Assessing the Collateral International Consequences of the U.S.' Removal Policy

Tara Pinkham
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INTERNATIONAL CONSEQUENCES OF THE
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Since the passage of the Antiterrorism and Effective Death Penalty Act (AEDPA)\(^1\) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)\(^2\) in 1996, the number of aliens who may be removed from the United States (U.S.) without relief has greatly increased. These two acts enlarged “the class of aliens subject to deportation by increasing the number of offenses that could constitute aggravated felonies,”\(^3\) thereby eliminating the availability of equitable relief from removal.\(^4\) IIRIRA is also applied retroactively so aliens are potentially removable for crimes that they committed over twenty years ago.\(^5\) Removal of so-called “criminal aliens” (hereinafter “criminal aliens” or “criminal deportees”) is an enforcement priority in the U.S. as the U.S. government aims to “‘identify and remove criminal aliens and minimize recidivism.’”\(^6\)

As a result of increased enforcement in criminal alien removals, the change in the definition of an aggravated felony, as well as the lack of equitable relief from removal, the number of alien removals markedly in-

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\(^3\) M. Isabel Medina, Demore v. Kim – A Dance of Power and Human Rights, 18 GEO. IMMGR. L.J. 697, 707 (Summer 2005).

\(^4\) IIRIRA has taken discretion away from immigration judges in that they may not grant equitable relief to aliens based on factors such as family ties, business ties, employment history, rehabilitation, and other significant connections to the U.S. See Columbia International Affairs Online, Criminal Aliens and Immigration: Taking Stock and Looking Ahead, Feb. 10, 1999, http://www.ciaonet.org/conf/cei08/cei08.html.


creased in 1997. In 1996, the U.S. removed a total of 69,588 aliens of which 36,203 removals were due to criminal convictions; the following year, however, the U.S. removed an astonishing 114,292 aliens of which 49,768 removals were due to criminal convictions.\(^7\)

Since “[c]riminal aliens [have become] uniformly perceived as a threat to public safety,”\(^8\) it therefore follows that the American public generally supports the policy of removing aliens convicted of certain crimes. Although the U.S.’ removal policy is considered a success in some regards, it is short-sighted since the U.S. has failed to assess the policy’s international repercussions. This paper will focus on the effects of the U.S.’ removal policy on countries that receive removed aliens (hereinafter referred to as “receiving countries”).

The first part of this paper will focus on the troublesome aspects of the U.S.’ removal policy. The second part of this paper will examine the effects that these removals have on receiving countries, specifically in Haiti and Central America. It will further examine the receiving countries’ reactions to those effects and how those reactions may have future repercussions in the U.S. Lastly, this paper will offer suggestions to remedy the difficult predicament that receiving countries encounter as a result of U.S.’ removal practices.

THE U.S.’ TROUBLESOME REMOVAL PROCESS

To effectuate its streamlined removal process, the U.S. government implements procedures that raise red flags for U.S. foreign policy and human rights practices. The U.S.’ removal process does not require that the receiving country accept the alien before removing her.\(^9\) In addition, the U.S. government has attempted to remove criminal aliens to territories where there is no government and the U.S. government fails to forewarn the receiving countries’ governments that criminal aliens will be removed to their territories. In practice, the U.S. government violates international human rights law and disregards the collateral effects its policy has on receiving countries.

First, U.S. regulations do not require receiving countries to accept removed aliens before deporting the aliens to the receiving countries.\(^10\) The

\(^7\) Id.
\(^8\) Teresa Miller, Blurring The Boundaries Between Immigration And Crime Control After September 11th, 25 B.C. Third World L.J. 81, 118 (Winter 2005).
\(^9\) Jama v. Immigration and Customs Enforcement [hereinafter ICE], 543 U.S. 335 (2005).
\(^10\) 8 C.F.R. § 1240.10(f) (2006).
Secretary of Homeland Security and the Attorney General recognize that “the actual removal of the alien by [the Department of Homeland Security (DHS)] is generally not predicated on any acceptance of the alien into any specific country.” DHS acknowledges that acceptance by the receiving country is desirable, but “national security concerns, including foreign policy concerns, as well as other Executive Branch interests might deem removal appropriate even in the absence of acceptance.”

Receiving countries are less likely to cooperate with U.S.’ removal efforts if the U.S. government disregards their refusals to accept criminal aliens. Instead, the receiving countries are more likely to hinder efforts to effectively and efficiently remove these aliens. Some countries “have devised ways to make the [removal] process more lengthy and costly for the [U.S. government]” by failing to admit the alien or by refusing to administer the proper travel documents. Other countries like “Cuba, Laos, and Vietnam, flatly refuse to take back their criminals, making the U.S. the government by default of effectively stateless alien criminals.”

A second issue regarding the U.S.’ removal process is that an alien may be removed to a country without a government. The Secretary of Homeland Security and the Attorney General explain that “it does not follow . . . that the removal of aliens to the territory of such a receiving country must cease until a ‘government’ is organized, or until that government is recognized.” The Supreme Court decision in Jama v. Immigration and Customs Enforcement raises concern that the U.S. will remove Somali refugees and aliens to Somalia which has not had a government since 1991. Even though Jama did not address this issue specifically and only decided that the U.S. does not need advance consent from the receiving country to remove an alien or refugee, the practical effect of this decision is that the U.S government could remove an alien to a country without a government, especially since the receiving country’s government’s consent is not needed.

There are presently over 3,500 deportable Somalis in the U.S. who worry about losing their lives if they are removed to a territory without a government.

