



FIX '96:

*Restore America's Tradition as a
Nation of Immigrants and A Nation of Just Laws*

2000-2

3 pages

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March 16, 2000

SENDING ADOPTEES INTO EXILE

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Among other things, the Act leads to automatic detention and removal for legal immigrants convicted of certain crimes. Detention and removal is automatic, no matter when the crime was committed; no matter whether the person has straightened out and no longer is a threat

I'm your son, right? They can't take me away, can they? Show them the adoption papers.

Joao Herbert, age 22, adopted at age 8 and now facing deportation to Brazil.

to society; and no matter whether the person has any ties at all to his or her country of origin. As is usually the case when a rule is applied automatically without a chance for intelligent assessment of a person's particular situation, the law has led to absurd results.

The absurdity of the law is perhaps most aptly illustrated by its application to immigrants who were adopted as children by American families. It is not unusual for families who adopt foreign children to misunderstand that the child does not automatically become a citizen. Some of these families only discover this when their child gets into trouble. Then, it is too late. Because of the law, no judge can take into account the fact that the child grew up in this country and does not deserve so severe a punishment. He or she is sent into exile. Without a change in the law, the exile will be permanent.

"Aren't we engaged in an amazing fiction, to say that this group of people, who were raised in this country, who believe that they're part of this country, that suddenly they're strangers?"

Nancy Morawetz, New York University

"It was an American youth who was sent back, with an American education, American influences, American parents, an American grandmother. It was not a Thai youth."

Pam Gaul, speaking of her son recently deported to Thailand.

No law with such severe punishment—in this case permanent exile from one's adopted country and family—should be applied automatically. Congress should return some common sense to the law, and allow an immigration judge discretion to base punishment on the circumstances of the particular individual and the severity of the crime.

The attached *Washington Post* article reports on the cases of several adoptees who have been, or soon will be, sent into exile.

Right the Wrongs - Restore the Balance

On the Verge of Exile

For Children Adopted From Abroad, Lawbreaking Brings Deportation

By SUSAN LEVINE
Washington Post Staff Writer

MEDINA, Ohio—The Americanization of Joao Herbert began in 1987, when an 8-year-old boy from Brazil flew north to become the adopted son of a small-town Ohio insurance salesman and hairdresser. Blessed with an ebullient spirit, he embraced his new family, his new home, his new world. English quickly replaced Portuguese. Football eventually supplanted soccer. By high school, his father boasts, he could nail a field goal from 50 yards.

Unfortunately, by then he'd embraced some less desirable aspects of American youth, too. Herbert fell in with the wrong crowd, partied with booze and pot. And two months after high school graduation in 1997, he sold 7.5 ounces of marijuana to a police informant in his hometown of Wadsworth.

This Friday, he stands to be kicked out of his adopted country—for the rest of his life.

The U.S. government intends to banish Herbert—a first-time offender sentenced only to probation and community treatment—and send him back to an alien land. He knows no one in Brazil, and he no longer understands the native tongue. At 22, he has few recollections of his early years in Sao Paulo, although he remembers that his orphanage overlooked a slum.

Through the thick glass of the visitation cubicles at the county jail where he's been held since last March, he'd plead with his mother: *I'm your son, right? They can't take me away, can they? Show them the adoption papers.*

But those papers matter not, just as other papers and pleadings have mattered not in half a dozen similar cases over the past two years. In each, men and women adopted from abroad as children—loved and assimilated as Americans but, for whatever reason, never naturalized as citizens—have found themselves suddenly facing deportation as adults because U.S. immigration law considers them to be serious and unwanted criminals. They constitute a small but poignant subset of the millions of people subject to Congress's sweeping immigration reform of 1996.

"There's something particularly appalling about sending back someone who was adopted," said law professor Nancy Morawetz, who runs the Immigrants Rights Clinic at New York University. "Aren't we engaged in an amazing fiction, to say that this group of people, who were raised in this country, who believe that they're part of this country, that suddenly they're strangers?"

Indeed, even as Joao (pronounced Ja-WONE) Herbert sits day after day in detention, in Georgia a woman who was adopted as a toddler is fighting a deportation order because of a 1988 misdemeanor battery charge—from a hair-pulling scuffle after a boyfriend stood her up. As punishment, Mary Anne Gehris received a one-year suspended sentence and 60 hours of community service, which she worked off cleaning county probation officers' cars and bathrooms.

The Immigration and Naturalization Service only learned that bit of history when she at last applied for citizenship last year. *Have you ever been convicted of a crime?* the form asked. She answered honestly: Yes.

"It's just totally consumed me," said Gehris, 34, whose accent reveals her southern upbringing, not her German birth. She has two children, including a profoundly retarded son with cerebral palsy who could not travel abroad. Stinging criticism of the government's effort against her brought the attention of the Georgia Board of Pardons and Parole, and last week, it voted 5 to 0 to pardon her, thus halting any deportation.

The law at issue is the Illegal Immigration Reform and Immigrant Responsibility Act, aimed at closing loopholes in past immigration policies and practice. Its effect on adoptees was an unintended consequence, and Congress and the INS fault each other for cases like these.

The act's harshest provisions made detention mandatory and potentially endless once the INS started deportation proceedings against someone with a criminal conviction; stripped immigration judges of virtually all ability to weigh cases one by one and decide them on their merits; and significantly limited immigrants' right to contest adverse decisions through the federal courts.

Moreover, the law greatly expanded the definition of crimes that put someone at risk of deportation, and even allowed the INS to pursue people whose conviction occurred years before the statute took effect. Such retroactivity would be unconstitutional in the criminal justice system. Deportations, however, are deemed a civil matter.

"A nightmare," said Gehris's attorney, Socheat Chea. "You don't think it's real, but it's very real."

Although the law's provisions and reach have divided many immigrant families, several cases of late have involved long-ago orphaned children: John Gaul, who was adopted from Thailand at 4 and forcibly returned at 25. Michael Perry, adopted from Canada at 5 and expelled across the border at 24. Even a decorated Vietnam War veteran, a Californian who hadn't seen his native Japan for more than three decades, was nearly deported in 1998 on two lesser drug charges.

"My adjustment to Thailand was very hard," Gaul wrote last week in a short and muted e-mail from Bangkok, where he continues to struggle with the language and society. "God was with me even though I pleaded with him not to be here. . . . I just take it one day at a time."

No one condones or minimizes the crimes for which he and the others have been convicted, but the government's aggressiveness in seeking their removal has chilled people who work in the field of international adoption.

"It totally invalidates the whole adoption experience," said Susan Cox, vice president of Holt International Children's Services, which is based in Eugene, Ore., and each year places about 1,000 foreign children with American couples. She worries about the future repercussions of these actions.

"It's the impact they have on our responsibility as the receiving country, on our integrity, on the promises we've made to the sending countries," she said.

Precisely the point made by Brazil's new ambassador, Rubens Antonio Barbosa. He suggests that his nation (which authorized 103 adoptions into the United States last year) might rethink its cooperation if there are many more situations like Herbert's. Brazil refused to grant travel papers for him and another young man from Massachusetts who is in similar straits; as Barbosa explained, his country's law is clear that an adopting father and mother become responsible for a child.

"The links with Brazil are cut," he said, slicing a hand through the air for illustration. "Adoption, according to Brazilian legislation, is irrevocable."

Continued

But he has other, too—humanitarian reasons, as he sees them. With no language, no contacts, no way to make a living, how well could Herbert survive back in Sao Paulo? So he will not be allowed in, which means that if the INS does not find a third country to accept him, he could be detained indefinitely—a "lifer" in immigration parlance.

"It's a tragedy," Barbosa has concluded.

All told, U.S. citizens completed more than 16,300 foreign adoptions last year, with well over half of the children coming from Russia, China and South Korea. During the decade, the increase has been sharp, and agencies such as Holt say these headline deportations have pushed counselors to be far more diligent in stressing the importance of naturalization to new parents.

For contrary to what some think—to what Gaul's and Perry's parents insist they thought for more than a decade—naturalization is not automatic when an adopted child enters the country. When begun while he or she is still a minor, naturalization is not a particularly difficult process, but it can prove cumbersome, time consuming and confusing, and families not uncommonly delay doing it. Legislation pending on Capitol Hill would confer immediate citizenship on adoptees, allowing them to quickly have the right already enjoyed by the biological children of immigrants-turned-citizens.

Such change would avert much tache for adopting families whose foreign-born sons and daughters run into the same sort of turmoil or trouble as native-born offspring.

"Kids who [become] so totally American, whatever they've done is a reflection of the society they grew up in," said Carol Wolchok, director of the American Bar Association's Center for Immigration Law and Representation.

At this perilous intersection of immigration and criminal laws, there is plenty of finger-pointing about who gets the credit or blame for the dramatic spike in deportations since the 1996 act. In three

scored from 36,203 people to 63,012 in fiscal 1999. About 10 percent involved legal permanent residents, and nearly half of the total centered on drug charges.

Even the strongest congressional supporters of the toughened enforcement have concerns—although they tend to blame INS officials for failing to exercise the case-by-case discretion that they say would solve the bulk of the problem.

"There has been widespread agreement that some deportations were unfair and resulted in unjustifiable hardship," acknowledged more than two dozen lawmakers in a November letter to Attorney General Janet Reno and INS Commissioner Doris Meissner. Among the signers was Rep. Lamar S. Smith (R-Tex.), one of the act's chief architects. "True hardship cases call for the exercise of such discretion," he and his colleagues urged.

But the agency insists that changes in the law are needed. Because in cases involving an "aggravated felony"—an INS-specific term that covers the criminal waterfront, from Gehris's simple battery charge to Perry's vandalism and botched bank burglary—spokeswoman Karen Kraushaar says there is no latitude.

"The law is, fortunately or unfortunately, very clear in this regard. Removal is mandatory for those convicted of aggravated felonies," she said.

So one day immigrants may find themselves, as Perry did in January 1999, on an unscheduled plane ride to an unfamiliar place. He landed in Toronto, and from there the former Louisianan was driven to an isolated community in Manitoba—the aboriginal community into which he'd been born. Camperville has two gas stations, one general store and no traffic light. Still, he was grateful to be able to connect with someone who'd once known him.

"It's going all right, I guess," said Perry, who's living with his biological mother. Down south, he'd been trying to right himself by doing maintenance at a golf course. But here, "I can't get no work. I ain't got the kind of papers that say I'm a Canadian citizen."

Every Sunday without fail, he calls his adoptive parents in Bush, La., to tell them hello. "Michael's been a heck of a son," Jim Perry said last week, reminiscing about the many trips they spent hunting and fishing when his boy was young.

ger. Despite the criminal record: "We all miss him. We talk about how much we love him."

The separation holds special import for the older man, who is battling cancer and is sure his son never will be allowed to set foot in the United States again. He sounds less bitter than resigned, and still somewhat disbelieving: "The papers we got [at Michael's adoption] said he was an American citizen." The father contacted attorneys to fight the deportation. They told him not to waste his money.

In contrast, Pam Gaul in Florida battled to the end, convinced that it was the INS's fault that her son John was not naturalized before his 18th birthday—action that would have precluded his deportation. An immigration judge ultimately agreed, calling the agency "totally to blame" for the paperwork delays, but declared he could do nothing to correct the error.

"Accordingly," ruled Judge R.K. McHugh, "I must deny all relief and order that the respondent be deported from this country to his native country of Thailand."

Said Pam Gaul last month, a day before her son's one-year anniversary in Bangkok, "I never believed the what-ifs would happen." He'd been an all-American kid, with sports trophies weighing down his bedroom shelves, who chose the wrong playmates after high school and "we don't make excuses for that." He wrote some bad checks. He stole a car. He served his time. It was in state prison that the INS came calling.

"John, you're adopted, don't worry about it," she reassured him. Today she wonders how this nation of immigrants, "of second chances," could forever ban her son from its shores. "It was an American youth who was sent back, with an American education, American influences, American parents, an American grandmother. It was not a Thai youth."

On the other side of the world, John is trying to craft a new life. Volunteering at the same orphanage where Gaul first found him more than 20 years ago. Earning a certificate to teach conversational English to Thai children. "We've encouraged him not to be bitter because that will destroy him," Gaul said.

In Ohio, Jim Herbert and Nancy Saunders fear Joao's time is running out, that on Friday, a judge will sign a final removal order and there will be no turning back. They will not be told before, nor have they been allowed to attend their son's hearings. They have sought help from their congressional representatives, written Reno and President Clinton.

But because Joao was tangled up with drugs, Herbert was told, no one dares intervene. His didn't help his case by fleeing from his community treatment program after INS agents informed him that he would be deported. He arrested a year ago when he returned to his mother's house on his 21st birthday.

"In my mind you deport murderers, Colombian drug kings," his father said. "Joao still has chances, still has possibilities here. He wants to go to school."

