

Donald Kerwin, “From IIRIRA to Trump: Connecting the Dots.” Center for Migration Studies, 2018

Antiterrorism & Effective Death Penalty Act 1996

- Greatly expanded aggravated felony list (criminal grounds for deportation)
- Limited relief from removal
- Restricted judicial review
- Expanded mandatory detention

IIRIRA 1996

- Expanded funding for border and interior enforcement
- Consolidated removal process
- **NEW CRIMINAL GROUNDS FOR INADMISSIBILITY:**
 - Acts that constitute the essential element of a CIMT / controlled substance violation
 - Multiple convictions with an aggregate sentence of at least 5 years
 - Controlled substance trafficking
 - Prostitution
- **NEW DEPORTABLE CRIMES:**
 - CIMT within 5 years of admission for which a sentence of one year could be imposed
 - 2 or more CIMTs
 - Controlled substance violation
 - Excludes single offense involving 30g or less of marijuana
 - High speed flight from immigration checkpoint
 - Firearms offenses
 - **Aggravated felonies**
 - Triggers fast-track removal, mandatory detention, permanent banishment
 - Added
 - Smuggling
 - Money laundering
 - Crimes of violence / theft for which the term of imprisonment is one year or more
- **CANCELLATION OF REMOVAL**
 - Stripped IJs of discretionary “suspension of deportation” based on community ties
 - **LPRs**
 - 7 years continuous physical presence
 - 5 years as LPR
 - No aggravated felonies
 - **Non-LPRs**
 - 10 years continuous physical presence
 - Good moral character
 - Extreme and unusual hardship to USC spouse/child/parent
 - No convictions for various crimes
 - This is all still discretionary: IJ may not grant it even if qualifying.
 - Resulted in increase of deportations of LPRs with strong ties to U.S., often because of past arrest.
- **EXPEDITED REMOVAL**
 - Formalized removal process
 - Most noncitizens get no process
 - At first only at POEs
 - In 2004: expanded to 100 miles inland from the southern border and within 14 days of entry

- **REINSTATEMENT OF REMOVAL**
 - Noncitizens who had been previously ordered removed / deported
 - **Summary removal** (as many as 90% of removals)
 - Only exception: if they can establish reasonable fear.
- **ASYLUM**
 - **One-year deadline rule instated**
 - Credible fear interview
 - If passed, can apply for asylum during removal proceedings
- **DETENTION**
 - Expanded mandatory detention of noncitizens removable on criminal and security grounds
 - Detention of asylum seekers while credible fear determination is pending
 - Others with document problems
 - Persons ordered removed (for 90 days, see *Zadvydas v. Davis*)
 - Increase in detentions and for-profit private prisons
- **CRIMINALIZATION OF IMM OFFENSES**
 - High-speed flight from imm checkpoint
 - False application
 - False claims to citizenship
 - Voting in a federal election
 - Increased penalties for others
 - Operation Streamline: serve time, then immediately deported
- **EFFECT ON FAMILIES**
 - Discouraging protection of poorer EWI immigrants takes priority over promoting family unity
 - Requires USC and LPR petitioners to demonstrate ability to keep up at least 125% of FPG until naturalization / 40 quarters of work
 - Prevention of **public charge**
- **BARS TO ADMISSION / ACCRUAL OF UNLAWFUL PRESENCE**
 - Previously undocumented and deported persons
 - Especially those who might qualify for a family-based visa
 - Must leave country for consular processing: triggers bar to reentry
 - 3 years if they have 180 days or more of unlawful presence
 - 10 year bar if 1 year or more of unlawful presence
 - Waivers based on extreme hardship to LPR / USC **spouse**
- **STATE AND LOCAL IMMIGRATION ENFORCEMENT: 287(g)**
 - **Task force model:** federally trained state & local LEOs can question employees re. immigration status, arrest for immigration violations, issue detainers to provide ICE time to arrest.
 - **Jail-enforcement model:** questions re. status at jail intake; issue detainers
 - **Hybrid** combining both
 - Obama discontinued task-force and hybrid: Trump reinstated these.