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12 Id.
13 CENTER FOR IMMIGRATION STUDIES, supra note 6, at 5.
14 Id.
15 Execution of Removal Orders: Countries to Which Aliens May Be Removed, supra note 11.
17 Id. at 352.
government. The State Department has even labeled Somalia as “extremely dangerous” and closed the U.S. embassy in Somalia in 1991. Human rights activists are concerned that Somali refugees and aliens could be removed to Somalia especially because, since there is no recognized government in Somalia, there is no entity that will protect or enforce human rights throughout the territory. Though the U.S. maintains no embassy in Somalia, the U.S. will remove a petty criminal refugee to this extremely dangerous environment. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) Article 33 prohibits states from returning refugees to territories where their lives would be threatened on account of a protected status. The U.S. acceded to the 1967 Protocol to the Refugee Convention in which it agreed to follow Article 33 of the Refugee Conven-

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19 Sheridann, supra note 18; U.S. STATE DEP’T, BUREAU OF AFRICAN AFFAIRS, BACKGROUND NOTE: SOMALIA (2005), available at http://www.state.gov/r/pa/ei/bgn/2863.htm. Great Britain granted Somalia independence in June 1960. Somalia was later united with Italian Somaliland after it gained independence that same year. The Somali Prime Minister, Mohamed Ibrahim Egal was ousted in a bloodless coup in October 1969 and was replaced with Major General Mohamed Siad Barre as President. This coup ended Somalia’s party-based constitutional democracy. In the 1980s, armed opposition groups to Barre’s government developed in the north of Somalia. These groups quickly spread to the central and southern regions. The Somali army then collapsed and former soldiers rejoined their old clan militias. Barre lost control of all of the Somali territory except for the area around Mogadishu. In 1991, Barre was driven out of power and the Somali government collapsed. After the government collapsed, “factions organized around military leaders to take control of Somalia.” Id. Small wars were fought between rival factions. Some areas of Somalia declared independence or autonomy. Id.

20 Mary Beth Sheridann, supra note 18.

21 The U.S. government attempted to remove Jama to Somalia in April 2005 but its attempt was unsuccessful since there were no Somali government officials to issue a passport. Jama v. ICE, 2005 U.S. Dist. LEXIS 10614 (D. Minn. Apr. 7, 2005), 10-16 BENDER’S IMMIGR. BULL. 15 (Aug. 15, 2005).

Article 33 does not prohibit the sending country from refouling a refugee whom it deems a security threat. A petty criminal, however, is not a national security threat and therefore should not be refouled to a country with no existing government.

Moreover, aggravated felons who are removed to Somalia may not have relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Although an alien who is removable as an aggravated felon may otherwise be eligible for CAT relief, it is uncertain whether such relief would be granted in the case of the Somalis. CAT relief requires that the torture be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Because Somalia has no formal government, Somalia does not have government officials or anyone who acts in an official capacity. Therefore, CAT claims may be easily denied. Thus, if the U.S. government attempts to remove refugees and aliens to Somalia, such an action would be in direct contravention of Article 33 of the Refugee Convention and would violate international human rights law.

A third troublesome practice of the U.S.' removal policy is that in some instances the U.S. government fails to notify the receiving country that criminal aliens will be removed to its soil. This failure results in "serious offenders [being] deposited unannounced at international airports."
For example, “busloads of Mexican nationals [were shuffled] across the border, where they . . . [disembarked] in the middle of the night with no notice to Mexican authorities.”\(^2\) Thus, receiving countries lose the opportunity “to register the presence of criminal offenders, to check for outstanding warrants on deportees, and to assist their reintegration into society.”\(^3\)

At the Caribbean Summit in 1997, President Clinton agreed in the Barbados Declaration to provide advance notification of the removal of criminal aliens to receiving countries. The Immigration & Naturalization Services (INS) subsequently instructed its officers to give at least three days notice before the arrival of criminal aliens to the receiving countries.\(^3\) In addition, the Barbados Declaration provided that the U.S. would prove that the removed alien is a national or citizen of the receiving country and the U.S. government would also provide information about the alien and circumstances leading to her removal.\(^3\) The countries that signed the Barbados agreement “claim that little if anything has been done by the U.S. to follow through on [its] agreement.”\(^3\)

The U.S.’ failure to provide receiving countries with advance notice of the arrival of criminal aliens has caused significant problems in these countries. In Central America and the Caribbean, aliens removed from the U.S. are blamed for escalating crime rates. Because receiving countries cannot effectively combat problems posed by the U.S.’ removal of criminal aliens, they have enforced harsh laws indiscriminately, such as the mano dura law in Central America and the indefinite detention of deportees in horrible prison conditions in Haiti. In many receiving countries, the governments do not know how to combat the problems that result from the U.S.’ removal process.

**The International Effects of the U.S.’ Removal Policy**

The U.S.’ removal process is problematic and in some cases has wreaked havoc on receiving countries. Many receiving countries are developing and are politically and economically unstable. Removal of criminal

\(^{29}\) Id.

\(^{30}\) Id.

\(^{31}\) Id.


\(^{33}\) Id.
aliens poses additional threats that receiving countries cannot effectively combat. Therefore, some receiving countries have resorted to harsh alternatives to combat these problems. This paper will examine the problems and reactions that have occurred in Haiti and Central America.

The Human Rights of Criminal Aliens in Haiti

Although the U.S. removes a relatively small number of criminal aliens to Haiti in comparison to other countries in the Caribbean or Central America, these deportees are a “grave concern to those responsible for public security.” Since the late 1990s, the Haitian government has been concerned with instability. Haiti has a rampant crime rate and is a significant transshipment point for drug trafficking. Furthermore, over two-thirds of the people in Haiti are not formally employed. In light of these problems, the Haitian economy cannot efficiently absorb aliens removed from the U.S.