Herbert spends hours each day on the Internet, searching for leads, researching any slim hope. He does not go to visit Joao in the Medina County jail west of Akron. Seeing him there surrounded by prisoners up for murder and mayhem, knowing he has little hope to offer, is just too hard.

That job falls to his former wife. She's at the jail twice a week, shoring up her son's spirits, crying with him, facing his questions. For all the scene around him, he appears more than anything to be a 22-year-old, with dark hair that he's wound into tight finger curls out of boredom and fear.

"I consider myself an American," he said through the glass recently. "But the way they label me, I'm labeled a foreigner. I asked an immigration officer, 'Don't I have any rights?'"

"You have no [expletive] rights," he told me.

**LESLIE
BERNSTEIN**

09/16/99 07:41:41 PM



Record Type: Record

To: Irene Bueno/OPD/EOP@EOP, Reynaldo Valencia/WHO/EOP@EOP, Brian A. Barreto/WHO/EOP@EOP
cc: Maria Echaveste/WHO/EOP@EOP
bcc:
Subject: Re: Fix 96 Meeting

The following is a list of participants for tomorrow:

- ✓ Margaret McHugh/New York Immigrant Coalition
- ✓ Adriana Cadena and Valerie Benevides/TX Immigration and Refugee Coalition
- ✓ Rand Quinn and Oscar Chacon/Northern CA Coalition for Immigrant Rights
- ✓ Marisela Garcia/IL Coalition for Immigrant and Refugee Rights
- ✓ Josh Bernstein (no relation)/National Immigration Law Center
- ✓ Jayne Park/National Asian Pacific American Legal Consortium
- ✓ Marcela Urrutia/National Council of La Raza
- ✓ Tyler Moran and Muriel Heiberger/MA Immigrant and Refugee Advocacy Coalition
- ✓ Moira Fisher/FL Immigrant Coalition

Thanks for your help guys!

Irene Bueno

Irene Bueno

09/16/99 07:30:06 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP@EOP
cc: Leslie Bernstein/WHO/EOP@EOP, Reynaldo Valencia/WHO/EOP@EOP
Subject: Fix 96 Meeting

Attached for your information are two documents in preparation for the Fix 96 meeting on Friday, at 11am. I understand that the groups want to thank you for your leadership, to push for the welfare restoration proposals, and to raise concerns with cancellation/detention/discretion provisions of IIRAIRA.

First, attached are talking points on the President's welfare restoration proposal. Last week, the President mentioned these proposals in his recent health care speech. We continue to work with the Hill sponsors (Levin, Moynihan, Chafee, Graham, etc) and the groups to move these proposals forward but have not

had success in getting much momentum. They are meeting with Secretary Shalala later in the afternoon to discuss these proposals. They wanted to do a press event with Shalala but it didn't work out. Cynthia Rice and I have spoken with the groups and have committed to try to work with them on doing some event to attempt to build interest and support for these proposals.

Second, attached are general talking points on IIRAIRA. There are bills in Congress pending - including a bill introduced by Reps. Frost and Frank that would restore immigration judge's discretion in the removal process. Senators Kennedy and Graham are preparing a more comprehensive bill that they plan to introduce soon and have been working to try to get bipartisan support. After I met with the groups earlier this year, I asked DOJ/INS to prepare some additional proposals to address their concern. As DOJ reported last week, they are working on a proposal and hope to get us language soon. I think it will be difficult to pass comprehensive legislation this year but smaller fixes such as those that we have proposed and Frost/Frank bill may be possible. However, Smith opposes and Abraham believes INS has more prosecutorial discretion but don't exercise it.

Please let me know if you have any questions.



welfareimmtalkingpoints.cancellationtp.916.d

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Irene Bueno

09/16/99 07:03:28 PM

Record Type: Record

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cc: Leslie Bernstein/WHO/EOP, Reynaldo Valencia/WHO/EOP

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welfareimmtalkingpoints.cancellationtp.916.d

**Talking Points on the
Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),**

- Under the **Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)**, the INS has detained and removed thousands of the detention and removal of serious criminals.
- However, we also are seeing an increasing number of legal permanent residents convicted of non-violent offenses, some of which occurred decades ago, that must be detained and removed from the country under IIRIRA.
- In these respects, the new law went too far.
- The Administration would like to work with Congress to alleviate some of the effects of IIRIRA while still allowing the INS to continue its enforcement mission.
- In June as part of a budget amendment, the Administration proposed legislation to permit the discretionary release from detention of certain individuals who are not a danger to the community or a flight risk. This would include legal permanent residents convicted of minor crimes and other individuals who are cooperating with an ongoing investigation.
- In July, the INS issued updated legal interpretation of the mandatory detention requirements of IIRIRA that allows certain individuals to be considered for release from detention pending their removal hearing. This will affect roughly 5 percent of the INS' total detainee population of about 17,400.
- In April, all INS district offices were instructed to perform mandatory reviews of individuals who have final orders of removal but whose immediate repatriation is not possible (Cuba, Vietnam, Laos, Cambodia). These reviews will determine eligibility for release of these individuals under authorization provided in the 1996 immigration law. These mandatory reviews will occur before the expiration of the 90-day review will have their cases reviewed every six months thereafter. In August, the INS issued guidelines on these reviews.
- However, the Administration is not currently considering modifying the application of summary exclusion (currently know as expedited removal) to asylum seekers. We believe we have put into place sufficient safeguards to ensure that bona fide refugees are treated fairly in the context of expedited proceedings.

President Clinton and Vice President Gore: Fighting for Fairness for Legal Immigrants

New Proposals in the Administration's FY 2000 Budget

President Clinton and Vice President Gore believe that legal immigrants should have the same opportunity, and bear the same responsibility, as other members of society. Upon signing the 1996 welfare law, the President vowed to reverse unnecessary cuts in benefits to legal immigrants that had nothing to do with the goal of moving people from welfare to work. Because of the Administration's leadership, the Balanced Budget Act and the Agricultural Research Act restored eligibility for Medicaid, SSI, and Food Stamps to hundred of thousands of legal immigrants. The Administration's new FY 2000 budget would build on this progress by restoring important disability, health, and nutrition benefits to additional categories of legal immigrants, at a cost of \$1.3 billion over five years. The Administration's proposal is included in the Fairness for Legal Immigrants Act of 1999 (S.792/H.R.1399) recently introduced by Senator Moynihan and Representative Levin.

Disability and Health

The Balanced Budget Act of 1997 restored disability and health benefits to 380,000 legal immigrants who were in this country before welfare reform became law (August 22, 1996), at an estimated cost of \$11.5 billion. The Administration's new budget would restore eligibility for SSI and Medicaid to legal immigrants who enter the country after that date if they have been in the United States for five years and become disabled after entering the United States. This proposal would cost approximately \$930 million and assist an estimated 54,000 legal immigrants by 2004, about half of whom would be elderly.

Nutritional Assistance

The Agricultural Research Act of 1998 provided food stamps for 225,000 legal immigrant children, senior citizens, and people with disabilities who came to the United States by August 22, 1996. The Administration's budget would extend this provision by allowing legal immigrants in the United States on August 22, 1996 who subsequently reach age 65 to be eligible for food stamps at cost of \$60 million.

Childrens' Health Care and Maternal Care for Pregnant Women

States currently can provide health coverage to immigrant children who entered the country before August 22, 1996. The President's FY 2000 budget would give states the option to provide health coverage to legal immigrant children who entered the country after August 22, 1996. Under this proposal, states could provide health coverage to those children through Medicaid or their CHIP allotment. The proposal would cost \$220 million and serve approximately 55,000 children by FY 2004. Furthermore, the budget proposes to give states the option to provide Medicaid coverage to pregnant legal immigrant women who entered the country after August 22, 1996. Such coverage would help reduce the number of high-risk pregnancies, ensure healthier children, and lower the cost of emergency Medicaid deliveries. This proposal would cost \$105 million and serve approximately 23,000 women by FY 2004. Recently, Senators Chafee, McCain, Mack, Jeffords, Graham, and Moynihan introduced S. 1227, a bipartisan bill that includes a similar proposal for legal immigrant children and pregnant women.

President Clinton and Vice President Gore: A Record of Restoring Benefits to Legal Immigrants

Upon signing the 1996 welfare law, President Clinton vowed to reverse some of the unnecessary cuts in benefits to legal immigrants. The President and Vice President fought for three laws continuing or restoring SSI, Medicaid, and Food Stamps to certain groups of legal immigrants. The Balanced Budget Act (BBA) “grandfathered” eligibility for SSI and Medicaid for legal immigrants, while the Agricultural Research Act addressed eligibility for Food Stamps. In addition, legislation making technical corrections to benefits for legal immigrants restored SSI and Medicaid eligibility of certain recipients not covered under the BBA.

Balanced Budget Act of 1997 Restored Disability and Health Benefits

The BBA restored SSI and Medicaid eligibility to some legal immigrants. CBO estimated the cost of these provisions at \$11.5 billion over five years (\$9.5 billion for SSI, \$2 billion for Medicaid). Briefly, the BBA:

- Continued SSI and related Medicaid for legal immigrants receiving benefits on August 22, 1996;
- Allowed SSI and Medicaid benefits for legal immigrants who were here on August 22, 1996 and who later become disabled;
- Extended the exemption from SSI and Medicaid restrictions for refugees and asylees from five to seven years after entry;
- Classified Cuban/Haitians and Amerasians as refugees, as they were prior to 1996;
- Exempted certain native Americans living along the Canadian and Mexican borders from SSI and Medicaid restrictions.

Agricultural Research Act of 1998 Restored Food Stamp Eligibility

The Agricultural Research, Extension, and Education Reform Act of 1998 restored Food Stamp eligibility to approximately 225,000 legal immigrants at a cost of \$818 million over five years. Under the Act, the following groups became eligible for Food Stamps:

- Noncitizen children under age 18 who entered by August 22, 1996;
- Legal immigrants here by August 22, 1996, who were age 65 and over or disabled on that date, or who become disabled after that date;
- Refugees and asylees for seven years after entry as refugees or obtaining asylum status in the United States, as opposed to five years under the welfare law;
- Hmong refugees; and
- Certain Native Americans living along the Canadian and Mexican borders.

Technical Amendments Act of 1998 Protected Those Receiving Assistance

The Noncitizen Technical Amendments Act of 1998 ensured that individuals who were receiving disability and health benefits when welfare reform became law were able to continue receiving assistance, even if they were too disabled to prove their date of entry into the United States. This change protected an estimated 3,400 elderly and severely disabled recipients at a cost of \$41 million over five years.



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 Angela Ferguson
NEVADA
 Peter L. Ashman
NEW ENGLAND
 Gerald C. Rovner
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 Robert Frank
NEW YORK
 Michael Turansick
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WASHINGTON STATE
 Kevin Lentsman
WISCONSIN
 Gail K. McCarthy

Mary Beth Cahill
 Assistant to the President and Director
 of Public Liaison
 Office of Public Liaison
 Executive Office of the President
 1600 Pennsylvania Avenue, NW
 Washington, D.C. 20500

Irene Bueno
 Special Assistant to the President for Domestic Policy
 Executive Office of the President
 1600 Pennsylvania Avenue, NW
 Washington, D.C. 20500

Dear Mary Beth and Irene:

A belated thank you for meeting with immigration organizations to discuss the negative impacts on American citizens and immigrants nationwide of the 1996 immigration laws. We hope the Clinton Administration will be forcefully on our side to change these harmful laws!

As promised, I enclose some selected clips from around the country which detail the devastating consequences of these laws. I also want to alert you to the campaign, "FIX 96," that immigration groups launched yesterday. We are calling on Congress and the Administration to renew our nation's commitment to our cherished constitutional principles of civil liberties and due process, and FIX '96!

I look forward to speaking with you both about our efforts and the Administration's position on this issue that tops the agendas of immigration groups nationwide.

Thank you,

Judith E. Golub
 Director of Advocacy

28AD9038



Fix '96:

*Restore America's Tradition as a
Nation of Immigrants and A Nation of Just Laws*

PRESS CONFERENCE

FOR IMMEDIATE RELEASE
July 23, 1999

Contact: Judy Mark, National Immigration Forum
(202) 544-0004, ext. 14

LEADERS LAUNCH NATIONAL CAMPAIGN TO FIX HARSH 1996 LAWS AFFECTING IMMIGRANTS

WHAT? In 1996, Congress adopted three separate laws on immigration, welfare, and anti-terrorism that contributed to the most dramatic crackdown on immigrants in 70 years. Almost immediately upon enactment, a bipartisan majority in Congress worked with the Administration to begin to correct some of the most egregious excesses. Although the fixes of the past two years are a good start, much more needs to be done to restore the balance and wisdom of our traditions as a nation of immigrants and a nation of just laws.

