphold their constitutional oaths of office," he said, "and failing… to follow the Constitution and enforce existing federal immigration law?"[5]

When talk turns to "criminal aliens" (an oft-cited but poorly defined and misunderstood category that includes many first-time drug offenders), the rhetoric becomes still harsher. Congressman Lamar Smith (R-TX) said in 2003, "We should not give criminals who are not U.S. citizens more opportunities to further terrorize our communities."[6] Such rhetoric may be seen as part of a process of "securitization" (i.e., an ostensible focus on national security and crime) that has arguably eroded protections for certain basic human rights of non-citizens.[7] Some sociologists and criminologists have also used the term "moral panic" to describe such phenomena. Moral panic, they suggest, facilitates powerful state action against a social group or activity that is said to threaten the very stability and well-being of society.[8] Much of the immigration debate beginning in the 1990s can be well-described in this way.[9] I recall, in particular, a statement reportedly made by a U.S. senator at the beginning of the current crackdown: "Criminal aliens," he suggested, were "savaging our society."[10]

To be sure, the United States still faces the serious, unresolved problem of more than eleven million undocumented people living and working

within its borders.[11] However, notwithstanding certain famous local arguments about under-enforcement in Arizona and a few other border states, the fact is that this country is still in the midst of a massive deportation experiment that is exceptionally sweeping and harsh by virtually any historical or comparative measure. Indeed, the 1996 laws served to accelerate trends that had been developing since the 1980s. The number of deportees during this period will likely surprise many readers. According to Department of Homeland Security statistics, in the last twenty-five years, the number of non-citizen deportations has exceeded *25 million*.[12] On average, about one million people per year have actually been removed.[13]

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It may also come as a surprise that the number of deportations during the Obama administration has increased substantially from that of the George W. Bush administration.[14] What has changed recently, however, is the focus of deportation. Moving away from high-profile workplace raids, the current administration has concentrated on deportations of otherwise legal resident non-citizens who have been convicted of crimes. A significant increase in "company audits" of businesses suspected of hiring unauthorized workers has also been reported.[15]

Still, the U.S. Immigration and Customs Enforcement ("ICE"), the country's main deportation agency, estimates that formal deportations alone will total about 400,000 this fiscal year, which is nearly ten percent above the Bush administration's 2008 figures and 25 percent above its 2007 numbers. Combined with other mechanisms, such as "voluntary departure," 2011 is on pace for another record year of removals. According to ICE Director John Morton, agents now focus their "principal attention" on felons and repeat lawbreakers. As Morton offered in an interview, "You've got to have aggressive enforcement against criminal offenders. You have to have a secure border. You have to have some integrity in the system."[16]

Mr. Morton has labored assiduously and honorably to improve the rather dysfunctional deportation system he inherited. Systemic integrity, however, is an elusive concept under any circumstances, and it is especially so in the realm of deportation. One reason for this is that the political constraints that might restrain government enforcement power are weak in his setting, leaving the agency's discretion relatively unbridled. It is hard

to imagine a constituency with less political clout and that is less likely to evoke sympathy or empathy than "criminal aliens."

For that reason, it becomes especially important for those of us who study the system to think critically about how it is really working, including by examining the deportation of many hundreds of thousands of green-card holders. These individuals have grown up, been fully acculturated, attended school, and raised families in the United States. Upon deportation, they are separated from their families and sent to places where they frequently have few acquaintances, do not speak the language, lack cultural references, and possess bleak job or life prospects. Many are permanently barred from ever returning to the United States, even temporarily, to visit their parents, spouses, or children.