Some Haitian officials worry that these deportees, who are unable to speak French or Creole and who have no ties to Haiti, will resort to criminal behavior to survive. Furthermore, the Haitian government has not had, and continues to lack, the financial resources to create and maintain social services necessary to integrate these newly removed aliens.

As a result of the Haitian government’s security concerns, Haiti has enacted policies which greatly deviate from the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human

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34 In 2004, Haiti encountered political turmoil after President Jean-Bertrand Aristide was removed from power. Nick Caistor, Challenges Ahead for Haiti’s Preval, BBC NEWS, Feb. 16, 2006, available at http://news.bbc.co.uk/2/hi/americas/4721510.stm. Rene Preval, elected President in February 2006, planned to “revive Haiti’s parlous economy, boost exports, and create new jobs.” Id. Even though this article focuses on events that occurred before Aristide’s removal, some of the analysis contained therein continues to be relevant to Haiti’s present day situation.

35 Precil, supra note 32.


37 CENTRAL INTELLIGENCE AGENCY, THE WORLD FACT BOOK: HAITI, supra note 36.

Rights (UDHR). First, Haiti does not adhere to the due process requirements as called for in international human rights law. Article 14 of the ICCPR provides in part that a person should “be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”\textsuperscript{39} and “[t]o be tried without undue delay.”\textsuperscript{40} In Haiti, “[j]udicial dockets are clogged, and fair and expeditious trials are the exception rather than the rule.”\textsuperscript{41} Frequently, judges’ orders to release inmates are ignored.\textsuperscript{42} In addition, “criminal deportees who already have served sentences outside the country are kept in jail, with no timetable for their eventual release”\textsuperscript{43}

Second, Haiti indefinitely and arbitrarily detains criminal deportees. In doing so, Haiti violates UDHR Article 9 which states that no one shall be detained arbitrarily.\textsuperscript{44} Upon arrival at the International Airport of Port-au-Prince, criminal aliens removed from the U.S. are immediately incarcerated at Haiti’s National Penitentiary.\textsuperscript{45} They are held in prisons without being charged and without knowing when they will be released. Criminal deportees who have family members in Haiti are fortunate because a Haitian family member can secure a deportee’s release by proving that she is related to the deportee and by guaranteeing that she will be responsible for the deportee. The relative signs a document attesting that she will be subject to arrest until the deportee is apprehended if that deportee commits a crime and flees. Michelle Karshan, the Director of Alternative Chance, explains that:


\textsuperscript{40} Id.


\textsuperscript{42} Id.

\textsuperscript{43} Id.


\textsuperscript{45} Precil, supra note 32; U.S. \textsc{Citizenship and Immigration Services, Ins Resource Information Center, Response to Query No. HTI01001.ASM, Haiti: Information on Conditions in Haitian Prisons and Treatment of Criminal Deportees} (2002), available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f6f14176543f6d1a/?vgnextoid=46d6361cfb98d010VgnVCM10000048f36a1RCRD&vgnextchannel=D2d1e89390b5d010VgnVCM10000048f36a1RCRD.
In 2001, 4-5 families have been subjected to arrest, with one family member imprisoned for three months until the police were able to arrest the deportee. This deters some families from coming forward or following through with the process for releasing their loved one from detention when first deported to Haiti.\textsuperscript{46}

Deportees, who do not have Haitian family members willing to claim responsibility for them remain incarcerated indefinitely.\textsuperscript{47} In some instances, bogus “lawyers” promise to give them their freedom in exchange for bribes.\textsuperscript{48} Upon paying such bribes, the deportees often remain in prison.\textsuperscript{49}

Third, due to the lack of adequate prison structures, appalling conditions in Haitian prisons and the Haitian policy of detaining criminal deportees on arrival, Haiti further violates international human rights laws. The horrendous prison conditions are in direct contravention of Article 5 of the UDHR which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”\textsuperscript{50} There is no question that Haitian prison conditions constitute cruel, inhuman, and degrading treatment and punishment.\textsuperscript{51} There, detainees do not have adequate drinking water, they rely on relatives and friends to provide them with food, and are crammed into tiny cells without adequate lighting.\textsuperscript{52} There are also reports of 17 U.S. deportees being held in a four-by-four meter cell.\textsuperscript{53} Michelle Karshan further describes the conditions in a Haitian prison as follows:

\textsuperscript{46} U.S. Citizenship and Immigration Services, \textit{supra} note 45 (quoting Letter from Michelle Karshan, Dir. of Alternative Chance, 2000).
\textsuperscript{47} \textit{Id.}
\textsuperscript{48} Kershaw, \textit{supra} note 38.
\textsuperscript{49} \textit{Id.}
\textsuperscript{50} UDHR, \textit{supra} note 44, at art. 5.
\textsuperscript{51} The prison conditions in Haiti’s detention facilities also violate the Economic and Social Counsel’s Standard Minimum Rules for the Treatment of Prisoners (Minimum Rules), which details the country’s requirement to provide adequate detention facilities. Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 663C (XXIV), at ¶ 15, U.N. Doc. E/ 5922 (May 13, 1977). According to the Minimum Rules, the country shall provide detainees “with water and with such toilet articles as are necessary for health and cleanliness.” \textit{Id.} In addition, the Minimum Rules require that prisoners be provided with nutritional food and adequate drinking water. \textit{Id.}
\textsuperscript{52} Kershaw, \textit{supra} note 38.
\textsuperscript{53} \textit{Id.}
These holding cells have no toilets and no sinks. Usually those wishing to use a toilet must use a bag to defecate in or they urinate in a communal bucket which stays inside the cell . . . . [T]hese cells range in temperature from 80-105 degrees during the day. There is no light provided and . . . the CDs [criminal deportees] are packed in an extremely hot cell which is dark at all times. The CDs are not provided any chairs, beds or mats to sleep on or sit on and are therefore sleeping altogether directly on cement floors . . . .

