

Written Statement for the Record
Public Safety Finance and Policy Committee
Support of H.F. 43
January 23, 2022

Dear Chair Moller and Members of the Committee,

The Advocates for Human Rights supports H.F. 43, a bill to ensure that people convicted of gross misdemeanors under state law are not categorized as “aggravated felons” under federal immigration laws.

Federal immigration law imposes severe consequences on persons convicted of what is defined at 8 U.S.C. sec. 1101(a)(43) as an “aggravated felony.” These consequences may include:

- Deportation without a removal hearing in front of an immigration judge;
- Mandatory unreviewable detention by immigration authorities following release from criminal custody;
- Ineligibility for asylum (allowing the United States to deport a person to a country where they may face persecution on account of their race, religion, nationality, political opinion, or membership in a particular social group);
- Ineligibility for cancellation of removal and certain waivers of inadmissibility (blocking an immigration judge from considering the impact of deportation on the person’s U.S. citizen or permanent resident spouse or children);
- Permanent inadmissibility following departure from the United States; and
- Enhanced criminal penalties for illegally reentering the United States (resulting in a term of imprisonment of up to 20 years).

Counterintuitively, an “offense need not be ‘aggravated’ or a ‘felony’ in the place where the crime was committed to be considered an ‘aggravated felony’ for purposes of federal immigration law.”¹

When congress created the statutory definition of “aggravated felony” in 1988, it meant what it said: the definition including murder, federal drug trafficking, and illicit trafficking of certain firearms and destructive devices. But today the definition has swollen to include more than 30 different types of crimes, including some crimes which states intend to be punished as gross misdemeanors.

¹ American Immigration Council, “Aggravated Felonies: An Overview,” March 16, 2021.

Six broad categories of crimes fall within the “aggravated felony” definition when the term of imprisonment is “at least one year.” Among these are theft, burglary, and gambling offenses, and the broad category of “crimes of violence” that can include a simple assault. Once convicted of one of these offenses and sentenced to a 365-day term of imprisonment, the draconian penalties attach.

By redefining the maximum penalty for a gross misdemeanor from 365 days to 364 days, Minnesota will not shelter people from deportation. Gross misdemeanor convictions may still result in an individual being placed in removal proceedings and ultimately being deported.

But redefining the maximum penalty will mean that crimes Minnesota considers to be gross misdemeanors are not treated as aggravated felonies under federal immigration law. This simple step restores the fundamental principle of proportionality in criminal sentencing by allowing people to raise defenses to their deportation and to apply for permission to return lawfully to the United States in the future. This step is also important as a matter of racial equity. Not surprisingly, “although Black immigrants comprise just 5.4% of the unauthorized population in the United States, and 7.2% of the total noncitizen population, they made up a striking 10.6% of all immigrants in removal proceedings between 2003 and 2015.”²

This bill takes a minor step – removing a single day from the maximum sentence possible for a conviction for a gross misdemeanor – but makes a major impact in the lives of refugee and immigrant Minnesotans, their families, and their communities.

Sincerely,

Michele Garnett McKenzie
Deputy Director

The Advocates for Human Rights

Founded in 1983 by Minnesotans who recognized the state’s unique spirit of social justice, The Advocates for Human Rights works in our home community and in partnerships worldwide to end violence against women, abolish the death penalty, protect the rights of migrants, and build the human rights movement. Governed by a 30-member board of directors, The Advocates is a volunteer-driven 501(c)(3) nonprofit organization.

² National Immigration Project and Immigrant Justice Network, *Aggravated Felonies and the Harmful Exclusion of People from Immigration Relief*.