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Had these deportees all been serious or dangerous criminals, one might see some justice or proportionality in this regime. But the reality is much more complicated—not least because the vast majority of criminal deportees stand accused of relatively minor offenses. A 2009 report by Human Rights Watch[17] examining the effectiveness of these post-entry social control deportations[18] concluded, strikingly, that the majority of individuals were deported for a non-violent offense.[19] The most common grounds involve controlled substance offenses. In many cases, a single such offense may suffice for deportation. Although the data kept by ICE in this regard are woefully inadequate, in the cases in which adequate records were kept, the researchers concluded that 77 percent of "legally present" non-citizens deported for crime were guilty of such non-violent offenses as drug possession and larceny (even shoplifting may suffice).[20] More specifically, for lawful permanent residents, data related to 4,453 deportees showed that some 68 percent were expelled from the United States for such non-violent offenses.[21] Further, as noted, many deportees are not newcomers to the United States. A 2006 study analyzed the use of so-called "aggravated felony" charges[22] in formal removal proceedings and found that some 70 percent of those charged had lived in the United States for more than a decade. The median length of

residence prior to removal was fourteen years.[23] This fact becomes especially significant when one realizes that the "aggravated felony" category sounds much worse than it is. It has included simple possession of drugs, petty larceny with a one-year suspended sentence, simple assault, and driving while intoxicated.

Such facts raise both policy and normative questions. What are the real policy goals of this form of deportation? Should a long-term lawful permanent resident with substantial U.S. family ties be deported for petty crimes, such as the possession of a marijuana cigarette?[24] Is the system working in a fair and just way?

Although the search for "integrity" demands such questions, answers are elusive. For example, those who support deportation as a crime-control strategy might consider that social science researchers have highlighted a "paradox of assimilation." Assimilation, as traditionally understood, involves immigrants and their descendants acquiring language proficiency, higher levels of education, job skills, and other attributes that improve their chances of success. However, the life situations of immigrants—and their children—often worsen the longer they live in the United States and increase their acculturation. The children and grandchildren of many immigrants, as well as some immigrants themselves, become subject to economic and social forces—such as higher rates of family disintegration and drug and alcohol addiction—that increase the likelihood of criminal behavior.[25] Thus, one might correctly say that it is not immigrants who cause crime in U.S. society, but rather it is U.S. society that frequently criminalizes the children of immigrants.

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Furthermore, the more one digs into the historical attempt to justify post-entry social control deportation as a crime-control measure, the more one realizes how often supporting data has been lacking. As Rubén Rumbaut et al. noted in a 2006 study, the Industrial Commission of 1901, the [Dillingham] Immigration Commission of 1911, and the [Wickersham] National Commission on Law Observance and Enforcement of 1931 all originally sought to measure how immigration resulted in increases in

crime. Instead, "each found lower levels of criminal involvement among the foreign-born but higher levels among their native-born counterparts." The disturbing conclusion is clear: "If there was an 'immigrant crime problem' it was not found among the immigrants, but among their U.S.-born [U.S. citizen] sons."[26] Whatever one may think of such a problem, its solution is not deportation.

There are several bases for this conclusion. First, as one court described it in a case I litigated many years ago, the deportation system itself is "a mess."[27] Part of the problem stems from certain venerable legal formalisms that are only now beginning to erode.[28] Deportation has long been technically understood as a non-punitive, regulatory measure.[29] And yet, functionally speaking, it often seems to be both punitive and retributive. As the Supreme Court recently noted,

> The landscape of federal immigration law has changed dramatically over the last 90 years. While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The "drastic measure" of deportation or removal… is now *virtually inevitable* for a vast number of noncitizens convicted of crimes.[30]

Second, the deportation system has been severely criticized for such problems as adjudicative disparities among judges, deficient oversight, arbitrary detention and transfer practices, and problems caused by lack of counsel.[31] We know that many people have been deported in error. Indeed, in recent years, even some U.S. citizens have found themselves cast out of their own country, although deporting Americans violates more laws and legal principles than I can count. The widely reported case of Pedro Guzman is a particularly compelling example. Pedro (also known as Peter) is a U.S. citizen, born and raised in California. Mr. Guzman has a cognitive disability. He attended special education classes as a child, cannot read or write, and has serious difficulty processing information. He was arrested in Los Angeles for the misdemeanor of trespassing. While in the custody of the