In some of the cells when it rains the cell is flooded and the CDs must get up from the cement floor and use their own clothes to mop up the floor. It is then impossible to sleep given the flooding conditions of the cells . . . . While in these holding cells no food is provided to the CDs and they must depend on a family member to bring them food. Unfortunately, many of the CDs have no relatives in Haiti . . . . While in these holding cells, the CDs are only provided access to tap water. The water is contaminated and is [sic] extremely high risk to everyone. Unless boiled for a period of 20 minutes, tap water can typically transmit typhoid fever, hepatitis, parasites, amoebas. The CDs have no possibility to boil water . . . . CDs must wash their clothes (often without soap) and hang them in the cell to dry although there may be no ventilation in the cell. Problems of properly washing clothes contribute to fungus infections or parasite infestations which quickly become open and infected sores . . . . There is no medical care for CDs held in police station holding cells. There are no doctors available to diagnose or treat sick CDs. There is no medicine available to treat CDs in holding cells.54

As a result of these conditions, there is a high death rate among inmates.55

In addition to the harsh prison conditions, there is evidence that U.S. deportees are often abused by prison officials. The State Department recognizes that “[p]olice mistreatment of suspects . . . remains pervasive in all parts of the country. Beating with fists, sticks, and belts is by far the most common form of abuse.”56 There is also documented evidence that

54 U.S. CITIZENSHIP AND IMMIGRATION SERVICES, supra note 46 (quoting Letter from Michelle Karshan, Dir. of Alternative Chance, 2000).
55 U.S. STATE DEP’T, supra note 41.
56 Id.
prison officials burned inmates with cigarettes, choked them, hooded them, and severely boxed them in the ears.\textsuperscript{57} These deplorable prison conditions and the torture of criminal deportees are serious violations of international human rights.

In a 2002 decision, the Board of Immigration Appeals held that Haitian prison conditions do not constitute torture under immigration regulations; therefore, Haitian aliens may not receive relief from removal based on CAT claims.\textsuperscript{58} This allows more aliens to be deported to Haiti because they cannot seek relief from removal based on horrendous Haitian prison conditions.\textsuperscript{59} Therefore, even more criminal aliens will be incarcerated in Haiti, further burdening the Haitian penitentiary system.

The U.S. should be concerned with the collateral effects that its removal policy has on Haiti because its policy frustrates the U.S. goal of promoting democracy throughout the world. In the 1990s, the U.S. was committed to fostering and strengthening democracy in Haiti and helped return Haiti's first democratically President Jean-Bertrand Aristide to power in 1994.\textsuperscript{60} The U.S. poured millions of dollars into the Haitian economy to build a democratic society. Nevertheless, the U.S. continues to remove criminal aliens to Haiti without offering any assistance to relieve the problems posed by them. These aliens cannot assimilate into Haitian society and may resort to criminal behavior to survive in Haiti. The rise in crime rates causes further instability in a country with an already weak democratic infrastructure. Furthermore, the Haitian government violates the basic premises of democracy by failing to provide criminal aliens with due process and by holding aliens indefinitely.

The U.S.' removal policy could have domestic repercussions as well by increasing the U.S.' crime rate and by making the war on drugs more difficult to fight. It is usual for the U.S. to remove drug offenders to

\textsuperscript{57} Id.

\textsuperscript{58} In re J-E, 23 I. & N. Dec. 291, 302 (B.I.A. 2002) (recognizing that there are circumstances in which Haitian police actions could constitute torture, but that they are isolated instances); \textit{but see} Azanor v. Ashcroft, 364 F.3d 1013, 1020 (9th Cir. 2004) (explaining that the Board of Immigration Appeals misused the regulations in In re J-E because "it impermissibly prevents aliens from seeking relief under the Torture Convention for claims based on threats of torture when not in official custody"). This disagreement only applies to the 9th Circuit; In re J-E is still good law in other circuits.

\textsuperscript{59} See, \textit{e.g.}, In re J-E, 23 I. & N., \textit{supra} note 58.

Haiti. For instance, in 1998 half of the criminal aliens removed to Haiti were convicted of drug offenses in the U.S.\textsuperscript{61} Haitians who are removed from the U.S. may later return to the U.S. Since Haiti is "a major transshipment point for South American narcotics . . . being sent to the United States,"\textsuperscript{62} the movement of Haitians between Haiti and the U.S. will increase communication networks among drug circles. This increased communication and travel will effectuate the growth of an international drug market with Haiti as an intermediary point for drug shipments. As a result, drugs may easily be brought into the U.S. by the return of aliens previously removed from the U.S. An increase in the drug supply in the U.S. will cause drug related crimes to increase. The potential drug trafficking increase will frustrate the U.S.' efforts to fight the war on drugs and to halt the international drug trade. The U.S. contradicts the objectives of the war on drugs by dumping criminal aliens on Haitian soil without giving Haiti any assistance to combat the problems associated with these deportees. Therefore, the U.S. should reconsider and fully analyze the effects of removing criminal aliens to countries that cannot manage the threats they pose.