The bitter legacy of the laws' excesses is felt everyday by average Americans and immigrants: families are being ripped apart; immigrants are being jailed and deported for minor transgressions committed years ago; immigrants are being denied their day in court; refugees are being sent back to their persecutors; among other serious problems. At this press conference, speakers will call on Congress to renew our commitment to our cherished constitutional principles of civil liberties and due process.

WHEN? Wednesday, July 28, 1999
1:00 PM

WHERE? U.S. Capitol Building, Room HC-5

WHO? U.S. Catholic Conference, Most Reverend Thomas G. Wenski, Auxiliary Bishop of Miami
American Bar Association, Robert J. Grey, Jr., Chair, House of Delegates
Leadership Conference on Civil Rights, Wade Henderson, Executive Director
Anti-Defamation League, Jess Hordes, Government Affairs Director
American Immigration Lawyers' Association, Jeanne Butterfield, Executive Director

Immigrants affected by the laws will also speak and representatives from other organizations supporting the Campaign will attend.

#

Right the Wrongs - Restore the Balance

News Release

For Immediate Release
Wednesday, July 28, 1999

Contact:
Matthew Tallmer
Public Affairs Manager
Office: 202-216-2404
Fax: 202-371-9449
mtallmer@aila.org

Immigration Law Violates American Principles of Law, Fairness *Right the Wrongs; Fix '96*

WASHINGTON, D.C. – Congress should renew our tradition of laws, justice, fairness and family values by changing 1996 immigration laws, according to Jeanne Butterfield, Executive Director of the American Immigration Lawyers Association.

Butterfield joined with representatives of the U.S. Catholic Conference, the American Bar Association, the Leadership Conference on Civil Rights, the Anti-Defamation League, and many other participating organizations, at a July 28 press conference advocating major reform of 1996 immigration laws.

"These laws violate fundamental American principles. They deny people their day in court; deny people a second chance; change the rules in mid-game; tear families apart; and hit the wrong targets," Butterfield said. "People are being deported with no appeal because courts cannot review INS decisions. Americans believe in second chances and redemption, but IIRAIRA deports people who since have led exemplary lives due to long-ago minor offenses and youthful indiscretions. Because the laws are retroactive, people are being deported for offenses that weren't even grounds for deportation before 1996. These immigrants already have paid their debts to society, but are being deported anyway."

Butterfield noted that many have been in the U.S. since they were children, are married and their children and spouses are U.S. citizens. When these people are deported, family members face the heartbreak decision of leaving the U.S., their country of birth, or remaining here, often without a breadwinner, and being forced to go on welfare.

"The law was supposed to keep dangerous criminals from entering and remaining in the United States. Instead, Congress went too far and now requires the INS to deport any non-citizen who has ever made a mistake, no matter how minor that mistake may be and no matter how long ago it was committed, and no matter what contributions they have made since," Butterfield commented. "These draconian provisions fly in the face of America's tradition as a nation of immigrants that values due process and fairness. That's why we're calling on Congress to drastically amend the 1996 immigration laws."

FACT SHEET: PEOPLE HURT BY IIRAIRA

Guy Taylor, 17-year-old Canadian orphan who wants to enlist in the U.S. Army. INS won't let American grandmother adopt him, won't extend visa. *Source: Associated Press, Los Angeles Times.*

Robert Glazewski, immigrant from Poland. Being deported for overstaying his visa while caring for his ailing mother. *Source: Associated Press.*

Meng Li, real estate executive from Shanghai, strip-searched, handcuffed, held in jail before being subject to expedited removal. INS said Li used the same visa twice. *Source: New York Times.*

Roberto Obergon, Nicaraguan immigrant, being deported for drunk driving conviction. Only potential kidney donor for his son, whose organs are failing. *Source: Houston Chronicle.*

Elba Digna Wood, wife of a former Contra commander, denied entry into U.S. and barred for five years through expedited removal process. INS said Wood overstayed her visa in 1994, after she gave birth to her daughter. INS Commissioner acknowledged Wood should have been admitted. *Source: New York Times.*

Olufemi Abdulai, fled Nigeria after being imprisoned and tortured. Indefinitely detained by INS for not having identifying documents. *Source: ABC News.*

Donald Vega, world-reknowned jazz pianist, being deported for illegally entering the country at the age of 11. *Source: Los Angeles Times.*

Attila Hegyi, a Hungarian student, barred from the country for five years under expedited removal process. INS says Hegyi overstayed a visa by three months five years previously. *Source: New York Times.*

MIKE DOWNEY

He Wants to Serve His New Country, if It Will Let Him

So, Oleta Hansen goes to a courtroom Tuesday, and her grandson goes along. He is 17. He has just graduated from a high school in Garden Grove. He's been living in that Orange County town with his grandparents for more than a year, ever since his mother died in Canada from a drug overdose.

The boy wants to join the U.S. Army, and the Army apparently wants him.

There is a catch, though.

The boy is not a U.S. citizen. He did spend some of his childhood in Long Beach, but his mother was a Canadian and gave birth to him there, so so is he.

His father?

"Unknown," says the boy.

He is an orphan. His remaining relatives live in the United States. He has no Canadian kin. Yet he must go back there to live, unless something happens before his temporary visa expires on Aug. 13.

Oleta Hansen has a solution. A judge could declare her grandson a dependent of the court. Immigration could then give him a green card. And the boy could then march straight to the Army.

But no, says the judge, Juvenile Court Referee Gary G. Bischoff.

So, Oleta Hansen now sits crying, two days later, running out of time and options. Her grandson's diploma from Lake High is on a table in front of her. There is also a color photo of his mother, her daughter.

If the judge would only understand . . .

"He said his courtroom was for abused children," she says, sobbing, her grandson seated by her side. "I suppose if I went over there and hit him, he would be taken care of by the court."

Somewhere there must be someone—an elected official, an authority figure, someone—who can keep a 17-year-old boy from going "home" to Canada, to nobody.

Family matters do get messy, but this one doesn't seem too complicated.

"It's kind of scary," says Guy Taylor, the boy in question.

"I'm only 17. I don't have any family. I don't have anywhere to start if I go back. I want to go to the U.S. Army so I can serve the country. It's been a dream of mine for a long time."

He has visited a recruiter. He has taken pre-enlistment testing. A staff sergeant from Westminster says the Army could take Guy almost immediately, as soon as he gets a green card. The Army by being his employer could qualify Guy for a green card, but Guy can't JOIN the Army until he gets a green card.

That's some catch, that catch.

The question is, is Guy a man or is Guy a boy?

He was 16 when his mother died. A court in Canada named his grandmother his legal guardian. But the Immigration and Naturalization Service objected when Oleta Hansen wanted Guy to live permanently in Garden Grove, saying he was too old to be a dependent.

He was ordered deported.

Then came a "humanitarian parole." It was a one-year extension from the INS, which came about after Hansen made pleas to public servants.

She is grateful for help received from Sen. Dianne Feinstein's office, and has a letter from Sen. Barbara Boxer, as well. Rep. Dana Rohrabacher from Huntington Beach also intervened on the family's behalf.

Tuesday's hearing was due to those politicians' efforts. The court was asked to view it as a case of "abandonment."

"Guy's mother died," says his lawyer, Carl Shusterman. "That's the ultimate abandonment."

But the judge was not swayed.

If the applicant had a trade, a professional reason to be in the U.S., it could be a factor. Guy's too young. If the applicant had been abused by a parent, it could be a factor. Guy was not.

His grandmother said Thursday, "We're trying to do everything legally. My husband and I are taxpayers, we've lived here our entire lives, we're retired. To be honest, we don't need these problems. But for the love that we have for this boy, we'd go to the ends of the Earth for him."

"Ever since my daughter's funeral in a last year, we've done nothing but bump our heads against a brick wall. I don't know what's going to happen now, except that I might have a nervous breakdown."

Guy's deadline is Friday the 13th, three weeks from today. That's when his "humanitarian parole" expires.

He turns 18 in November. INS law "has a series of 'special immigrants,' for people who fall between the cracks of normal law," says Shusterman, the lawyer. But it's up to a court what qualifies as special.

"Please, please, let him have a green card. Guy's grandmother pleads to anyone who listens."

Or back to Canada he goes. Alone.

Mike Downey's column appears Sundays, Wednesdays, Fridays. Write to him at Times Mirror Square, Los Angeles 90033. E-mail: mike.downey@latimes.com

Doting son must go, INS says
July 22, 1999

OMAHA (AP) — A Polish immigrant in the United States to care for his ailing mother has been granted a seven-day reprieve but apparently will not be allowed to stay in the country beyond that.

A query from the staff of Sen. Chuck Hagel, R-Neb., did not sway the Immigration and Naturalization Service from its deportation order.

Robert Glazewski, 30, has been in the United States for nine years caring for his mother.

The INS does not consider his caretaker role enough reason for him to remain in the country. The agency already extended Glazewski's visa to finish college, said Micheal Went, acting director of the INS in Omaha. Glazewski graduated in May.

A spokeswoman for Hagel said the office could find no way to prolong Glazewski's stay. "There's only so much you can do," Deb Fiddelke said. "We can't force a federal agency to change its mind." Glazewski will be deported Monday. The INS gave him seven days to get his affairs in order.

The INS has purchased a plane ticket for Glazewski's return to Poland. Agents will take Glazewski to Eppley Airfield, see him on the airplane and be in Chicago to make sure he boards his flight overseas.

Glazewski's mother, Danuta, has been granted special permission to remain in the United States because of a medical condition. Danuta Glazewski underwent a liver transplant nine years ago and a kidney transplant a year later. The treatment is unavailable in Poland.

Abroad at Home

ANTHONY LEWIS

It Can Happen Here

BOSTON

Suppose an American businesswoman flew to Shanghai to buy Chinese goods for a New York department store. She had a Chinese visa, but at the Shanghai Airport an official said she was trying to enter the country illegally. Without a hearing, or even being told what the problem was and given a chance to explain, she was strip-searched, handcuffed, held in jail and finally sent home.

A story like that would no doubt be seen in the United States as an example of the arbitrary, lawless Chinese system. It could not happen in a law-bound country like ours, we would say. But it has happened here.

Meng Li, an executive with a real estate development company in Beijing, set out for New York in June to buy plumbing fixtures. She had a business visa issued by the U.S. Embassy in Beijing. She had used the same visa twice before, in 1996 and February 1997, entering the United States at Detroit.

This time the plane landed first in Anchorage, Alaska. There an agent of the U.S. Immigration and Naturalization Service decided that she was trying to enter the country by fraud or with improper documents. She was strip-searched, handcuffed, put in an Anchorage jail and told she was barred from the U.S. for five years.

Ordinarily we would not have heard about Ms. Li. Under the radical new immigration law passed by Congress and signed by President Clinton last year, an alien found by an I.N.S. officer to be trying to enter by fraud is subject to "expedited removal." She is sent home at once, without any administrative hearing or review by a judge.

But because of language difficulties, it was thought that Ms. Li was applying for political asylum. So she was held in jail; and an Anchorage lawyer, Margaret D. Stock, took up her case.

Ms. Li was never told what was supposedly fraudulent about her attempted entry. But Ms. Stock thinks the problem was that Ms. Li applied for another kind of U.S. visa last winter, one that would allow her to work for an American company while here. That application was first

The arbitrary powers of an I.N.S. agent.

denied. Then in late May it was approved, Ms. Stock said, but Ms. Li did not know that — and apparently neither did the I.N.S. agent in Anchorage.

In any case, Ms. Stock said, it is legal for an alien coming here to use a valid visa when another has been denied, so long as the alien uses it for the designated purpose.

An Anchorage Daily News reporter, Rachel D'Oro, interviewed Ms. Li in jail after she had been there two weeks. She cried as she spoke of how humiliated she felt. Not only was she in prison, she said; her luggage had been seized, including \$32,000 for purchases in New York. Ms. Stock went to court and got an order letting her use a bit of the money to buy toilet articles.

"People always think this country is one of the most pro-human rights places," Ms. Li said. "But they were so inhumane."

Ms. Stock brought a suit challenging Ms. Li's exclusion. The Government, in its answer, did not disclose its reasons. It merely said the court had no power to hear the case under the new immigration law, and the judge agreed. Ms. Stock appealed to the U.S. Court of Appeals for the Ninth Circuit. But Ms. Li decided to go home.

"My client was in jail a month and the I.N.S. still wouldn't tell her what she did wrong," Ms. Stock said. "That is very scary."

Ms. Li flew home on July 3. Just before leaving she told The Daily News that she had lost all confidence in the United States and from now on would take her business elsewhere.