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Los Angeles County Sheriff's Department, he apparently signed a document stating that he was a citizen of Mexico and had no legal status in the United States. The administrator who obtained his signature on the document checked a box indicating that Mr. Guzman had read the statement himself, in Spanish. On the basis of this signature alone, Mr. Guzman was transferred to ICE custody, which transported him by bus to the streets of Tijuana. No attorney or family members were ever present during the removal process. Mr. Guzman had virtually no money and could not contact his family. He wandered the streets for three months, eating out of garbage cans and bathing in the Tijuana River while his terrified family desperately searched for him. Eventually, Mr. Guzman was allowed to return to the United States after Customs and Border Protection (CBP) learned that a warrant for his arrest had been issued because he had missed meetings with his probation officer.[32] Mr. Guzman is far from alone in this strange and illegal predicament. Indeed, there have been many such cases reported in recent years. [33]

Third, we also know that many non-citizen deportees never should have been deported, despite having gone through formal deportation hearings. A litany of mistakes may underlie this phenomenon. Some deportees simply gave up fighting their cases after years in immigration detention because they could not stand to remain incarcerated any longer. A higher number of deportees simply lacked immigration counsel or had inadequate counsel. As the recently decided Supreme Court case of *Padilla v. Kentucky*[34] highlights, many criminal defense lawyers have no awareness of possible immigration consequences and, if they advise their non-citizen clients at all regarding pleas, they often advise badly.[35] For this reason, the Court, for the first time in history, held in a path-breaking opinion that Sixth Amendment constitutional norms applied to a non-citizen's claim that his criminal defense counsel was ineffective due to allegedly incorrect advice concerning the risk of deportation.

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Despite such recent cases as *Padilla*, administrative and judicial review of deportation cases has been severely limited for many years. Thus, many mistakes have gone unnoticed by the legal system. Still, over time, the Supreme Court has repeatedly recognized that the government's theory of deportation was, in various cases involving lawful permanent residents, unduly rigid and fundamen-

tally flawed as a matter of legal reasoning.[36] However, in many such cases, there is no recourse—either in criminal or immigration court.

All of these facts add up to a powerful indictment of the accuracy, integrity, justice, and fairness of the deportation system. It indicates that many thousands of deportees may reasonably claim that they should still be in the United States, living with their families. The full scope of this problem can probably never be accurately measured. But we can try. Consider the many millions of people who have been deported in the last fifteen years, and then imagine a minuscule—maybe one or two percent—error rate. Even assuming such a small error rate, we are still talking about some 80,000 to 100,000 mistakes over the past several years alone, including refugees, asylum-seekers, and many thousands of long-term legal residents.

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What can and ought to be done about such deep problems of justice and fairness? The usual response to administrative law errors is to enact a safety mechanism that allows cases to be reconsidered. In deportation law, this mechanism is known as a "motion to reopen" or a "motion to reconsider." Such motions, which are "discretionary," are to be adjudicated by immigration judges or the Board of Immigration Appeals (BIA). They constitute part of the discretionary authority that might be termed "the flexible shock absorber of the administrative state."[37]

One might expect that such motions could cure at least some cases of wrongful deportation. But in this arena, Mr. Morton's call for integrity seems to have lacked a certain bite. The BIA has ruled that "[r]emoved aliens have, by virtue of their departure, literally *passed beyond our aid*." Deportation, as the BIA also put it, is a "transformative event that fundamentally alters the alien's posture under the law."[38] Thus, the consequence of a deportee's removal—even if it was done in error—is "not just physical absence from the country, but also a nullification of legal status, which leaves him in no better position after departure than any other alien who is outside the territory of the United States."[39] That is to say, in this legal limbo, the deportee fundamentally lacks rights. This rigid, formalist approach means that countless mistakes have likely gone undiscovered, let alone rectified.[40] Slowly, a number of federal courts of appeals have

rejected the BIA's approach. The issue will probably have to be decided by the Supreme Court.

But considerably stronger action is needed to bring true integrity to the U.S. deportation system. The Post-Deportation Human Rights Project, based at the Center for Human Rights and International Justice at Boston College, is a pilot program designed to address the moar cruel effects of current U.S. deportation policies.[41] The Project aims to conceptualize an entirely new area of "post-deportation" law by merging the best principles of U.S. constitutional law with accepted aspects of international human rights law.[42] For example, human rights law is much more protective of family unity and the rights of children than current U.S. deportation law is.[43] Likewise, the Project develops norms of proportionality, anti-discrimination, and due process are much more fully than current U.S. deportation laws.