The Creation of a Gang Culture in Central America

Even more so than Haiti, the U.S.' deportation policy has affected Central America by fostering a gang culture there. Since 1996, Central America has been the recipient of an overwhelming portion of U.S. deportees. About one-fourth of removed aliens returning to Guatemala and Honduras have criminal records.\textsuperscript{63}

In recent years, gang members from the Los Angeles Mara\textsuperscript{64} Salvatrucha 13 (MS 13)\textsuperscript{65} and Mara 18 (18th Street Gang) were removed to Central America. Many of these gang members had lived in the U.S. since they

\textsuperscript{61} Precil, \textit{supra} note 32.

\textsuperscript{62} \textsc{U.S. State Dep't, Bureau of Western Hemisphere Affairs, Background Notes: Haiti} (2005), available at http://www.state.gov/r/pa/ei/bgn/1982.htm.

\textsuperscript{63} Taylor & Aleinikoff, \textit{supra} note 28.


\textsuperscript{65} \textit{Mara Salvatrucha Gang in US and Central America} (NPR broadcast Mar. 17, 2005). \textit{See also Gang Violence} (CNN television broadcast Apr. 14, 2005) [hereinafter \textit{Gang Violence}] (An ICE officer described MS 13 as "a unique gang, comprised primarily of foreign nationals originating from Central America, primarily El Salvador. They're transnational. They have a history of violence. They're very predatory in nature and extremely violent.").
were young children and many did not speak Spanish. Upon removal, these gang members failed to reintegrate into their native countries so they resorted to their U.S. lifestyle and formed gangs in Central America.66 These gangs recruited local members, thereby allowing the gang culture to grow throughout Central America.67 The gang growth is also attributable to "limited economic opportunities and weak law enforcement."68

It is estimated that Honduras has 35,000 gang members, El Salvador has 30,000 gang members and Guatemala has 14,000 gang members.69 Central American countries blame the increased domestic crime rate on gangs and the U.S.' removal of criminal aliens.70 Even though there is little research attesting to the correlation between increased crime rates and criminal deportees, many diplomats find that recent deportees are a significant contributing factor “for sharply rising crime rates throughout Central America.”71

Central America is not equipped financially or socially to handle such deportees.72 In an effort to combat the dangers, Central American governments enacted harsh laws known as mano dura (Spanish for “firm hand”) that target current and former gang members. In some Central American countries, mano dura laws gave authorities the ability to incarcerate people simply for having a gang tattoo.73 After the passage of the mano dura laws in El Salvador, the Salvadoran police “registered some 19,275 arrests on gang-related charges” between 2003 and 2004.74 El Salvador’s

66 Taylor & Aleinikoff, supra note 28.
68 Id at 102.
69 S. Lynne Walker, Gang Members Deported From US Take Deadly Culture to Their Home Countries, COLEY NEWS SERV., Jan. 18, 2005.
70 Taylor & Aleinikoff, supra note 28.
71 Id. See also Walker, supra note 69.
72 Walker, supra note 69.
74 Hearing, supra note 67.
Supreme Court of Justice has since found the *mano dura* laws unconstitutional. However, similar *mano dura* legislation was enacted in Honduras, making gang membership a crime punishable by up to twelve years in prison.\(^{75}\) Honduran authorities claim that kidnapping, car thefts and gang related murders have dramatically declined since Honduras passed the strict anti-*maras* laws.\(^{76}\) The government in Chiapas, Mexico passed a similar law allowing for a five-year prison sentence for merely belonging to a gang.\(^{77}\) Simply phrased, these *mano dura* laws called for the arrest of “anyone looking like or being associated with gang members.”\(^{78}\)

As a result of the *mano dura* and other harsh laws enacted by Central American governments, these countries’ penitentiary systems were overwhelmed.\(^{79}\) El Salvador’s prison population doubled in the past five years.\(^{80}\) In August 2004, there was a riot in El Salvador’s La Esperanza Prison in which a battle erupted between the 400 Mara 18 member-inmates and other inmates, and which culminated in grenades exploding inside the prison.\(^{81}\) Thirty-one inmates died as a result of the riot.\(^{82}\)

Other countries in Central America have experienced riots, fires and other problems as a result of overcrowded prisons.\(^{83}\) Increased incarceration rates and strengthened enforcement measures, however, did not satisfy Central Americans’ need for security and protection. In El Salvador, the *Sombra Negra*, a vigilante death squad, policed streets and neighbor-

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\(^{75}\) *Gang Violence*, supra note 65; Walker, supra note 69. *See also* AMNESTY INTERNATIONAL PRESS, supra note 73 (noting that the Supreme Court of Justice of El Salvador ruled that *mano dura* laws were unnecessary because appropriate legislation to deal with gang activity already existed, and found all articles in the *mano dura* law to be a breach of the constitution since *mano dura* laws violated the basic principles of equality before the law). El Salvador has since passed the *Super Mano Dura* laws, a revised version of the *mano dura* laws.

\(^{76}\) *Hearing*, supra note 67.

\(^{77}\) Walker, supra note 69.

\(^{78}\) *Mara Salvatrucha Gang in US and Central America*, supra note 65.


\(^{80}\) *Hearing*, supra note 67.

\(^{81}\) Jordan, supra note 79.

\(^{82}\) *Id.*

\(^{83}\) *Id.; see also* Bringing It All Back Home: Central America, ECONOMIST, U.S. ed., May 22, 2004, at 31 (reporting that 103 gang members died in a prison fire that swept through an overcrowded prison in San Pedro Sula in Honduras on May 17, 2004); *Hearing*, supra note 67 (noting that prisons in Honduras hold twice their capacity).
hoods which were threatened by gangs. The Sombra Negra acted on the belief that the country’s judicial branch failed to adequately enforce justice. The death squad killed accused criminals who had been “released by judges due to lack of evidence.” It was even implied that “Sombra Negra select[ed] its targets based on the theory that human rights protect criminals.” Due to the widespread maras fear that plagued the Salvadoran population, many Salvadorans supported the Sombra Negra’s actions because it helped to eliminate gang violence in their neighborhoods. There was speculation that “the new death squads operate[d] with the blessing of the [Salvadoran] government.” Similarly, in Honduras, authorities investigated allegations that death squads in Tegucigalpa murdered over fifty gang members.