Is the case of Meng Li unique? Not in Anchorage. Ms. Stock filed an affidavit in court in the Li case about five other Chinese she had seen in the Anchorage jail. All were business people who had visas. They had been headed elsewhere in the U.S. but were stopped at the Anchorage airport by I.N.S. agents and told they were being sent back the next day and banned for five years.

Meng Li and the others did not understand what was happening to them. Do Americans understand? Do they know that the new immigration law allows a single I.N.S. agent to decide that someone who has a U.S. visa is a fraud, to send him home without a hearing and ban him from this country for five years?

If Americans understood that, I believe they would demand changes in the arbitrary new law. Or am I old-fashioned in believing that about my country? □



D. Fahleson / Chronicle



Miriam Obregon gets a kiss from her son Arnulfo outside the INS detention center here. Her husband, Roberto, above, faces deportation to Nicaragua because of a drunken-driving conviction, but he may be needed here for a kidney transplant for his son.

Deportation threat adds to family plight

By **DEBORAH TEDFORD**
Houston Chronicle

The mother of a critically ill 3-year-old is involved in a life-and-death battle with the U.S. government as authorities try to deport her husband — a legal immigrant and potential kidney donor for their child.

Miriam Obregon said her son, Arnulfo, will not live without a kidney transplant. The boy has been on dialysis 11 hours a day since February,

Child critically ill, father held by INS

when doctors at the University of Texas Medical Branch in Galveston removed his kidneys after two years of treatment for kidney failure.

In a May 2 letter presented to U.S. Immigration and Naturalization service officials, doctors at UTMB asked that deportation proceedings against Roberto Obregon be halted

■ Strict U.S. Immigration law splits family: Page 6A.

because of the gravity of Arnulfo's medical condition.

"We are requesting that ... Mr. Roberto Obregon be allowed to remain in the United States," wrote Dr. Alok Kalia, director of Pediatric Nephrology at Children's Hospital of UTMB. "Both of his parents are po-

See OBREGON on Page 4A.

(over)

Obregon

Continued from Page 1A.

tential kidney donors. It is necessary for his father to remain in this country for evaluation and possible surgery, so as to increase Arnulfo's chance of successful kidney transplantation."

But Robert Kahn, attorney for Roberto Obregon, said INS officials have been unmoved — despite the fact that Obregon has been a legal resident for more than 10 years and his legal infractions have been for drunken driving.

Miriam Obregon said her husband battled alcoholism for years, but it wasn't until he hit bottom after his third drunken driving arrest that he dried out and straightened up.

"He went to jail, but when he came out he wanted to do better for us — and he did," she said. "He was doing everything he was supposed to. He hasn't had a drink since 1995. He went to AA. He had a good job and took care of us ... and now this."

U.S. Immigration and Naturalization Service authorities began deportation proceedings against Obregon in March after discovering the 1995 drunken driving conviction, which made him a candidate for deportation. Since then he has been locked in the INS detention facility in Houston.

Under the Immigration Reform Act of 1996 certain state crimes can be upgraded to aggravated felonies under federal law, allowing legal immigrants to be deported.

INS officials did not comment.

A native of Nicaragua, Obregon and his entire family were granted

'He was doing everything he was supposed to. He hasn't had a drink since 1995. He went to AA. He had a good job and took care of us ... and now this.'

Miriam Obregon

political asylum more than a decade ago. "If he is deported, he will lose his whole family," said Doris Polanco, Obregon's sister. "We are all here. We are all American citizens."

She said her brother wanted to become a citizen, but his application was denied because of the drunken driving conviction.

Besides losing his family, Obregon could also lose his life if he is deported. Polanco said her brother will be in danger the moment he sets foot on Nicaraguan soil because their father was employed by the government during a previous political regime.

Obregon, who has been in detention for three months, said he blames only himself for his woes. But he is constantly worried about Arnulfo and his five other children.

Obregon, 36, said he believes he will be the donor because he is in good health and his wife needs to be well to take care of the family's five other children, who range in age from 17 to 5.

Miriam Obregon said her hus-

band's incarceration has been an emotional and financial drain on the entire family. The family lived well on Obregon's salary as a pipefitter at Texas Dry Dock in Port Arthur, and his insurance paid for Arnulfo's medical care.

Now the insurance is gone and the family is living on welfare, she said.

To make matters worse, Arnulfo's complicated medical treatments require her full-time attention. Miriam Obregon was trained to give Arnulfo his daily dialysis treatments, and she must also prepare a special diet, monitor his blood pressure and keep up with his medications.

The routine leaves her little time to spend with the other children, she said. She said she depended upon her husband to supervise mealtime, bathtime and bedtime.

Kalia's letter states Obregon will be needed at home even if Miriam Obregon is selected as the donor.

"Mr. and Mrs. Obregon work as a team to fulfill their parental obligations as well as to meet the extensive health care needs of their youngest child," Kalia wrote.

Kahn said it will take about a year for Obregon to exhaust his appeals and be deported. In the meantime, he will remain in detention, where Kahn said there is no avenue for his release to be tested as a donor.

Kahn said he has asked INS officials to reconsider their decision to deport Obregon on humanitarian grounds, but he holds little hope.

Meanwhile, Miriam Obregon said she and her children have a double burden to bear.

"They are not just destroying my husband, they are destroying my whole family," she said. "I think he and my children deserve another chance."

Abroad at Home

ANTHONY LEWIS

'Humans, Not Animals'

BOSTON

Elba Digna Wood is a Honduran woman who lives in Nicaragua with her husband, a former commandante of the contras. In 1994 she visited her sister in Houston. She was pregnant and planned to go home in September for the birth. But the baby was born prematurely in August, and she stayed until the doctor said she could go home, in December.

Last month she flew to the United States with her now 3-year-old daughter to see her sister and nephews. She had a U.S. visa, but at the Miami airport she was stopped by agents of the Immigration and Naturalization Service. It was about 5:30 P.M. on Aug. 7 — the beginning of an ordeal that lasted a week and in a sense is not over yet.

"Around 7:30 I told an immigration officer that my daughter was hungry and I needed to go to the bathroom, but they told me I had to wait," Mrs. Wood said in a sworn statement. "My daughter was crying all this time...."

"I said I have a right to know why this is happening to me, I am covered in grief, what have I done, what is the crime? The immigration officer said that my first crime was to overstay my visa in 1994 and my second crime was when I took Medicaid for the birth of my daughter...."

"By this time it was about 9:30, and neither me nor my baby had had anything to eat, to drink or were able to go to the bathroom. [At 10:30 an officer took her to the bathroom.]

"At about 11:30 a female officer said, 'You know we are going to deport you because you have illegal papers.' I was just crying. And the female officer said I had an attitude problem because I didn't respond...."

"Around 2 A.M. a male officer came and started screaming at me

The new law is no
excuse for I.N.S.
mistreatment.

that I was a thief, that I had come here to steal from his taxes. He told me 'You're not even worth this much (he put his fingers together) respect.' Then he said, 'If you're a tourist why don't you come with \$20,000, go to Disney World and spend your money? ... We're going to deport you. Then we'll decide how many years you won't be allowed back.'"

Mrs. Wood said she was allowed to use the telephone for the first time at 7 the next morning. She called her mother-in-law, who lives in Miami, and she came and took the baby.

At 2 A.M. the next day, Aug. 9, Mrs. Wood was taken to the Immigration Service's Krome Detention Center in Florida. During the next five days, she said, her daughter was brought to her for one 30-minute visit.

She wrote out by hand on Aug. 13 her statement of what had happened to her. She said she had been told that she would be flown back, without her daughter. Her statement ends: "I feel like I'm someone else, I feel a burden I can hardly bear, and my baby is suffering without me. How did all this happen to me?"

On Aug. 14, a week after she landed in Miami, the baby was returned to Mrs. Wood. Then she and the child were flown back to Nicaragua.

A lawyer acting for Mrs. Wood after her departure asked an I.N.S. inspector why she had been barred. Because, the inspector said, she had overstayed her 1994 visa, and the new immigration law enacted last year makes someone who has overstayed a visa inadmissible. But even if the reason for Mrs. Wood's overstay — the premature birth — was somehow not a valid one, it is not clear that the provision applies to people who overstayed before the new law took effect.

On Aug. 25 Mrs. Wood's husband, Osorno Coleman, wrote a letter directed to U.S. authorities and Senator Jesse Helms. "I risked my life fighting against the Communist system," he said. "Now that this war is finished we are like garbage to you...."

"My daughter was left traumatized. If you do not want a visitor to land, you can return him without screaming at them with obscene words, comparing them to animals and incarcerating them. In the eyes of God we are all equal, and we all deserve to be treated like humans and not like animals."

I asked an I.N.S. spokesman about the case of Elba Wood. The I.N.S. Commissioner, Doris Meissner, telephoned in reply.

"This was a complete mistake on the part of the immigration officer so far as we can tell," Ms. Meissner said after looking into it. "She had a valid visa. She should have been admitted."

"And her treatment was completely against our policy. It violated any acceptable norm. I am ashamed that it happened. I hope that this is a totally isolated incident." □



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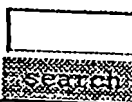
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Asylum Seekers Face Difficult Path to Freedom

Olufemi Abdulai sought asylum in the U.S. after being tortured in Nigeria. Now he's in another kind of prison while his case is appealed. If America doesn't want refugees, he says, "they should put it on the radio so people like me will know not to come."
(Heather Maher/ABCNEWS.com)

By Heather Maher
ABCNEWS.com

NEW YORK — When the most recent wounds he had suffered at a torturer's hands had healed, Olufemi Abdulai fled the hospital, and his home.

On Nov. 22, 1998, he arrived at New York's JFK airport from Nigeria, seeking political asylum in the United States. After years of being brutally punished for his activism with a pro-democracy group, he was scared. But he kept reminding himself of America's reputation as "a haven for the oppressed."

Instead, he was stunned when airport Immigration and Naturalization Service officials reacted with disbelief and cynicism to his tale of imprisonment and beatings at the hands of Nigeria's dictatorship. The INS handcuffed him and took him to a large room, where an agent covered a three-page document with a blank sheet of paper and told him to sign.

Olufemi says the agent told him, "Go back to your country, America doesn't give asylum."

But he refused, remembering how, in Nigeria, prison officials tortured him until he signed papers that implicated innocent friends.

At that, he says, INS officials put him in leg irons and chained him to a desk, where he sat for 12 hours, until a van picked him up and took him to a detention facility in Elizabeth, N.J. There he was stripped, given

SUMMARY

Human rights groups say America is no longer a haven for the oppressed and persecuted.

Asylum Links

[Lawyers Committee for Human Rights](#)
[Slamming the Golden Door Report](#)
[Refugee Law Center](#)
[National Immigration Forum](#)
[Amnesty International](#)
[Federation for American Immigration Reform](#)

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Restrained upon arrival	Automatic detention	Inadequate language interpretation	Insufficient medical care	No parole while their case is heard
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Many human rights groups take issue with how asylum-seekers are treated after their arrival in America. They argue that people fleeing torture and oppression should receive considerate handling, not mass processing. Some of their main complaints:

A 'Back Door' to Entry?

But David Ray of the Federation for American Immigration Reform, the country's leading anti-immigration lobby, argues that the new system works.

"We don't want to send a message that we're going to be duped by false claims of political asylum and allow hundreds of thousands of people to use this benevolent program as a back door to illegal entry," he warns.

And Kelly Ryan, chief of the INS' refugee and asylum law division, says the law actually favors people seeking asylum.

"I think that we have made the trigger [for admittance] very low," she says. "When we ask the questions, if the answer is 'yes,' an inspector can't say 'no.' There are no legal determinations made at the airport about whether or not they will ultimately receive asylum."

But the real issue, say rights groups, is whether those seeking refuge understand the question or are given adequate information about their options.

The sensitivity is just not there, says Acer. Even though these refugees are arriving "illegally" because they don't have proper paperwork, she notes, "if a government is persecuting you, and torturing you for your political views, they're not going to turn around when you escape and give you a passport."

Acer concedes that in the early 1990s, bureaucratic inefficiencies caused a huge backlog of asylum cases that "encouraged abuse."

But a total overhaul of the system in 1994 sharply curtailed the ability of immigrants to use it as a way to get work papers. By January 1995, asylum applications had plummeted, she says, since applicants no longer received the right to work in America. The reforms, Acer says, rendered charges of abuse

When Mourad finally received asylum, he "felt like a bird who was in a cage and [then] the door opened and I was able to fly away."

Fifteen months after arriving in America, Olufemi is still waiting for the door to open. Last spring, a Sri Lankan denied asylum tried to hang himself with a sheet by jumping off a stairwell. When Olufemi asked to retrieve his prayer beads from his bag, guards wouldn't let him, afraid he, too, might try to kill himself.

"Why will I try to kill myself?" he asks, genuinely puzzled. "If I wanted to kill myself, I'd have stayed in my country to die."

