



PROPOSITION 36 IS **BAD FOR** **IMMIGRANTS. THIS IS WHY.**¹

Prop 36 will result in more Californians being deported
and more families separated

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TO UNDERSTAND PROP 36 WE NEED TO UNDERSTAND PRIOR PROP 47.²

Prop 47 (2014) reclassified six felony offenses to misdemeanors, including shoplifting and simple drug possession, and funneled costs savings into safety measures like drug and mental health treatment and victim services centers. Proposed Prop 36 would roll back those reforms and add new criminal penalties and sentencing enhancements. Prop 36 will also impose severe immigration consequences on immigrants and their families.

PROP 36 IS BAD FOR IMMIGRANTS IN TWO WAYS

1. **FIRST**, Prop 36 will make more immigrants deportable and ineligible for lawful status, even if they have lived in the U.S. for decades.
2. **SECOND**, Prop 36 will increase ICE arrests, meaning that more vulnerable immigrants will be funneled into the detention and deportation system.

DID YOU KNOW? Anyone who is not a U.S. citizen (such as a long-time permanent resident, undocumented person, refugee, DACA-recipient, etc.) can face life-altering

1 **Disclaimer:** The consequences detailed in this resource are not meant for individualized legal advice. Immigrants should consult with a legal service provider for how contact with the criminal system might impact their case. Legal service providers may consult <https://www.ilrc.org/crimes> and <https://www.ilrc.org/crimes-summaries> for crim/imm resources generally.

2 To learn more about Prop 36 see, [Vera Institute, Prop 36: California's 2024 Ballot Proposition to Recall Prop 47 Explained](#) (Jun 21, 2024).

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immigration consequences even for minor criminal convictions. The sentence enhancements proposed by Prop 36 exponentially raises these risks. Deportation separates families, leaving children without their parents. One in four people in California is foreign born, and half of all children in California have at least one immigrant parent.

EXAMPLES OF THE WAYS PROP 36 WILL HARM IMMIGRANTS:

- **People will lose their green cards and be barred from nearly every way of fighting a deportation case, including asylum: Simple possession of a drug with priors, proposed PC 395.** Simple possession of a controlled substance is an immigration “aggravated felony” if prior possession convictions are used as a sentence enhancement.³ *An aggravated felony triggers the most severe immigration penalties possible*, mandating deportation for life in almost all cases and barring nearly all immigration relief, including for long-time permanent residents with U.S. citizen dependents, people seeking asylum, and victims of domestic abuse. Even if the person successfully completes mandated drug treatment and is granted a dismissal, the aggravated felony conviction will remain.⁴ *Under Prop 36, every immigrant found guilty under proposed PC 395 will have an aggravated felony conviction.*
- **People will be barred from getting legal status and may lose any legal status they have: Petty theft as a felony, proposed PC 490.3, 666.1.** If a “petty theft” six-month misdemeanor is elevated to a felony, more immigrants will become deportable (including green card holders), will lose their ability to get a green card (despite USC⁵ or LPR⁶ family), and will be barred from valuable waivers to

³ *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 568 (2010) (while a simple possession is not typically an aggravated felony, a felony possession may be, when charged with a recidivist enhancement - meaning the prosecutor has charged and proved a prior controlled substance possession conviction); *Lopez v. Gonzales*, 549 U.S. 47, 55, n.6 (2006).

⁴ The statement at PC 395(d)(3) that “dismissal based on the successful completion of treatment shall not count as a conviction for any purpose” is incorrect, misleading, and unfair to noncitizens. As the Legislature previously found regarding PC 1000.4, such dismissals still have adverse immigration consequences. See [PC 1203.43](#).

⁵ U.S. Citizen.

⁶ Lawful permanent resident, also known as a green card holder.

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fight deportation cases (which means deportation even if that would cause USC or LPR dependents extraordinary hardship).⁷

- **People sentenced to one year, even if suspended, will lose their green cards and be barred from nearly every way of fighting a deportation case, including asylum: Receipt of stolen property with a year imposed, proposed PC 12022.7.**

If misdemeanor receipt of stolen property is made a felony and a year or more sentence is imposed, it becomes an immigration “aggravated felony.” This triggers the most severe immigration consequences, mandating deportation for life in almost all cases.

PROP 36 WILL RESULT IN MORE ICE ARRESTS

Prop 36 increases incarceration for many offenses, and because of the close cooperation between many jails, prisons, and ICE, more incarceration often means more detention and deportation. By converting certain offenses to felonies, Prop 36 will remove the valuable protection of the California Values Act which otherwise prohibits certain people from being turned over to ICE in county jails.⁸ Prop 36 would also mandate state prison for certain offenses, sending people into a penal system that works closely with ICE to deport people.

7 Petty theft is an immigration “crime involving moral turpitude” (CIMT). A felony CIMT causes these immigration penalties even if the person is just ordered to probation, with no jail time.

8 For example, the Values Act prohibits handing someone to ICE based only on a misdemeanor drug possession. By increasing simple possession to a felony, Prop 36 will allow the ICE arrest, making people vulnerable to detention and deportation. This is just one way Prop 36 will degrade Values Act protection.

ABOUT THE ILRC: The crossover between immigration and criminal law is one of the most complex and technical areas of law. The Immigrant Legal Resource Center (ILRC) is recognized as a national leader in criminal immigration law and immigration consequences of crimes. We provide critical support to immigration attorneys and criminal defenders through analysis, policy work, trainings, technical assistance, and developing and disseminating best practices.

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