The U.S. deported its gang crisis abroad in an effort to alleviate domestic problems. However, the removal of these aliens created a global problem that will likely harm the U.S. in the future. The threat has begun at the street level in Central America because removed gang members teach local youth about gang culture and how to be savvy members. Tough legislation in Central American countries allow many deported gang members to be imprisoned with native inmates, thereby creating prisons that are “gang colleges” where non-gang inmates learn about and join gangs. In these

84 Lawrence Michael Ladutke, Expression For and Against the Vigilante Death Squad Sombra Negra, 8 SW. J.L. & TRADE AM. 283, 288 (2001-02).
85 Id. See also Ray Sanchez, Marked For Death: El Salvador’s Tattooed Teens Face “Shadow”, NEWSDAY CITY ED., July 4, 1995, at A11 (‘Teens with gang tattoos worry that they will be targeted by the death squads. Some teens have therefore attempted to remove their tattoos with cheese graters and acid.’).
86 Ladutke, supra note 84, at 288.
87 Id. at 299-300 (“In January 1995, . . . residents of San Miguel set off fireworks in celebration of one of the death squad’s summary executions.” In addition, “[a]n article in La Prensa Grafica suggested that social cleansing death squads were effective in establishing peace in gang ravaged communities such as Chalchuapa.”). See also Sanchez, supra note 85 (“The level of hopelessness and insecurity among Salvadorans is so high that people feel unprotected and view these groups as saviors,’ said Victoria Marina de Aviles, [the nation’s top human rights official].”).
88 Sanchez, supra note 85.
89 Tim Rogers, Central America’s Uneasy Disarmament, 39 N.A.C.L.A. REP. ON AM. 12 (July 1, 2005).
90 “The world is too global to export a problem and not expect it to come back.” Walker, supra note 69 (quoting Prof. David Brotherton, John Jay College of Criminal Justice.).
settings, gangs gain strength, unify and create a more advanced gang system.

The continued growth of gangs internationally may become a threat to the U.S. Immigration authorities are aware that deported gang members re-enter the U.S. without documentation. The quick turn-around cycle of gang members who are removed to Central America and subsequently return to the U.S. fosters international ties and international organization. These already experienced individuals develop stronger networks through removal than they would have had they remained in the U.S. For example, it has been reported that “Mexican and Colombian traffickers now reportedly use [gang members] to distribute narcotics in the [U.S.].”

Moreover, removed gang members still have ties to the U.S. through family members and friends; therefore, communication between those that are removed and those that remain in the U.S. further strengthens networks to facilitate international crime and drug trafficking. As recently as October 2005, “[n]ewly organized [gang] cells in El Salvador have returned to establish strongholds in metropolitan Washington, D.C., and other U.S. cities. Prisons in El Salvador have become nerve centers . . . where deported leaders from Los Angeles communicate with gang cliques across the [U.S.].” A new gang created in El Salvador, known as the Marineros, has already developed cells in Washington, D.C. These advanced networks may pose a future threat to the U.S. through organized crime and drug trafficking. The U.S. must amend its removal process and address the problems created by its own practices.

**Alleviating the Problems Caused by the U.S.’ Removal Policy**

Although the U.S.’ removal policy has wreaked havoc on many countries that receive criminal aliens, the U.S. can change its removal policy to alleviate the distress endured by receiving countries. Aleinikoff and Taylor investigated and reported four options which would alleviate some

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92 *Hearing, supra* note 67.

93 *See generally id.*

94 *Id.*

95 *Lopez, supra* note 91.

96 *Id.*

97 Although “[deported gang members] pose no immediate national threat to the United States, there is potential, however [for the maras to pose a larger threat than they already do].” *Hearing, supra* note 67.
of this distress. They argue that the U.S. should create “additional procedural reforms to improve the process of criminal alien removals,” the U.S. should give aid to receiving countries, foreign born offenders should be incarcerated in their country of origin, and the government should relax its enforcement efforts or restore relief from removal.98

Regarding additional procedural reforms, Aleinikoff and Taylor advocate that the U.S. should provide receiving countries with advanced and enhanced notice regarding aliens that the U.S. plans to remove to the other territory.99 They maintain that enhanced notification should include the alien’s criminal background history.100 In addition, Aleinikoff and Taylor suggest that the U.S. should assist in the border processing of these deportees and prevent “midnight dumping.”101 Their study also proposes that the U.S. should consider negotiating interior repatriation agreements with receiving countries.102

Second, Aleinikoff and Taylor recommend that the U.S. provide aid to the receiving countries to support domestic law enforcement and to assist in reintegrating deportees.103 They advise that this aid could take various forms, such as helping to establish social services that assist criminal aliens to reintegrate into the receiving countries’ societies or teaching local law enforcement how to maintain criminal databases.104

Third, Aleinikoff and Taylor suggest that foreign-born offenders should be incarcerated in their country of origin.105 They evaluate this option “primarily because it is so prevalent in the current policy discussions about criminal aliens,”106 not because it is aimed “at reducing the numbers or alleviating the problems created by criminal alien deportations.”107 The U.S. has signed treaty transfers with several countries allowing foreign-born offenders to serve their sentence in their country of origin as long as the foreign-born inmate consents to the transfer.108 Aleinikoff and Taylor find

98 Taylor & Aleinikoff, supra note 28.
99 Id.
100 Id.
101 Id. Midnight dumping, as explained in the introduction of this article, is where the U.S. leaves buses full of Mexican immigrants on Mexican territory without notifying the Mexican officials of their arrival.
102 Id.
103 Id.
104 Taylor & Aleinikoff, supra note 28.
105 Id.
106 Id.
107 Id.
108 Id.
that transfers would be beneficial because "the states could save money and alleviate prison overcrowding . . .". These transfers, Aleinikoff and Taylor argue, might "help to further [the foreign-born offender's] rehabilitation and reintegration into their country of origin."