If the Board of Immigration Appeals believes that, he could soon be free. ■

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ROBERT DURELL/Los Angeles Times

"I just love jazz. All I want to do is play as much of it as I possibly can," says pianist Donald Vega, who faces deportation.

ON BORROWED TIME

Donald Vega is widely perceived as a rising jazz talent. But new INS rules could send the 22-year-old pianist back to Nicaragua.

By DON HECKMAN
SPECIAL TO THE TIMES

Donald Vega is a quiet, soft-spoken young man with a rapidly growing talent for playing jazz piano.

Ask him what is most important in his life, and he replies, "I just love jazz. All I want to do is play as much of it as I possibly can."

He does precisely that so well that he has received a string of honors in the past few years, ranging from the \$5,000 Music Center Spotlight Award in 1991 to the 1995 L.A. Jazz Society New Talent Award. Along the way, he also managed to pick up classical performance awards

in 1991 and 1992 from the Southern California Junior Bach Festival.

"Donald is a first-class player," says bassist-composer John Clayton. "It's very rare to find a player with his kind of talent at his age."

Vega would seem to be a performer with a bright future in front of him.

Maybe yes, maybe no.

Because, at the moment, the Immigration and Naturalization Service is threatening to deport the gifted 22-year-old back to his native Nicaragua.

Why? Because Vega, like thousands of other resident aliens, is now confronted by the tough new regulations of the Illegal Immigration Reform and Immigrant Re-

sponsibility Act of 1996, which went into effect on this month. And Vega's career, which appeared to be on the fast track, is now floating in limbo until, on some indefinite date, a court rules that he can either stay here or must return to Nicaragua.

Vega's situation is not unique, but his talent clearly is. He began picking out melodies on the piano at 8 and quickly turned to jazz when, as an 11-year-old conservatory student, he discovered the music of Chick Corea and Eddie Palmieri. Brought to this country at 15 by his parents, he barely spoke English and was totally involved with his music.

Please see VEGA, F10

VEGA: INS Could Deport Jazz Pianist

Continued from F1

"I came in as a minor," he says. "At that time, I wasn't thinking about what 'illegal' was. I didn't even know what it meant. I just wanted to do my music."

His abilities were quickly recognized. He was granted a scholarship at the Colburn School of Performing Arts in South Los Angeles almost immediately after he arrived in 1989 and attended the school for the next five years.

"Donald is an enormous musical talent," says Joseph Thayer, Colburn's dean. "He is the only student to ever perform both jazz and classical works at our annual honors recitals."

In 1991, Vega became much more widely recognized when he won the Spotlight Award from a judging committee that included Henry Mancini, Bill Conti and Leonard Feather. Currently, he is a junior at USC, working on a degree in jazz performance.

Vega's accomplishments are all the more remarkable since they have been achieved despite considerable physical problems. Born with a cleft palate, he experienced hearing loss in his teens. Surgery repaired the hearing problem, and he has begun a series of operations to deal with the cleft palate.

"I have three more surgeries to go," he says. "It's a complete thing, you know, for my teeth, my lips and my nose."

Does this unusual combination of special talents and singular physical problems have any impact upon his residency situation?

It depends on whether one is speaking of the old law or the new one, according to Vega's lawyer,

"I'm really just getting started, just beginning to find my own sound. And getting the chance to listen to, and even to play with people like Eric Reed, Mulgrew Miller—people that I really admire—is incredible. I would never have that opportunity if I had to go back to Nicaragua."

Donald Vega
Jazz pianist

Carl Shusterman, a specialist in immigration law.

"Under the old law," Shusterman says, "if you have seven years in the U.S., if you're a person of good moral character and it would be an extreme hardship on you or certain close relatives who are citizens or green card holders if you were deported, you have a

fairly good chance of staying."

The parameters of the new law are much more difficult.

"Under its terms," Shusterman explains, "you must have 10 continuous years in the U.S. and have good moral character for the 10 years. The real killer is that the 'extreme hardship' qualification has become 'exceptional and extremely unusual hardship,' which was the standard we used to use for people who had committed crimes."

Further compounding the difficulties, hardship to the would-be immigrant is no longer a factor. The new law only defines hardship in terms of qualifying relatives.

"Donald doesn't have 10 years' residency," his lawyer says, "and he has no qualifying relatives [his parents, whose immigration case is separate, are not legal residents]. So it would be a loser case for him under the new law."

To avoid falling into that category, Shusterman last year advised Vega, as he did other clients, to turn himself over to the INS before the new law went into effect in order to qualify under the terms of the old law. Although there have been a few glitches, Vega's case is now pending qualification under the more moderate conditions of the old law.

Even here, however, the situation can be dicey. Shusterman points out that suspension of de-

Please see VEGA, F11

VEGA

Continued from F10

portation under the old law has not been given out very freely by judges.

In the final complication facing Vega, the congressionally mandated cap of 4,000 permits to suspend deportation for the calendar year 1997 has already been reached. According to Shusterman, it is not yet clear how the government will deal with applications beyond the 4,000 number.

The Los Angeles jazz community has rallied around Vega to provide evidence that the young pianist deserves to remain in the U.S.

"KLON [88.1 FM] has been running an ad asking for support," Shusterman says. "The L.A. Jazz Society, musicians, fans are all writing letters asking the judge to be aware of Donald's unique qualities."

Vega takes a fairly philosophical view of the situation.

"Mr. Shusterman is a very good

everything he told me to do. So, now I'm just waiting to see what happens."

But he also is vividly aware of the impact that deportation would have upon his life. Professionally, he sees himself as a very young artist with a great deal to learn.

"I'm really just getting started," he says, "just beginning to find my own sound. And getting the chance to listen to, and even to play with people like Eric Reed, Mulgrew Miller—people that I really admire—is incredible. I would never have that opportunity if I had to go back to Nicaragua."

Equally important, the surgery to complete the work on Vega's cleft palate is dependent upon his continued residency in L.A.

"There's no way I could have the surgeries if I had to go back to Nicaragua," he adds.

Shusterman, who is handling the case pro bono, is cautiously opti-

mistic about Vega's future.

"There's nothing else that we can do," he says. "We have the paperwork right, I believe. The next key date is when we open the mail one morning and it will contain a notice to appear before the immigration judge in a deportation hearing for Donald Vega. At that point, we'll just have to see what happens."

Vega, despite his uncertainties, tries to keep an upbeat attitude about the nagging predicament.

"I have faith," he says. "So many people believe in me, and the jazz community has been incredible. So I just try to be confident that, somehow, I'll be able to stay."

■ Donald Vega performs today from 1:30 to 4 p.m. with the Jazz Delegation From the West (Zane Musa, saxophones; Shanti Mathews, guitar; Danton Boller, bass; Willie Jones III, drums). Pedrini Music, 230 W. Main St., Alhambra, (818) 289-0241. Free.

Abroad at Home

ANTHONY LEWIS

'Now We Are Ashamed'

BOSTON

Attila Hegyi, a 26-year-old Hungarian, arrived at Kennedy Airport in New York on the afternoon of Sept. 6. He had a visitor's visa, issued at the U.S. Embassy in Budapest, but he was not admitted. Instead he found himself badgered into signing documents he did not understand, then sent back to Hungary and barred from the United States for five years — without explanation.

What happened to Mr. Hegyi is a concrete example of what the 1996 Immigration Act blandly calls "expedited removal." The account that follows is taken from statements sworn by Mr. Hegyi before the U.S. Consul General in Budapest.

An I.N.S. officer questioned Mr. Hegyi at length about visits he made in 1994-95 and 1996-97. On the first of the earlier visits Mr. Hegyi overstayed his visa by three months. He was nevertheless given a visa for the next visit, and an extension to that. The officer was skeptical about the extension and could not seem to find a record of it in his computer.

The first hour and a half or two of the interrogation was in English, which Mr. Hegyi speaks badly and has trouble understanding. Then, suddenly, the officer began speaking in Hungarian. After two more hours he said his name was Doczy.

Mr. Hegyi has an arthritic condition that causes severe pain. When he asked if he could sit down, officer Doczy replied, "Don't screw around with me, because I'm working hard, too. O.K., you want to sit down, you can sit on your ass." He handcuffed Mr. Hegyi's ankle to a bench. When

One visitor's I.N.S. ordeal.

Mr. Hegyi said he was hungry, the officer gave him nothing to eat but went off for dinner himself.

When officer Doczy returned, he asked Mr. Hegyi to sign a document that he said was a record of his questions and Mr. Hegyi's answers. Mr. Hegyi's sworn statement says:

"I [told him] that although I spoke a little English, I had no idea what he had written. . . . I also told him I was tired. It was between 10 and 11 P.M., although as I had flown in from Hungary that day it felt much later to me. Doczy then threw his pencil down on his desk and said, 'if you don't sign this, we won't be able to decide your future. If you sign, I'll go to my boss and we'll reach a speedy conclusion.'"

Mr. Hegyi signed the document — and some others that officer Doczy then produced. "At about midnight," he says, "two guards came and took me out of the room. That is when Doczy said the papers I had signed barred me from entering the U.S. for five years. He did not tell me why this decision had been reached."

For the rest of the night he was handcuffed to a backless bench. In pain, he asked the guards to be put on one with a back. They refused. At 6 A.M. he was given coffee and a roll, his first food in 18 hours.

He had brought some gifts with him for his intended hosts, Judy and Tibor Horvath. They were taken from his luggage, he says, and never returned.

What happened to Mr. Hegyi leaves aching questions. It may be that officer Doczy thought his long stays in the last few years showed an intention to live here. But why should someone with a duly issued United States visa be barred in such a summary way, with no real chance for him to appreciate what is going on? Is it I.N.S. policy to have officers badger someone into signing documents that he does not fully comprehend?

A lawsuit now before the courts contends that the new law's "expedited removal" process was designed for people who reach our borders with fraudulent travel documents or none at all, not those with visas. In any event, someone thus excluded should surely be given a reason.

Beyond law and policy, there is a question of American values. That was the point seen by Tibor Horvath, who had expected Mr. Hegyi as a guest.

"I was born in Hungary," Mr. Horvath said, "where I lived under Nazism as a small child and later Communism. I fought against the Communists in the 1956 revolution, and shortly after the Soviet tanks rolled in, escaped. . . . I came to the U.S.A., worked hard and proudly became a citizen. Until now my wife, who was born here, and I have been telling friends and relatives in Hungary what a great country this is, where civil liberties are respected. Now we are ashamed." □



FIX '96:

*Restore America's Tradition as a
Nation of Immigrants and A Nation of Just Laws*

Background

July 28, 1999

In 1996, Congress enacted three pieces of legislation—the **Illegal Immigration Control and Immigrant Responsibility Act (IIRAIRA)**, the **Anti-Terrorist and Effective Death Penalty Act (AEDPA)**, and the **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)**—that together represented the harshest crackdown on the rights and opportunities of immigrants in 70 years. Overreacting to a short-lived backlash against illegal immigration, Congress and the Administration seriously damaged our common-sense, balanced approach to immigration—one that upholds our tradition as a nation of immigrants and a nation of just laws. By tradition, the United States has welcomed immigrants and refugees, who have enriched our society and our economy. We have balanced our welcome with a well-regulated immigration system that has reasonable limits and clear rules.

In the aftermath of the enactment of these laws, immigrants and American families across the country have been harmed out of all proportion to any real problems the laws attempted to address. Practically from the moment these laws were enacted, a bipartisan majority in Congress, along with the Administration, has worked in a piecemeal fashion to correct the most egregious excesses. Much remains to be done before immigrants are once again treated with the same sort of fairness under our laws that other Americans take for granted. Having made a good start, Congress and the Administration should take the next steps to right the wrongs.

How immigrants are treated unfairly under the 1996 laws:

Punishment out of proportion to the crime. The 1996 laws *changed the rules* about what makes an immigrant deportable, applied the new rules *retroactively*, and stripped immigrants of the right to show that they deserve a second chance because of their good behavior subsequent to the past crime. In some cases, immigrants who have been here virtually all of their lives, are being thrown in jail for crimes they committed decades ago—even if the criminal justice system did not deem their crime serious enough to deserve a jail sentence. Previously, both the INS and an immigration judge had the authority to release an individual who posed no threat to society. But under the new “mandatory removal rules,” long-time residents are now being torn away from their businesses, homes, and families and put in deportation proceedings without the chance to appeal an adverse decision. In many cases, these individuals are incarcerated in local jails with hardened criminals.

A cold shoulder for those fleeing persecution. Refugees fleeing persecution are now subject to a “summary exclusion” proceeding as they attempt to enter the U.S. If they arrive in the U.S. without documents—which they may not have if they are forced to suddenly flee for their lives—or with documents that may seem improper, they are stopped at the airport and subjected to life-and-death decisions in shotgun proceedings before low-level officials. If they convince the authorities that they deserve a thorough review of their asylum claim, they are likely to spend weeks or months in prison while they wait for their claim of persecution to be heard.