The ultimate aim of the Project is to advocate, in collaboration with affected families and communities, for the introduction of proportionality, compassion, and respect for family unity into U.S. immigration laws. The goal is to bring these laws into compliance with international human rights standards.[44] One basic principle in that realm is that "states must show that the impact of the challenged policy or procedure on private or family life is proportionate to the legitimate aim pursued."[45] The stronger an individual's family ties and the longer his or her residency in the host country, the greater the burden on the state to demonstrate that the deportation is proportionate to the legitimate aim pursued.[46]

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Courts must consider "the extent to which private and family life was or will be ruptured, the existence and nature of the petitioner's links with his or her origin country, the retention of the nationality of his or her country of origin,"[47] as well as "the gravity of the petitioner's offense, persistence of his or her offending behavior, his or her age at time of offense, and his or her medical and psychological status."[48] In short, the best principles of law demand a proportional balancing of the nature of criminal conduct, its consequences, and the effects of the deportation sanction. This is the minimum that any reasonable concept of "integrity" demands. Sadly, however, it is precisely what the U.S. legal deportation system currently lacks. ■

ENDNOTES

1 U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration and Claims, *Testimony of Barbara Jordan, Chair, U.S. Commission on Immigration Reform*, February 24, 1995.

2 *The Antiterrorism and Effective Death Penalty Act of 1996* (AEDPA) Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified as amended in scattered sections of 8, 18, 22, 28, 40, 42 U.S.C.) (1999) and the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA) Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (1996) (codified as amended in scattered sections of 8, 18 U.S.C.) (1999).

3 Daniel Kanstroom, "Reaping the Harvest: The Long Rhetorical Struggle over Deportation in the 'Nation of Immigrants,'" *University of Connecticut Law Journal* 39 (5) (Spring 2007): 1911-1922.

4 See discussion of Supreme Court cases in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

5 Lou Dobbs Tonight, August 16, 2006, <http://transcripts.cnn.com/TRANSCRIPTS/0608/16/ldt.01.html> (accessed April 12, 2011).

6 U.S. House of Representatives, House Subcommittee on Immigration and Claims, *Immigration and Naturalization Service Decisions Impacting the Agency's Ability to Control Criminal and Illegal Aliens: Hearing before the Subcommittee on Immigration and Claims of the H. Comm,* Judiciary, 105th Cong. 13th sess., 1999 (Statement of Rep. Lamar Smith, Member, H. Subcomm. on Immigration on Claims).

7 Barry Buzan et al., *Security: A New Framework for Analysis*, (Boulder: Lynne Rienner Publishers, 1998), 23-29, 121-22.

8 Gary W. Potter and Victor E. Kappeler, *Constructing Crime: Perspectives on Making News and Social Problems*" (Prospective Heights: Waveland Press, 1998); Erich Goode and Nachman Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction", *Annual Review of Sociology*, 149, (1994) 149–71.

9 Michael Welch, *Detained: Immigration Laws and the Expanding I.N.S. Jail Complex*, (Philadelphia: Temple University Press, 2002).

10 UPI, "D'Amato Says INS Fails to Protect City," March 23, 1986. [*cited in* Peter H. Schuck and John Williams, "Removing Criminal Aliens: The Pitfalls And Promises Of Federalism," *Faculty Scholarship Series*, Paper 1659 (1999)].

11 As of March 2010, some 11.2 million "unauthorized immigrants" were living in the United States, virtually unchanged from a year earlier. Jeffrey S. Passel and D'Vera Cohn, "Unauthorized Immigrant Population: National and State Trends," February 1, 2011, <http://pewhispanic.org/reports/report.php?ReportID=133> (accessed March 16, 2011).

12 This number includes some people who may have been deported more than one time, so it is a measure of deportation events, not exactly the number of individuals deported.

13 Department of Homeland Security, Office of Immigration Statistics, "2009 Yearbook of Immigration Statistics," *Department of Homeland Security,* Table 36, 95, <http://www.dhs.gov/files/statistics/immigration.shtm> (accessed March 16, 2011).

