

## COMMENTARY

### Rutgers Webcam Case Underscores Uneven Treatment of Immigrants

By Mark Noferi

**D**harun Ravi, a 20-year-old Indian citizen and former Rutgers student, recently served 20 days in jail for bias intimidation and other offenses after he broadcast via webcam his gay roommate's sexual encounter with a man.

Some advocates immediately criticized the sentence — 30 days, reduced to 20 for good behavior — as too light, calling it a slap in the face and arguing that Ravi has not “done enough.” Surprisingly, U.S. immigration authorities then decided not to pursue deportation, sparing Ravi the greater punishment of months or years in immigration jail litigating intricate charges before his deportation to a country he barely knows.

Ravi's case reflects a growing discomfort with immigration justice that often fails to fit the crimes, even crimes far less culpable. Yet Ravi's result — a rare one undoubtedly furthered by public attention and Ravi's resources — illustrates the plight of many green card holders who like him, commit a crime while young, but unlike him receive their greater immigration punishment in the shadows.

Typically, upon release and completion of appeals, Immigration and Customs

*Noferi teaches legal writing and a seminar on immigrants' rights at Brooklyn Law School.*

Enforcement (ICE) transfers a convicted immigrant like Ravi to immigration detention. Detention, despite the different name, might be in a county jail rented by ICE, or a New Jersey detention center with even worse conditions.

At that point, ICE sets immigration bail — as Ravi met in his criminal case, paying \$25,000 — or determines whether, in cases such as Ravi's, multiple convictions warrant mandatory detention without bail so long as the immigrant fights deportation.

This process is usually extraordinarily complicated, long, and one-sided.

Mandatory detention can be triggered by several findings, met merely by the low threshold that a colorable government argument exists in support. For example, one of Ravi's 15 convictions might constitute an aggravated felony. Or, one might constitute a crime involving moral turpitude with a potential sentence of a year or more (even though Ravi served only 20 days). Or, two convictions might, together, constitute two crimes involving moral turpitude not arising out of a single scheme (even though Ravi's convictions were from a single trial).

Far less culpable conduct than Ravi's commonly meets these thresholds. His obstruction of justice convictions might constitute aggravated felonies, since minor drug possession crimes do. And if subway turnstile jumping or shoplifting candy involves moral turpitude, it is at

least “colorable” that Ravi's bias intimidation crimes do as well.

Once detained, because of massive immigration court backlogs, Ravi could expect a long wait in jail, potentially more than a year, if he chose to fight on.

Ravi avoided all this when ICE unusually and pre-emptively announced it would not begin deportation proceedings. He is extraordinarily lucky. In less public cases, ICE commonly detains first and adjudicates later. Here, Ravi's paid criminal lawyers, having already researched his complicated immigration consequences, undoubtedly played some advocacy role.

Indeed, even if Ravi was detained and transferred to Pennsylvania, Texas or Louisiana, as two-thirds of New York-area immigrants are, his lawyers could still collect evidence and witnesses and prepare arguments to challenge his detention and deportation. Moreover, Ravi was even more fortunate to have public, visible support protesting the severity of his punishment. Even Ravi's second victim, his roommate's boyfriend also caught on the webcam, stated his opposition to Ravi's deportation.

Conversely, unlike Ravi, most immigrants who commit crimes are detained and deported without public scrutiny. Further, once detained, most (84 percent in 2010) have no counsel to fight detention and deportation. Immigrants are not appointed counsel because deportation proceedings are technically civil.

Worse, they cannot afford counsel while detained and out of work, and pro bono counsel do not take complicated cases of detainees in other states. Many immigrants who committed minor crimes

have never had counsel, even in the criminal process, and unlike Ravi they unwittingly plead to minor crimes that still result in detention and deportation.

As a result, many immigrants, unlike Ravi, are detained without public attention, without representation and without a realistic chance to defend deportation to a country they hardly know. And many older immigrants, with even stronger ties to America through a lifetime of work, family

and friends, are deported later in life for crimes committed when Ravi's age.

Ravi's result — conviction without further detention and deportation — is a more just conclusion. Despite criticism of the lenient criminal outcome, Ravi was publicly and finally tried and sentenced. Indeterminate immigration jail and deportation would have frustrated any attempt to rehabilitate his American life.

Yet Ravi's case perhaps best dem-

onstrates the plight of those immigrants less fortunate than he. Although Ravi had counsel, his potential punishment reveals the need for immigrant detainees, jailed and punished like criminals, to be appointed lawyers as criminal defendants are. And although Ravi escaped detention and deportation, his high-profile case illustrates the disproportionate punishment our immigration laws impose on low-profile immigrants every day. ■