Right the Wrongs - Restore the Balance

National Immigration Forum

(202) 544-0004

Foreigners already in the U.S. and who want asylum must learn our asylum system and apply for asylum within one year of their arrival or (with limited exceptions) they are no longer eligible to apply.

Legal immigrant taxpayers denied the safety net. After enactment of the 1996 welfare law, able-bodied U.S. citizens were expected to move from welfare to work. Immigrants—though they must pay the same taxes as citizens—were denied benefits *regardless* of their fitness for work. In the last two years, Congress and the Administration have restored certain basic benefits to elderly and disabled immigrants and to children. But even today immigrants who arrive after the arbitrary date of August 22, 1996, will not have access to a safety net their taxes help maintain, no matter what misfortune befalls them.

American families ripped apart. Families—including families in which some members are citizens—are kept apart for up to ten years at a time as punishment for a status violation. Other families are kept from uniting by arbitrary and excessive income requirements placed on American citizens and legal permanent residents who want to sponsor and bring to the U.S. their husband, wife, or child. These income requirements essentially put family unification out of reach for low-income workers.

Victims of discriminatory application of the law still seeking redress. Certain groups of immigrants have resided for many years in the U.S. with temporary permission, while they have sought redress for discriminatory treatment by our government. Central Americans fleeing civil wars in the 1980s were unfairly denied refugee status, and certain long-resident immigrants were unfairly denied legalization by illegal INS policies in the mid-1980s. In 1996, Congress passed restrictions that may spell deportation for hundreds of thousands of hardworking, long-time residents with American families. Despite relief for some Central Americans, most immigrants in these categories still live in fear of deportation.

Justice denied. Since the passage of the 1996 laws, immigrants are routinely denied their day in court—that most American of constitutional guarantees. The 1996 laws have stripped immigrants of their rights to appeal decisions by the Immigration and Naturalization Service (INS) by removing certain immigration matters from the jurisdiction of the federal courts. This means that immigrants cannot seek justice in the courts when INS agents abuse their authority. The federal courts have served as an important check on the authority of agents of the INS—an agency that is infamous for its agents' refusal to follow established policy. Now, even when there is a *pattern* of abuse, an immigrant or group of immigrants may not be able to ask the courts to compel the INS to follow the law.

Lawful Permanent Residents punished a second time for their crimes—with life in prison. Many of the approximately 3,500 “lifers” now being held indefinitely by the INS are Lawful Permanent Residents who entered the U.S. as refugees when they were children. After finishing the sentences our criminal justice system imposed on them, they are taken into custody by the INS. Their countries (Cuba, Vietnam, Laos, Cambodia, and others) refuse to take them back and so, even though they have paid their debt to society and are no longer a threat, they are subject to indefinite detention—something which amounts to life sentences for crimes already paid for.

“Secret evidence” used to jail and deport immigrants. In apparent contravention of the constitutional directive that the accused have an opportunity to confront their accuser, the 1996 laws establish a special court charged with hearing cases in which the government seeks to deport aliens based on evidence the government says is “secret.” Under this system, immigrants can be denied their liberty on the basis of evidence that they have no opportunity to refute.

A big brother national ID scheme. The 1996 law requires the research, development, and testing of a system for checking applications for employment by name and social security number in a huge database. Intended to curtail the hiring of undocumented workers, the system is being tested in the states with the largest immigrant populations (CA, FL, IL, TX, and NY) and is marching toward full implementation

within a few short years. This provision is likely to do more to curtail the privacy rights of Americans and the civil rights of legal immigrants who look or sound “foreign” than it is to prevent the hiring of undocumented workers.

A reckless disregard for basic civil and human rights. The 1996 immigration law vastly increased spending for immigration enforcement. Since then, the ranks of the Border Patrol have swelled with inexperienced agents. Nearly 50% of them have been on the job less than three years—far beyond the maximum recommended percentage for a professional police force. The result of this hasty buildup: inexperienced Border Patrol agents have been involved in numerous unnecessary or questionable shootings and other incidents of abuse. Aside from the training problems presented by so many inexperienced officers, INS agents have carried out enforcement policies with reckless disregard for the most basic civil rights of those they apprehend. Workplace raids are conducted in a manner more befitting of a police state than the world’s oldest democracy; and INS agents engage in racial profiling that leads to the harassment of long-established Latino and Asian Americans—be they citizens or legal immigrants.

An Attack on Commerce. Beginning in March 2001, the law requires the federal government to track the entry and exit of every individual crossing our borders. No system has been developed to enable the government to carry out such an ambitious task without causing long delays at border crossing points, crippling cross-border commerce, hurting trade relations, costing Americans jobs, and distracting from effective border control activities.

Battered spouses and children again at the mercy of their abusers. In 1994, the Violence Against Women Act (VAWA) allowed immigrant spouses and children who were being abused by their U.S. citizen or permanent resident spouse or parent sponsor to become permanent residents independent of their sponsor’s petitions for them. Provisions of the 1996 immigration law put these battered immigrants back at the mercy of their abusers by closing off avenues for their adjustment to permanent residence. They again have the choice of staying with the person who is abusing them, or being deported from the U.S.



FIX '96:

*Restore America's Tradition as a
Nation of Immigrants and A Nation of Just Laws*

Contact: Angela Kelley (202) 544-0004, ext. 19

June 25, 1999

AS THIRD ANNIVERSARY OF OVERLY HARSH LAWS APPROACHES, IT'S TIME TO RESTORE BALANCE TO OUR IMMIGRATION SYSTEM

September 30th marks the third anniversary of the enactment of the **Illegal Immigration Control and Immigrant Responsibility Act (IIRAIRA)**. The enactment of IIRAIRA culminated a legislative season in which Congress and the Administration, overreacting to a short-lived backlash against immigration, enacted three pieces of legislation that represented the harshest crackdown on the rights and opportunities of immigrants in 70 years. With these three laws—the **Anti-Terrorist and Effective Death Penalty Act (AEDPA)**, the **Personal Responsibility and Work Opportunity Act (PRWOA)**, and IIRAIRA—common-sense balance in our immigration policy was eviscerated.

Not the American Way

In the aftermath of the enactment of these laws, immigrants across the country have been harmed out of all proportion to any real problems the laws attempted to address. The damage has not been limited to immigrants. Citizens have also been harmed, as have the democratic ideals that set our country apart from much of the world:

- Families with citizens and immigrants have been ripped apart because of overly harsh and inflexible penalties that keep them apart for 10 years.
- Perfunctory treatment of some refugees raises questions about U.S. leadership as a haven for the persecuted.
- For the first time, access to the social safety net depends

(Continued on page 2) ➤

Mother of Two Treated as Threat to Society After Con- viction for Shoplifting Baby Clothes

In 1993, Olufolake Olaleye tried to return baby outfits worth \$14.99 to an Atlanta store. She did not have a receipt, and was accused of shoplifting the items. She showed up in court without a lawyer, thinking that the misunderstanding could be quickly cleared up. To end the ordeal, she pled guilty to shoplifting, was fined \$360, and was sentenced to a 12-month suspended sentence and 12 months probation. When she paid her fine, the probation was terminated.

The embarrassing story would have ended there, except that Ms. Olaleye is an immigrant. She came to the U.S. from Nigeria in 1984, and became a permanent resident in 1990. She has two daughters who

(Continued on page 2)

Right the Wrongs - Restore the Balance
National Immigration Forum

(Continued from page 1)

on one's citizenship status—immigrants are denied public benefits even though they pay the same taxes as citizens.

- Our democratic institutions have been undermined as the new laws are applied *retroactively*; immigrants are denied access to the courts when they are wronged by the government; "secret evidence" is used in government proceedings against them; and those who commit crimes are jailed for perhaps a lifetime for crimes that the criminal justice system would never punish so severely.
- The laws have set in motion a process that could lead to a national I.D. card or scheme that will do more to curtail the liberties of Americans than the flow of illegal immigration.
- A new system to keep track of the entry and exit of everyone crossing our border could tie up cross-border commerce, and threatens the competitiveness of U.S. businesses.
- Immigration law enforcement has expanded so quickly and become so aggressive while civil and human rights concerns have been largely ignored.
- Despite unfair treatment at the hands of the federal government, long-time legal residents, including Central American immigrants and turned-away legalization applicants are now threatened with deportation.

Righting the Wrongs

Practically from the moment these laws were enacted, Congress and the Administration have worked to correct their most egregious excesses. A bipartisan majority in Congress, working with the Administration, has restored some of the rights and benefits taken away by the 1996 laws. Much remains to be done.

In this and subsequent communications, we will be describing some of the ways that the 1996 laws have effected our newcomers. We will also indicate where subsequently-enacted legislation ameliorated some of the excesses, as well as legislation currently on the congressional agenda.

(Continued from page 1)

were born in the U.S., and so are citizens. She herself applied for, and was approved for citizenship in 1996. She had not actually been sworn in as a citizen when the rules were changed, and Ms. Olaleye went from being a prospective citizen to a threat to society.

For failing to produce a receipt when returning \$14.99 worth of baby clothes to an Atlanta store in 1993, Ms. Olaleye is now facing a lifetime sentence of banishment from the U.S. and separation from her U.S. citizen children.

The laws passed in 1996 made her shoplifting offense an "aggravated felony," based on the length of the sentence (even though it was suspended). She was denied citizenship and placed in deportation proceedings.

In criminal law, her misdemeanor shoplifting offense was neither aggravated nor a felony. The immigration law, in Orwellian fashion, defines crimes differently. If the law is not changed, or if there is no ruling from a court that the law cannot be applied retroactively, Ms. Olaleye will be banished from the U.S. without the possibility of return. Her situation boils down to this: For failing to produce a receipt when returning \$14.99 worth of baby clothes to an Atlanta store in 1993, Ms. Olaleye is now facing a lifetime sentence of banishment from the U.S. and separation from her U.S. citizen children.



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FIX '96:

*Restore America's Tradition as a
Nation of Immigrants and A Nation of Just Laws*

Contact: Angela Kelley (202) 544-0004, ext. 19

July 19, 1999

OVERLY HARSH "EXPEDITED REMOVAL" LAW THREATENS AMERICAN TRADITION OF PROVIDING REFUGE FOR THOSE FLEEING PERSECUTION

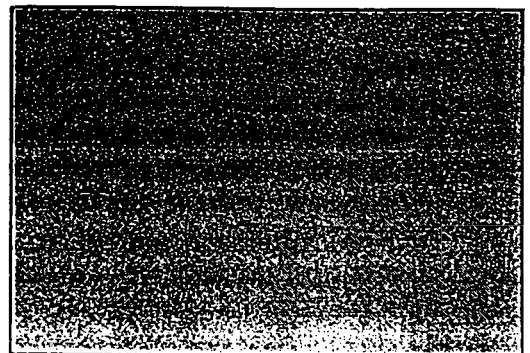
When Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, it unleashed a set of unintended consequences that have harmed America's newcomers out of proportion to any real problems the law attempted to address. One of many of the unintended consequences has been in the way the law treats those fleeing persecution.

America has a proud tradition of providing refuge for people fleeing persecution. Unfortunately, America's tradition of welcoming asylum seekers faltered severely with the passage IIRIRA. A provision of that law, called "Expedited Removal" provides for the immediate removal from the U.S. of individuals who arrive without valid travel documents, such as a passport and visa. Refugees—who may not have their documents in order if they are forced to suddenly flee for their lives—may be stopped and turned around by low-level employees of the Immigration and Naturalization Service (INS) who now have broad, unchecked authority to issue final and binding removal orders.

Even if they do convince the authorities that they deserve a thorough review of their asylum claim, they are likely to spend weeks or months in prison while they wait for their claim of persecution to be heard. This is no way to treat someone who may be fleeing from religious or political persecution.

INS Official, Using Serb Translator, Turns Away Refugee from Kosovo

The attached *Miami Herald* opinion piece illustrates the unintended consequence of Expedited Removal, and clearly illustrates what is at stake. While many mistakes in assessing a person's fear of persecution have been documented, there may be many more that we don't know about because a person is removed from the country before the error is discovered.



Right the Wrongs - Restore the Balance
National Immigration Forum

The Miami Herald

ABRAHAM H. FOXMAN

'Never another St. Louis'

Published Thursday, July 15, 1999, in the Miami Herald

Abraham H. Foxman, a Holocaust survivor, is national director of the Anti-Defamation League.

Sixty years ago the SS St. Louis was floating off Florida's coast, the lights of Miami plainly visible on the horizon. On board: more than 900 souls, Jews fleeing Nazi persecution. They pleaded for refuge in the United States.