Finally, Aleinikoff and Taylor strongly advise that the U.S. reduce the number of criminal alien removals. By easing up on enforcement efforts, amending the definition of aggravated felony, and offering relief from removal, Aleinikoff and Taylor believe that the amount of criminal alien removals will have less of an impact on receiving countries.

Aleinikoff and Taylor's research and suggestions are well developed and were applicable to the U.S. in 1998. Eight years have elapsed since Aleinikoff and Taylor published their research. Since then, the U.S. has experienced the terrorist attacks of September 11th and has focused on the war on terrorism. This section will explore Aleinikoff and Taylor's suggestions in light of current conditions in the U.S.

The U.S. is least likely to adopt the suggestions to incarcerate aliens in their country of origin for crimes committed in the U.S. and to provide U.S. monetary assistance or in-kind assistance to receiving countries to combat the problems posed by criminal aliens. Aleinikoff and Taylor's suggestions to modify U.S. removal procedures, to change the definition of aggravated felony, and to provide equitable relief from removal are the most logical solution to the problems.

First, Aleinikoff and Taylor's suggestion to incarcerate foreign-born offenders in their countries of origin is problematic because it will only exacerbate the problems that receiving countries currently encounter with criminal aliens. Simply placing criminal aliens in prison on foreign soil does not eliminate the need to reintegrate them. If all U.S. deportees are incarcerated in the same facility, then the facility could operate as a college for gang members like the Ciudad Barrios penitentiary in San Miguel, El Salvador. Ciudad Barrios is considered a college for gang members where the inmates learn gang techniques from one another and further strengthen their gang ties.

In addition, human rights may be violated when aliens are incarcerated in their countries of origin. For instance, as aforementioned, Haitian prisons violate many international human rights laws. Similarly, if the U.S. created agreements with receiving countries regarding incarcerating aliens

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109 Id.
110 Taylor & Aleinikoff, supra note 28.
111 Id.
112 See generally Lopez, supra note 91.
113 Id.
in the receiving countries' territories, the U.S. would have an interest in monitoring the conditions of the prisons to ensure that human rights are protected. Therefore, the U.S. may also have to fund projects to build more prisons or to help train officials in maintaining prison facilities. Considering the large deficit created by the current administration, it would be highly unlikely that it would fund a program to build prisons abroad.

Aleinikoff and Taylor optimistically suggest that the U.S. government provide monetary aid and assistance to receiving countries. It seems unlikely that the U.S. government will directly allocate funding to receiving countries to combat the problems associated with aliens. There is scant research dealing with the problems posed by criminal aliens who are removed and even less debate about it in the U.S. Through research and lobbying efforts, nonprofit organizations, immigration advocates and scholars would be able to draw the U.S. government’s attention to the problems associated with its removal policies. When such problems are well-documented, only then will the U.S. government consider reserving funding for problems posed by criminal aliens.

Although providing funding to receiving countries is currently an idealistic suggestion, such funding would tremendously assist receiving countries to combat problems posed by criminal deportees. The U.S. government could provide aid to help establish social reintegration for deportees. Specifically, this aid could prevent deportees from resorting to criminal behavior to survive in their new country. This aid could, for example, include language and cultural classes. Through repatriation agreements, the U.S. and receiving countries could establish social organizations to train deportees for employment and to help with the transition to life in the receiving countries. Perhaps even prior to removal, the U.S. government could provide language classes to the alien.

Alternative Chance in Haiti is an example of an organization the U.S. government could fund to help reintegrate deportees into their countries of origin. Alternative Chance, a nonprofit with offices in the U.S. and Haiti, is the first reintegration program in the Americas. This program integrates criminal deportees from the U.S. and Canada into Haitian society. Alternative Chance offers an orientation process where deportees are taught about “the history of Haiti, the transition from army to a civilian police, the government structure and the Constitution.” As part of this program, “peer counselors share vital information on survival, such as why one should not drink the water, and how to live non-violently and create a

\[ \text{Precil, supra note 32.} \]

\[ \text{Id.} \]

\[ \text{ld.} \]
productive life in Haiti.”¹¹⁷ Haitian authorities recognize that projects like Alternative Chance’s reintegration program “give deportees an orientation to help with their new life.”¹¹⁸ The U.S. and receiving countries, or the U.S. alone, could offer financial aid and in-kind assistance to establish nonprofits or international organizations similar to Alternative Chance to acclimate and integrate recent deportees into their countries of origin.

In addition, the U.S. government could provide receiving countries with database information about and enforcement methods on combating gang problems. The U.S. could collaborate with the receiving nations to “spearhead cooperative efforts against deported drug traffickers who build international networks to enhance their trade.”¹¹⁹ In October 2004, the Director General of El Salvador’s National Civilian Police and law enforcement officials from Southern California met to discuss the sharing of information on criminals.¹²⁰ More efforts should be made at the local level to allow database sharing.¹²¹ If both the U.S. and the receiving counties have access to the same information, they will be better able to combat the problems that occur. Through cooperation, the U.S. will attain the best results to protect its interests in national security and foreign affairs.

