

San Jose Mercury News:

U.S. government moving to deport longtime legal residents with criminal convictions

By Ken McLaughlin

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Roger Simmie is no angel.

Twenty years ago, the Mountain View carpenter was convicted of resisting arrest and drug possession. Fifteen years after that, he was found guilty of battering his girlfriend. Three times, he's been convicted of drunken driving.

But it's what he didn't do that got him locked up recently in the Santa Clara County Jail. Simmie, a Scot by birth who fought in Vietnam as a U.S. Marine, never applied for U.S. citizenship.

Now he finds himself facing deportation as one of nearly 400,000 immigrants incarcerated this year by the U.S. government. A growing number of noncitizens who have been living in this country as legal permanent residents are learning that run-ins with the law, even minor ones, are translating into life-altering, one-way tickets to homelands they no longer know.

A report last spring from Human Rights Watch found that 1 out of 5 "criminal aliens" deported from 1997 to 2007 had been in the country legally. Many, like Simmie, have known America as home for decades. "I'm living in limbo," said Simmie, 61, whose friends raised thousands of dollars to hire a lawyer to fight his deportation.

Simmie apologizes for the drunken driving, but he denies he was guilty in the other cases.

After leaving Great Britain with his family as a child and settling in Sunnyvale, Simmie joined the Marines as a teen and did two tours in Vietnam. But he never became a U.S. citizen, in part because his Scottish father felt his son should remain true to his heritage.

It was a costly decision. After Simmie didn't respond to a 2003 notice to appear in immigration court (he says he didn't get the notice), he became a fugitive and was arrested by U.S. Immigration and Customs Enforcement agents in October and locked up in the county jail, which has a contract with ICE to house its prisoners.

Like Simmie, longtime San Jose residents Hassan Abpikar and Victor Garabay were thrown into similar predicaments: Abpikar, 49, is an Iranian immigrant who was jailed because of a 3-decade-old charge that he contends was false. Garabay, 45, is a Mexican immigrant who says he stole food to survive when he suddenly became homeless.

They, too, have become enmeshed in a detention system that has mushroomed since Congress passed its last major immigration bill 13 years ago. Since then, the number of detainees has grown fourfold as new biometric technology, huge databases and more boots on the ground have made it easier for ICE to track down immigrants with criminal records.

While the 1996 immigration reform law was widely hailed as a get-tough measure on illegal immigration, one of its more controversial provisions allowed for relatively minor offenses to be grounds for deportation of noncitizens. The Human Rights Watch report found that 77 percent of legal residents had been deported for nonviolent crimes.

'Conditional agreement'

If immigrants have been in the U.S. fewer than five years, they can be deported for a single crime of "moral turpitude," a broad term that includes shoplifting and pot possession. If they're here longer than five years, they can be deported for either one aggravated felony or two crimes of moral turpitude.

"We're not talking about Jeffrey Dahmer or Charles Manson here," said Sin Yen Ling, an attorney with the Asian Law Caucus in San Francisco. She argues that the punishment of immigrants with criminal records -- deportation and separation from families -- is often disproportionate to the offenses.

But ICE officials argue that getting a green card is a "conditional agreement" and that immigrants have to take responsibility for their actions.

"The vast majority of immigrants who come here comply with laws, lead productive lives and contribute to society," said Virginia Kice, a spokeswoman for ICE. "But, if you come here as a guest of this country and you break our laws, you risk forfeiting the right to remain here."

Abpikar's case is bizarre.

He came to the U.S. on a student visa in June 1979, while Iranian students were still holding American hostages in the U.S. Embassy. In December of that year, while taking English classes in Oklahoma City, he put down a \$200 deposit to buy a car. When he later changed his mind and asked for his money back, Abpikar says, the disappointed salesman called the cops and accused him of calling in a bomb threat.

Ultimately, he says, he never spent time in jail and an attorney told him through a translator that the matter had "gone away."

He went on to get a bachelor's and a master's in chemistry from San Jose State University, worked in high-tech and in real estate, and applied for citizenship in 2004. When the application form asked whether he had ever been convicted of a crime, he didn't mention the Oklahoma incident. Two years later, the federal government accused

him of lying on his citizenship application — a felony — and put him into deportation proceedings. He spent 16 months as a detainee, mostly in Santa Clara County Jail.

While in custody, Abpikar, who also has a 1999 conviction for shoplifting, located his old Oklahoma records and found that he pleaded guilty in the case and was given a two-year suspended sentence. But under U.S. immigration law, according to immigration attorneys contacted by the Mercury News, the fact that Abpikar wasn't put on probation and didn't serve jail time in the Oklahoma case could mean it shouldn't count as a "conviction."

Severely beaten

After being severely beaten in June in his cell by a fellow inmate, Abpikar was freed in early November. The reason: An immigration judge ruled that, because he had served in the armed forces under the shah of Iran, he might be tortured by the current Iranian government if returned to his homeland. But he's still facing a federal charge of lying on his citizenship application, so he was placed in home detention.

Garabay's story is simpler.

He came from Mexico with his mother three decades ago at age 15. Two years ago, the green-card holder became unemployed and ended up living under a freeway ramp.

He was twice caught stealing fried chicken and a Heineken from a supermarket — and spent two weeks in jail. "I know what I did was wrong," he said. "But I was hungry and desperate."

The shoplifting convictions were enough to get him deported, and he was convicted of possession of a marijuana pipe and being under the influence of a controlled substance. Garabay landed in the county jail for six months.

Immigration judges are given more discretion if immigrants in deportation proceedings have not been convicted of an aggravated felony. So earlier this month, Garabay's attorney, Cassandra Lopez of Centro Legal de la Raza in Oakland, persuaded a judge to give Garabay another chance at freedom.

Garabay, who is still homeless, plans to crash on friends' couches and stay in motel rooms while he looks for work and attends a drug-treatment program.

"I don't want to go back into that jail," he said.