They were refused.

We know now, as the result of hard work by researchers at the United States Holocaust Memorial Museum, that hundreds of these men, women and children aboard the St. Louis ultimately perished in the Holocaust — lives lost that America could have saved. It was a dark moment, when fear of foreigners led us to betray one of our most cherished traditions: providing safe haven for the persecuted.

In the years since the end of World War II, one principle has been at the core of America's policy toward refugees: never another St. Louis. People fleeing persecution should not be turned away. The United States was a leader in establishing international recognition of the right to asylum and in constructing an international system for protecting refugees. And, at least theoretically, those who flee persecution and arrive on U.S. soil have the right to apply for asylum.

Today, because of a 1996 law that allows the "expedited removal" of people arriving without valid documents, there is a slow motion St. Louis unfolding at our nation's airports. The law fails to recognize that many refugees don't have and can't get valid documents. So people seeking asylum are being summarily deported without a chance to ask for refuge. As in 1939, we are barring the door to safety to victims of political persecution.

Take, for example, Dem, a 21-year old Kosovar Albanian. Serb police abducted him from his home last October, accused him of being a "terrorist," beat him and threatened to kill his family. Fortunately he was able to escape from Kosovo, a journey that took him through Albania to Italy and then to the United States, where he believed he would find refuge.

He was mistaken. After a two-hour wait in the airport, the Immigration and Naturalization Service arranged to interrogate Dem using a Serb translator by phone. When the translator realized that Dem did not speak Serbian, she said something to the INS officers, who hung up the telephone in apparent disgust or anger. Although Dem told the INS officers that he was a Kosovar Albanian, the INS responded by handcuffing and putting him on a plane back to Mexico City, where his flight to the United States had originated. He was never asked — in any language he could understand — whether he was seeking asylum or whether he was afraid to return to Kosovo.

He made his way back to the United States but wonders why America would not take him in the first time. On this anniversary of the St. Louis tragedy, we should wonder the same thing. How many other refugees have suffered the same "expedited" rejection as Dem? It is impossible to say, because the INS allows no outside monitoring of the deportation process at airports and other ports of entry. And it has been reluctant to release even the most basic statistics.

We can't go back and change the fact that the St. Louis was turned away. But we should learn from the sad history of America's indifference to refugees from Nazism. We can stop its modern sequel.

The Lawyers Committee for Human Rights and other organizations working on behalf of the persecuted are pressing to change the 1996 law that puts refugees at risk. The "expedited-removal" system must be scrapped in favor of one that ensures that those seeking asylum have an opportunity to present their case for protection.

FRIDAY, APRIL 9, 1999
THE HERALD 19A

Immigration reform unfairly includes petty offenses



PHILIP S.
ANDERSON

Philip S. Anderson is president of the American Bar Association.

The 1996 Illegal Immigration Reform and Immigration Responsibility Act drastically broadened the categories of people facing deportation after criminal convictions. Its aim: to keep dangerous criminals out. Congressional supporters of the bill categorically dismissed warnings that petty offenses — such as shoplifting — could become grounds for deportation.

Olufolake Olaleye knows better.

The Immigration and Naturalization Service has ordered the Atlanta mother of two deported because she was convicted six years ago of shoplifting baby outfits worth \$14.99.

Olaleye, a Nigerian who became a permanent resident in 1990, has two small children, both born in the United States. She has supported herself and her family as a gas-station cashier and never has received public benefits since she legally entered the United States in 1984.

In 1993 Olaleye was charged with shoplifting from an Atlanta store while attempting to return baby items without a receipt. Thinking this was a misunderstanding, Olaleye appeared in court without a lawyer. She told the judge that she had purchased the items, but entered a guilty plea to end the matter quickly. She was fined \$360, and given a 12-month suspended sentence and 12-months probation, which was terminated two months later when she paid the fine in full.

There was no way for Olaleye, or anyone, to know that this incident would come back to haunt her. The INS considered her neither a felon nor a threat to society when it approved her application for citizenship in October 1996, after classifying her shoplifting conviction as a petty offense.

Then in 1996 IIRAIRA changed the rules retroactively.

Previously, a criminal sentence of five years

or more could mean deportation. The new rules, passed after Olaleye was sentenced, lowered the cutoff to one year.

The change caught Olaleye and thousands of others in a widely flung net.

In August 1997 the INS reopened Olaleye's citizenship case to consider the impact that the 1996 legislation had on her misdemeanor conviction. Two months later, she was denied citizenship because IIRAIRA automatically reclassified her shoplifting offense as an aggravated felony. Last June she was ordered deported. She is appealing.

How could Olaleye's misdemeanor shoplifting offense — which was neither aggravated nor a felony — become both retroactively?

Since when does our country pass retroactive laws?

The short answer — never before IIRAIRA. Indeed, it is currently under challenge as an unconstitutional *ex post facto* law.

Did Congress really intend to expel people like Olaleye? Is the hard-working mother of two, with no other offense, a threat to our society? Did Congress really intend this law be used to separate a mother from her children, or to uproot her children from their country of citizenship?

Surely not.

If we want to deport criminals who pose a threat to our well-being, then we should target those convicted of serious felonies, not slam the door on the likes of Olaleye.

IIRAIRA should be amended to make the definition of "aggravated felony" fit the crime.

It also should be amended to give immigration judges discretion to consider mitigating factors such as rehabilitation, the hardship the deportation will create for the person's family and the person's contribution while in the United States.

And finally, the retroactive implementation of laws must be stopped. Changing the rules in the middle of the game is simply un-American.



IMMIGRATION
LAW ON TRIAL
AN OCCASIONAL
SERIES

**STATEMENT OF JESS N. HORDES
ANTI-DEFAMATION LEAGUE, WASHINGTON DIRECTOR
JULY 28, 1999, WASHINGTON, DC**

On behalf of the Anti-Defamation League, I am proud to join my colleagues in launching the "Fix 96" campaign.

The Jewish community has been deeply affected by America's treatment of persecution victims at its best and at its worst. We have benefited from its moral leadership in offering refuge to those fleeing anti-Semitism and have suffered the horrific consequences of America's betrayal of this cherished tradition.

Many of you have seen articles commemorating the 60th anniversary of the voyage of the SS St. Louis. More than 900 Jews aboard the ship watched the lights of Miami and prayed for refuge, only to be returned to Europe where hundreds of them perished in Hitler's death camps.

America's indifference to Jews fleeing Nazi oppression in 1939 left an indelible mark on our community and on our country in the 20th century. We have come here today committed to entering the 21st century as a nation that will never again deliver victims of persecution back into the hands of their oppressors.

The 1996 immigration law reversed America's tradition of offering a safe haven to people fleeing persecution by failing to accommodate the unique and tragic circumstances of those seeking asylum.

The "expedited removal" procedure allows officials at our airports to summarily exclude or deport people arriving without valid documents – often back to the world's most brutal regimes – without sufficient opportunity to make their case and without adequate judicial review.

- Arriving asylum seekers are not given notice of their rights before the initial screening process. The applicant may not know that they should have the opportunity to contact family or friends or to be represented by counsel, that they have the right to appeal a negative "credible fear" finding to a judge, or access to in-person interpretation at any stage of the process. Moreover, the INS conducts the entire

process behind closed doors; it has prevented non-governmental organizations from observing or monitoring the new procedures being implemented. There must be oversight of these rank and file officials -- who literally make life and death decisions.

Like many of the Jews on board the SS St. Louis, applicants arriving with fraudulent or with no documents do so precisely because they are the most vulnerable victims of government oppression. In fact, Congress has honored Raoul Wallenberg, a Swedish diplomat who saved Jews from death camps mainly by issuing false documents.

Of course the US has the right and the obligation to ensure that unworthy applicants do not take advantage of the asylum system. But this should NEVER be done in haste, without adequate protections. The current system belies our nations moral character and humanity.

Through its refugee and asylum protection policies, the United States has set a worldwide example for responding to humanitarian emergencies.

We have sacrificed the lives of American men and women in uniform for the sake of intervening in humanitarian refugee crises. How can we refuse those refugees arriving in our ports at least a fair hearing with full notice of their rights? How can we sacrifice their rights and potentially their lives for the sake of bureaucratic expediency?

Our refugee admissions system must reflect the priorities that are the moral underpinning of the entire policy -- compassion, humanity and respect for human rights.

ABA AMERICAN BAR ASSOCIATION

NEWS RELEASE

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ABA CALLS ON CONGRESS TO CHANGE 1996 IMMIGRATION LAW

WASHINGTON, D.C., JULY 28, 1999 -- The American Bar Association today called on members of Congress to enact corrective legislation to restore basic fairness to the nation's immigration laws.

In a news conference today on Capitol Hill, ABA House of Delegates Chair Robert J. Grey Jr., Richmond, Va., joined civil rights and religious leaders in highlighting the excesses and abuses of the 1996 immigration laws, and called on Congress to restore the due process principles that are so essential to the nation's system of government.

"The changes to the immigration law made by Congress in 1996 demonstrate how bad law frequently results in bad consequences, intended or unintended," Grey said.

"Many individuals have been treated unfairly and American families are being torn apart. Something urgently needs to be done to restore balance and fair processes to our nation's immigration laws."

Among the changes being sought by the ABA is repeal of the 1996 law that allows individuals to be deported for crimes they committed years before the law was enacted. Under the law, even minor offenses can lead to mandatory deportation.

- more -

REPEAL. Add One

"It is unfair to change the rules midstream or to impose a new penalty for prior acts," Grey said. "In the criminal law context, such ex post facto laws are unconstitutional. They should be avoided in the immigration context."

Congress also eliminated judicial review in many cases. An essential aspect of the American justice system is that important decisions are made following a hearing before an impartial adjudicator and judicial review. But these traditional expectations of due process are no longer applicable in many deportation cases.

The ABA also supports restoring discretionary relief from deportation. Under the new law, many legal immigrants cannot be considered for a second chance, even if the United States has been their home for decades. The ABA believes that judges should make these decisions on a case-by-case basis, after hearing all of the facts.

The ABA also believes judges should make the final determination as to whether individuals should be detained while awaiting their deportation hearings. The 1996 law requires the attorney general to take into custody certain categories of individuals, whether or not they pose a threat to national security or public safety, or pose a flight risk, and to hold them without bond.

"The new requirements have forced INS to house thousands of detainees in local jails, where they have little or no access to legal information or assistance," Grey said.

The American Bar Association is the largest voluntary professional organization in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.



C MMITTEE ON MIGRATION

**STATEMENT OF BISHOP THOMAS G. WENSKI
AUXILIARY BISHOP OF MIAMI
MEMBER, COMMITTEE ON MIGRATION
National Conference of Catholic Bishops/U.S. Catholic Conference**

July 28, 1999
on
Changing the 1996 Immigration Laws

I am Bishop Thomas G. Wenski, Auxiliary Bishop of Miami, Florida, and member of the Committee on Migration of the National Conference of Catholic Bishops. I am here today on behalf of the U.S. Catholic Bishops, who are deeply concerned about the impact recent changes in immigration law have had on individuals and families who have immigrated to the United States. My specific focus today is on the combined effect of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and certain provisions of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996. These laws mandate the detention of certain immigrant populations and detention and deportation of non-citizens who are found guilty of criminal offenses while in the United States.

We acknowledge and recognize the right and duty of the government to provide for the public safety and welfare of its citizens. Certainly, this duty and obligation requires that certain dangerous individuals in removal proceedings should be held in detention pending a resolution of their proceedings rather than permitted to remain in the country at large.

But along with this duty should come an obligation to assess whether each individual in detention and/or deportation proceedings is *actually a threat* to the safety of our country. Human rights considerations, respect for basic dignity, and the practicalities of cost and efficiency mandate that individuals in proceedings who are *not* threats to the public safety should not be detained. Unfortunately, all too often, current law does not allow this balancing test to take place. In short, we believe the provisions enacted in 1996 went too far. Taken collectively, they:

- undermine basic human dignity and human rights;
- unnecessarily separate and divide families;
- violate fundamental notions of fairness and equal protection under the law, time-honored concepts upon which our nation was founded; and
- have created an artificial "crisis" in the capacity for detaining truly violent individuals.

Some might ask why the Catholic Church would have an interest in this issue. We are here today, in part, because of the numerous requests the Church receives from immigrant families each week to help loved ones who have languished in detention for several months and even years after having served a criminal sentence, or who are being deported because of a minor crime. Many families have resided in the United States for many years and built equities in their communities, paying taxes and otherwise contributing to the rich fabric of our nation. Their loved ones, either a father, brother, mother, or sister, have also resided in the

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United States for long periods of time and contributed to their communities. In our view, these persons should have their situation reviewed on a case-by-case basis and should not be subjected to a one-size-fits-all approach.