14 Peter Slevin, "Deportation of illegal immigrants increases under Obama administration," *Washington Post*, July 26, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/25/AR2010072501790.html> (accessed March 16, 2011). One can only speculate about the reasons for this phenomenon. But I would suggest that a focus on criminal deportations strikes this Administration as more politically palatable and therefore the best way to show some enforcement energy and bona fides while seeking more comprehensive immigration reform.

15 The number of company audits has roughly quadrupled since 2008.

16 Slevin.
17 I worked with the drafters of this Report.
18 As I have explained at length elsewhere, the United States has two basic forms of deportation which reflect two somewhat different, if inter-related, goals. The first, *extended border control*, seeks to remove those non-citizens who have evaded the rules that govern legal entry into and temporary residence in the United States (*e.g.,* those who enter without inspection or "overstay" their allowed period of admission). Another form, *post-entry social control*, regulates the conduct of those who have been legally admitted (for example, as students, workers or permanent residents) but who then engage in a wide variety of prohibited behaviors. Deportation comes in many procedural guises, some of which are rather formal and well-structured, and others of which are quite informal, fast-track mechanisms, with names that reflect this, such as: "expedited removal," "administrative removal," and "reinstatement of removal." Daniel Kanstroom, *Deportation Nation: Outsiders in American History*,(Cambridge: Harvard University Press 2007), 2-20.
19 70.5 percent were deported for a non-violent offense and 29.5 percent were deported for a violent or potentially violent offense.
20 Ibid., see Figure 4 and Appendix E.
21 Ibid.
22 These charges are the most serious in terms of consequences, but very minor crimes, such as petite larceny and drug possession, can be aggravated felonies. 8 U.S.C. § 1101(a)(43) (2000).
23 TRAC Immigration, "How Often Is The Aggravated Felony Statute Used?", 2006, <http://trac.syr.edu/immigration/reports/158> (accessed March 16, 2011).
24 Nina Bernstein, "How One Marijuana Cigarette May Lead to Deportation," *The New York Times*, March 30, 2010 <http://www.nytimes.com/2010/03/31/nyregion/31drug.html> (accessed March 16, 2011).
25 Ruben G. Rumbaut and Walter A. Ewing, "The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates among Native and Foreign-Born Men," *Border Battles*, May 23 , 2007 <http://borderbattles.ssrc.org/Rumbault_Ewing/printable.html> (accessed March 16, 2011).
26 Ibid.
27 *Campos v. I.N.S.*, 961 F.2d 309, 315 (1992).
28 *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) (holding that noncitizens have a Sixth Amendment right to counsel regarding deportation consequences in criminal court).
29 Daniel Kanstroom, Daniel "Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases," *Harvard Law Review* 113, 8 (June 2000) 1890-1935.
30 *Padilla v. Kentucky*, 130 S. Ct. 1473, 1478.
31 ABA Commission on Immigration, Arnold & Porter, Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases; <http://new.abanet.org/immigration/pages/default.aspx> (accessed March 16, 2011), (noting that more than half of the noncitizens in removal proceedings, and 84% of the detained ones, lacked legal representation, which "calls into question the fairness of a convoluted and complicated process…"); *Ibid.*
32 US House of Representatives Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. *Statement Of Gary E. Mead, Deputy Director, Office Of Detention And Removal Operations U.S. Immigration And Customs Enforcement Department Of Homeland Security Regarding A Hearing On ~~P~~roblems With ICE Interrogation, Detention And Removal Procedures*, February 13, 2008; available at: <http://judiciary.house.gov/hearings/pdf/ Mead080213.pdf>

33 Jacqueline Stevens. "Thin Ice," *The Nation*, June 23, 2008. <http://www.thenation.com/article/thin-ice> (accessed March 16, 2011); U.S. Congress Commission on the Judiciary, *Problems with ICE Interrogation, Detention and Removal Procedures: Statement of Kara Hartzler, Esq., Florence Immigrant and Refugee Rights Project*, 110th Congress, Session 1, 2008; available at <http://judiciary.house.gov/hearings/ pdf/ Hartzler080213.pdf>. In 2007, the Florence Immigration and Refugee Rights Project, which provides services to detained noncitizens in Arizona, encountered some 40-50 detainees *per month* who presented what they deemed potentially valid claims to U.S. citizenship. This number, offered in congressional testimony, represented 6-7.5 percent of the 8,000 detainees to whom the organization provided services.