Since Congress is attempting to overhaul the current immigration system, Aleinikoff and Taylor’s more realistic and most ripe recommendation is that the U.S. relax its enforcement efforts, change the definition of aggravated felony and offer equitable relief from removal. The U.S. must reassess the aliens that it is removing because not all removable aliens pose a current or future threat to U.S. public safety or national security. Under the current removal policy, many aliens are removed for simple theft or marijuana possession; many are petty criminals. Of Aleinikoff and Taylor’s recommendations, this one could be easily enacted. Likewise, equitable relief could be easily enacted. This relief could be similar to INA 212(c) relief¹²² and suspension of deportation¹²³ which were previously available to deportable aliens who met certain requirements. Such relief need not frus-
trate the goals of the U.S.’ removal policy. Instead, relief may be offered in limited situations for aliens who are qualified to receive it. Equitable relief could relieve the domestic social costs that the U.S. incurs as a result of its removal policy. Furthermore, as Aleinikoff and Taylor advocate, equitable relief will alleviate the problems receiving countries encounter because fewer aliens will be removed. Receiving countries will not be as overwhelmed as they currently are with the mass influx of criminal deportees.

The best option for the U.S. would be to improve the process of criminal alien removals. The U.S. government should make it a priority to provide receiving countries with advance notice of aliens being removed to their territories. By simply providing three or four days notice, receiving countries can prepare for the aliens’ arrival. With more notice, receiving countries’ officials could “check local and national criminal databases and arrest any immigrants with outstanding warrants.” Furthermore, advance notice will give receiving countries the opportunity to implement a system to acclimate these aliens to their new surroundings and to be prepared for the types of assistance the aliens will need upon re-entering society. With advance notice, the receiving government may also be able to contact the removed alien’s family so she will have a place to go upon arrival.

[m]ust have been lawfully admitted for permanent residence and be continuing in that status; [m]ust be returning to a lawful unrelinquished U.S. domicile of seven consecutive years after a temporary absence abroad, or be maintaining such a domicile; [m]ust have departed voluntarily and not under an order of deportation, if he or she is entering the country; [m]ay be excludable on any grounds (“other than paragraphs (3) and (9)(C)” of INA section 212(a)) or deportable on any analogous grounds; and [m]ay not be ‘deportable by reason of having committed’ any one of several criminal offenses including: aggravated felonies, controlled substance offenses, certain firearms offenses, miscellaneous crimes relating to national security, or two or more crimes involving moral turpitude.

*Id.* In determining whether to exercise discretion, the immigration judge would weigh adverse and favorable factors.

123 Pre-IIRIRA, suspension of deportation was “a process to confer lawful permanent residence on certain deportable noncitizens with protracted residence. Application for this relief [was] made only in a deportation proceeding.” Charles Gordon, Stanley Mailman, & Steven Yale-Loehr, *Suspension of Deportation (Pre-IIRIRA)*, *Immigration Law and Procedure* § 74.07 (2005).

In addition to providing advance notice, the U.S. could enter into repatriation agreements with receiving countries. A repatriation agreement would detail how removals would be effectuated between the U.S. and the receiving country. In 2000, the U.S. signed such a repatriation agreement with Portugal.\textsuperscript{125} The Portuguese government expressed concern over the increasing number of U.S. criminal deportees resettling on the Azores.\textsuperscript{126} After the passage of IIRIRA, the U.S. deported several hundred aliens to the Azores.\textsuperscript{127} The Portuguese residents opposed the arrival of these aliens because the Azores previously had a virtually nonexistent crime rate.\textsuperscript{128} In the protocol, the U.S. agreed to give Portugal advance notification and specific information about the aliens being deported.\textsuperscript{129}

A repatriation agreement, like the one between the U.S. and Portugal, will facilitate the processing of an alien’s removal and will also provide the receiving country with notice. Also, the receiving country may be more likely to cooperate with the U.S.’ removal efforts. Overall, repatriation agreements offer a reasonable solution to problems posed by the U.S.’ removal policy. It is also the most likely to be enacted under the current administration because it will not require much funding and will not inhibit the U.S. from removing criminal aliens.

\textbf{CONCLUSION}

The current U.S. removal policy is shortsighted. It is a quick fix to problems posed by non-citizens in the U.S. As a result of this quick fix, the U.S. is forcing deportees onto receiving countries that do not necessarily have the resources, whether financial or social, to accommodate the deportees. Many receiving countries are at a loss as they develop plans to receive deportees. To secure its unstable society, Haiti, for example, incarcerates deportees indefinitely in some instances. Other countries, such as those in Central America, do not detain deportees upon arrival, but have enacted laws which prejudicially target deportees. Even when these Central American laws do not have enough muscle to combat the deportee problem, death squads clean up what the legal system leaves behind. In summary, as a

\textsuperscript{125} U.S., Portugal Agree to Deportee Protocol, 77 No. 22 Interpreter Releases 731 (June 5, 2000).
\textsuperscript{126} \textit{Id}.
\textsuperscript{127} \textit{Id}.
\textsuperscript{128} \textit{Id}.
result of the U.S.' removal policy, other countries are violating human rights and international law.

The U.S. has an obligation to receiving countries to help combat the problems posed by the U.S.' removal policy. If the U.S. does not act to alleviate the pressures on these countries, then the U.S. may face future repercussions, such as an increase in international criminal activity or possible threats to national security. The most realistic options for the U.S. are to offer equitable relief from removal to aliens and to make repatriation agreements with receiving countries. Through cooperative efforts, the U.S.' removal policy need not continue its devastating consequences in receiving countries.