

Immigration Violations are Civil Offenses, Not Crimes -- *continued*

The United States is a system of laws. However, we are a system of two types of laws, civil and criminal, a distinction that often is overlooked in the debate over issues as controversial as immigration.

The assertion that “if a person breaks a law, then that person must be a criminal” appeals to gut reaction but is actually deeply flawed logic. The distinction between criminal and civil offenses is significant and intentional. Unlike criminal proceedings, the full protections of the U.S. Constitution do not apply in civil proceedings.

The object of a criminal proceeding is to punish. In a civil proceeding, the object is to recover financial compensation or find other remedies for a wrongful act. The Internal Revenue Code and the Immigration and Nationality Act are both civil laws. Unfortunately, the Executive Branch has been muddying the waters over the last 20 years in treating immigration offenses like crimes. Congress could criminalize immigration violations but most Americans would not approve of the resulting costs.

When someone is accused or suspected of a criminal offense, the full protections of the Constitution are invoked. The purpose of the Bill of Rights is to protect individual rights against government overreach.

When a person is arrested for a crime, she has the right to a free attorney if she cannot afford one, the right to trial by jury, and the government must prove ‘beyond a reasonable doubt’ that the individual is guilty.

When a person is suspected of a civil offense, like a tax audit or deportation proceedings, full Constitutional protections do not apply. An individual has the right to an attorney (but not a free one), no right to trial by jury and the government must prove its case by “a preponderance of the evidence,” a much lower evidentiary standard. Civil proceedings, at least in theory, are more efficient and faster than criminal proceedings because there are fewer Constitutional protections.

Treating civil immigration violations like crimes by co-opting criminal law enforcement officers makes immigrants less likely to report crimes and cooperate in criminal investigations out of fear local police will have them placed in deportation proceedings. Victims of domestic violence will be less likely to seek protection orders in our courts out of fear that they will be deported. This is a valid fear as federal immigration officers apprehended a woman seeking a protection order in Texas last month.

The erosion of trust between the community and local police is exactly the reason why police chiefs and sheriffs across the U.S. exercise their 10th Amendment right in declining to be involved with federal civil immigration enforcement including honoring detainer requests at county jails. Local law enforcement should leave enforcement of federal civil offenses to the federal government. That would be a sensible and moderate policy.

The League of Women Voters of Illinois opposes the deputization of state and local police to enforce immigration laws in Illinois. In support of a more moderate policy, Illinois Senate Bill 0031 (the TRUST Act) has been introduced. The TRUST Act, among other things, “provides that no law enforcement agency shall enter into an agreement under federal law that permits State or local governmental entities to enforce federal civil immigration law.”

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