34 130 S. Ct. 1473 (2010).

35 *Padilla v. Kentucky*, *supra*, (holding that non-citizens have a Sixth Amendment right to counsel regarding deportation consequences in criminal court).

36 *Leocal v. Ashcroft,* 543 U.S. 1 (2004) (DUI held not to be an automatic aggravated felony); *Lopez v. Gonzales,* 549 U.S. 47 (2006) (state drug crime not necessarily and aggravated felony); *Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 (2010) (two misdemeanor drug possession offenses do not equal an aggravated felony).

37 Daniel Kanstroom, "The Better Part of Valor: The REAL ID Act, Discretion, and the 'Rule' of Immigration Law," *New York Law Review* 51 (Fall 2006): 161.

38 Ibid.

39 Ibid.

40 The Board may be slowly recognizing the seriousness and complexity of this problem. See *Matter of Bulnes-Nolasco*, 25 I. & N. Dec. 57 (BIA 2009) (improper notice may permit re-opening).

41 The author is the founder and director of this project. <http://www.bc.edu/centers/humanrights/projects/deportation.html>.

42 Daniel Kanstroom, "Post Deportation Human Rights Law: Aspiration, Oxymoron or Necessity?*", Stanford Civil Rights & Civil Liberties Law Review* (Spring 2007); IACHR, Report No. 81/10 Case 12.562; *Wayne Smith, Hugo Armendariz, et al. v. United States*; July 12, 2010 (a member state must provide non-citizen residents an opportunity to present a defense against deportation based on humanitarian and other considerations, such as the rights protected under Articles V, VI, and VII of the American Declaration. Each member state's administrative or judicial bodies, charged with reviewing deportation orders, must be permitted to give meaningful consideration to a non-citizen resident's defense, balance it against the state's sovereign right to enforce reasonable, objective immigration policy, and provided effective relief from deportation if merited).

43 Eur. Ct. H.R., *Berrehab v. Netherlands*, Judgment of June 21, 1988, No. 10730/84, paragraph 23; Eur. Ct. H.R., *Moustaquim v. Belgium*, Judgment of February 19, 1991, No. 12313/86; Eur. Ct. H.R., *Beldjoudi v. France*, Judgment of March 26, 1992, No. 12083/86; Eur. Ct. H.R., *Nasri v. France*, Judgment of July 13, 1995, No. 19465/92; Eur. Ct. H.R., *Boughanemi v. France*, Judgment of April 24, 1996, No. 22070/93, Rep. 1996-II, Fasc. 8, paragraph 32; Eur. Ct. H.R., *C. v. Belgium*, June 24, 1996, No. 35/1995/541/627; Eur. Ct. H.R., *Bouchelkia v. France*, Judgment of January 1, 1997, No. 230078/93, Rep. 1997-I, fasc. 28; Eur. Ct. H.R., *Boudjaidi v. France*, Judgment of September 26, 1997, 123/1996/742/941, Rep. 1997-VI, fasc. 51; Eur. Ct. H.R., *Boujlifa v. France*, Judgment of October 21, 1997, 122/1996/741/940, Rep. 1997-VI, fasc. 54; *Mehemi v. France (no. 2)*, Judgment of April 10, 2003, No. 53470/99 (sect. 3) (bil.), ECHR 2003-IV; U.N. C.C.P.R. Human Rights Committee, *Stewart v. Canada*, Judgment of December 1996, No. 538/1993, paragraph 12.10; U.N.C.C.P.R. Human Rights Committee, *Winata v. Australia*, August 16, 2001, No. 930/2000.

44 The PDHRP also provides direct representation to individuals who have been deported and promotes the rights of deportees and their family members through research, policy analysis, human rights advocacy, and training programs. Through participatory action research carried out in close collaboration with community-based organizations, the Project addresses the psycho-social impact of deportation on individuals, families, and communities.
45 *Berrehab v. Netherlands*, Judgment of June 21, 1988, No. 10730/84, para. 29.
46 Ibid.
47 Ibid.
48 Ibid.