Let me share an experience we have had in Miami with our current immigration law. Several parents of long-term detainees recently held a hunger-strike in Miami to protest the detention of their adult children, who cannot be deported to their country of origin and are languishing indefinitely in prison. After 48 days of a hunger-strike which basically risked their parent's lives, and ongoing negotiations with the Immigration and Naturalization Service (INS), our government finally agreed to review these cases. 5 of the 6 of the detainees were eventually determined not to be a threat to our society and were released. Why must parents go to such great lengths to attain a simple review of their children's cases? Why must families remain separated, especially when the incarcerated family member has served their sentence and is no threat to society?

In our view, current law is overly harsh in its treatment of non-citizens who have been found guilty of crimes after entering the United States. We have several areas of concern with regard to the due process and detention provisions of the 1996 immigration law and make the following recommendations:

- Repeal the mandatory detention provisions of the 1996 law and restore the pre-1996 rules to restore flexibility to the system;
- Give immigration judges the authority to grant release decisions to indefinite detainees. In the alternative, require INS to establish a centralized authority to review these cases and make release decisions.
- Require the release of asylum-seekers after they have established a credible fear of persecution, unless there exist exceptional and compelling reasons for detaining them.
- Repeal the retroactivity of the 1996 law as it applies to non-citizens who have committed crimes in the past; limit the definition of 'aggravated felony' to pre-1996 law; restore 212(c) discretion to immigration judges in removal proceedings so that immigrants may at least present an application for a waiver of their deportation based on hardship and rehabilitation.
- Repeal expedited removal, which allows INS inspection officers to summarily remove asylum-seekers without review by an immigration judge.

As a nation trying to address new issues, we sometimes overreach. It is only human. However, with the benefit of hindsight and accumulated evidence, statesmanship demands that we revisit our laws and correct those things which are unjust. Immigrants who come to the United States are by and large law-abiding individuals who contribute to the economic and social strength of our nation. The 1996 laws spreads the misconception that all immigrants are to be considered suspect and feared. The U.S. Catholic bishops believe that the 1996 IIRIRA and AEDPA laws far exceed fundamental notions of fairness and due process, separates and destroys families, and undermines the human dignity and rights of the person. We respectfully ask our federal elected officials to reevaluate these laws and consider our recommendations for their reform.

Thank you for the opportunity to speak today.



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FIX '96:

Restore America's Tradition as a Nation of Immigrants and a Nation of Just Laws

Lutheran Immigration and Refugee Service (LIRS) joins the Fix '96 Campaign. We agree with the National Immigration Forum's call to restore balance to our national immigration policy. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 went too far. When Congress passed IIRAIRA, a set of unintended consequences were unleashed that have harmed America's newcomers out of proportion to any real problems the law attempted to address.

LIRS calls for Congress to make the following reforms in response to IIRAIRA:

- 1) revise asylum procedures and asylum bars to assure that all asylum seekers have access to apply for and receive protection,**
- 2) restore judicial review of decisions by INS and the immigration judges instead of no review or limited review,**
- 3) restore for long-time, legal permanent residents a humanitarian waiver similar to the former 212(c),**
- 4) incorporate provisions enabling family unification (e.g. re-institute 245(i), remove bars to family member reunification or allow waivers of those bars),**
- 5) end mandatory detention.**

As a coordinator of the Detention Watch Network, a network of over 100 nonprofit, legal, social, and pastoral service organizations serving INS detainees, LIRS repeats the Network's call for INS to make the following administrative reforms:

- 1) enforce adequate detention standards system wide,**
- 2) disseminate quality legal rights information to all detained by INS,**
- 3) implement constitutional, humane, and fiscally sound release policies, including**
 - a) a fair and equitable process for releasing indefinitely detained immigrants, who cannot be returned because of the lack of cooperation of officials from their native countries,**
- 4) implement alternatives to detention for vulnerable groups (e.g., asylum seekers).**

IMMIGRATION DETENTION IN THE UNITED STATES

- ◆ **The immigration detention system is the most rapidly expanding prison program in the United States, costing taxpayers millions of dollars a year.**

In 1992, INS daily detention capacity was at 6,259 beds. As of September 1998, about 16,000 people were in detention on any given day, representing an almost threefold increase in six years. The system is expected to continue to grow, with 24,000 beds projected for the year 2001. In 1998, the INS will spend \$692 million on detention and deportation alone.

- ◆ **Asylum seekers fleeing persecution may find imprisonment in the United States.**

In 1997, there were 13.6 million refugees worldwide. Only one-half of one percent of these people fearing to return to their homeland fled to the United States to ask for asylum in 1997. Under the new immigration laws of 1996, asylum seekers arriving at our borders must be detained, at least until they demonstrate a "credible fear" of returning to their country. While asylum seekers are technically eligible for release from detention after they have been shown to have "credible fear," most remain detained until they are granted asylum. Even asylum seekers with families in the United States who are ready and waiting to care for them are often not released. This means months, and if the case is appealed, years, behind bars, separated from family, all at taxpayers' expense.

According to the Immigration and Naturalization Service [INS], 5,000 - 6,000 asylum seekers are detained annually.

- ◆ **Detention splinters families, causing needless suffering.**

Under the new immigration laws, a legal permanent resident who was convicted of even a minor offense ten years ago but has been completely rehabilitated and is a productive member of society may be deported. What's more, because of new mandatory detention provisions, such a person would likely have no opportunity to be considered for release from detention during immigration proceedings, regardless of family circumstances or community ties. These laws even apply to legal permanent residents who have lived almost their entire lives in the United States, served in the U.S. military, and have U.S. citizen spouses and children. Today, hundreds of families are suffering as a result of this cruel separation.

- ◆ **Thousands of immigrants who cannot be deported are being imprisoned indefinitely in the U.S.**

For the United States to send people who have been ordered deported back to their home countries, the INS must secure travel documents for their return. This can be very difficult, if not impossible, for people from countries with which the United States has no diplomatic relations, or when countries refuse to accept the return of particular individuals. People from countries such as Cuba, Laos, Vietnam, Iraq, Iran, Libya, China and others may fall into this category. For these people, their detention has literally no end in sight. Some people have been held for three years, and even longer. According to the INS, there are over 3,000 people being detained indefinitely. Most of these people have little chance to be released.

◆ **A majority of detainees are held in local jails.**

Sixty percent of all immigration detainees are held in local county or city jails, mixed with those who are serving time for criminal convictions. People held for immigration reasons are administrative detainees and are not being detained for punishment. For asylum seekers in particular, detention in a correctional institution is not appropriate.

◆ **County jails housing immigration detainees are not subject to standards for access and treatment.**

In January 1998, the INS issued 12 out of 39 standards for the treatment of immigration detainees. However, these standards only apply to detention facilities operated by the INS (called "Service Processing Centers") or contract detention facilities operated for the INS by a private correctional company. This constitutes less than half of the total detained population. Although the INS often pays county jails housing immigration detainees up to twice the amount per day that jails receive for the incarceration of those serving criminal sentences, the INS claims to have no ability to require the jails to adhere to the detention standards.

◆ **Women are more likely to be detained in jails and denied services.**

Women make up about 7% of the overall detained population. Because of the smaller numbers, the INS has less space reserved for women in their own facilities, and is more likely to place women detainees in local jails mixed with the general criminal population. Additionally, the INS often uses the small numbers to justify the denial of services such as translation services and English classes.

◆ **Families are often separated in detention, husbands from wives, mothers from children.**

There are few facilities to hold families together while their asylum status is being determined. A mother may be placed in county jail while her child is shipped to a facility in another state.

◆ **Asylum seekers and other immigrants in proceedings have no guarantees of legal counsel**

Although *pro bono* and private attorneys work on behalf of asylum seekers and other immigrants, there is no guarantee of legal representation for immigration detainees. The burden is on the detainee to find and pay for his or her own legal counsel. Finding an attorney from detention can be incredibly difficult, especially for people who do not speak English, or who are held in detention centers or jails in isolated locations or where access to telephones is limited. According to the Executive Office of Immigration Review, only 10% of immigrants in detention are represented by counsel. What's more, detainees who already have an attorney may be transferred to a far-away facility, without any notice to their attorney or their family.

◆ **Conditions in detention often lead people to give up hope for a life of freedom in this country.**

Detention is an incredibly confusing, lonely, and painful experience, both for the person detained as well as their family and friends. Detention is especially difficult because of its indefinite nature; immigration detainees almost never know how long their imprisonment will last. Conditions in detention facilities and jails vary greatly, but immigration detainees often suffer hardships such as crowded conditions, poor medical care, lack of outdoor recreation, inappropriate use of solitary confinement, verbal and even physical abuse. These conditions, combined with separation from family and uncertainty about the length of their detention, lead even people with a good chance of winning their cases to give up and accept deportation.



**The American Jewish
Committee**

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FOR IMMEDIATE RELEASE

AMERICAN JEWISH COMMITTEE JOINS IMMIGRANT ADVOCACY ORGANIZATIONS TO KICK OFF CAMPAIGN TO ROLLBACK ANTI-IMMIGRANT LEGISLATION

WASHINGTON, DC, July 28, 1999....The American Jewish Committee joins forces with a variety of ethnic, religious, labor, civil rights and immigrant advocacy organizations to further restore crucial benefits and services for lawfully resident immigrants.

"AJC is deeply committed to rolling back the severe cutbacks in benefits and services brought about during the 104th Congress under the guise of immigration and welfare reform," said Stephen Steinlight, National Affairs Director of the American Jewish Committee. "While separate legislative actions in 1997 and 1998 to restore benefits began an important process, many of America's legal immigrants remain afflicted by the 1996 cuts, and much more needs to be done to restore disability, health and nutrition benefits to legal immigrants."

The FIX '96 CAMPAIGN provides a crucial opportunity to educate the public and advocate for important proposals introduced this Congress, including those that would: provide legal immigrant children, pregnant women and disabled persons with medical assistance under Medicaid or the Children's Health Insurance Program; provide food stamps, Supplemental Security Income, or domestic violence assistance to qualified legal immigrants; end the disproportionately harsh practice of automatic deportation of legal permanent residents for relatively minor past crimes; or simply stem the confusion set by the 1996 reform laws that has caused tens of thousands of eligible immigrants from obtaining needed assistance.

The American Jewish Committee, the nation's oldest human relations organization with 100,000 members and 32 offices nationwide, is dedicated to defending civil liberties, religious freedom and human rights, and promoting respect for American pluralism and democratic principles. We recognize the myriad ways in which immigration has contributed to American life and advocate for generous immigration and refugee policies.

United
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Public
Information
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UNHCR opposes US policy of detaining refugees and asylum-seekers

Washington, Monday 22 February 1999. The Washington-based Representative of the United Nations High Commissioner for Refugees (UNHCR), Karen AbuZayd, reiterated on Monday the opposition of UNHCR to the detention of refugees and asylum-seekers in the United States.

"We urge the US government to seriously consider alternatives to detention for asylum seekers and refugees" said AbuZayd. "Asylum-seekers who are not a threat to society should not be detained and should not be treated like criminals," she added.

Following the 10 February release of UNHCR's Revised Guidelines on the Detention of Asylum-seekers, UNHCR sent a letter last Thursday to INS Commissioner Doris Meissner, asking INS to use its discretion in releasing asylum seekers who arrive at US entry points. Some of these applicants remain in detention while their asylum requests are pending, even though they could be considered for release since they have shown a credible basis for their claims. These are people who have fled from war and persecution and have come to the US believing they would find refuge and protection.

"Detention of asylum-seekers and refugees on the grounds of their illegal entry to the US is a matter of major concern and contrary to the principles of international law" said AbuZayd.

Detention by the US becomes even more disturbing in the case of vulnerable groups such as women, children and those with special medical and psychological needs.

"This is simply unacceptable," AbuZayd said. "Detention in these circumstances is an undeserved punishment that is costly to the United States government and can be avoided with appropriate alternatives."

The right to seek and enjoy asylum is a basic human right according to the Universal Declaration of Human Rights and the 1967 Protocol relating to the Status of Refugees, to which the US government is a party.

"The US, with its humanitarian traditions, should serve as a model to other nations by honoring its international obligations towards refugees" added AbuZayd.

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Statement

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Triana R. D'Orazio

FIX '96: Restoring America's Tradition as a Nation of Immigrants and Just Laws

(Washington, DC. July 28, 1999) The Mexican American Legal Defense and Educational Fund (MALDEF) is supporting the "Fix '96" campaign along with other immigrant and civil rights organizations. We hope to bring awareness to the unfair treatment to which immigrants are subjected under current immigration laws.

In 1996, overreacting to a national backlash against immigration, Congress and the Administration enacted anti-immigrant provisions in three pieces of legislation: an anti-terrorism bill, a welfare reform bill, and an immigration reform bill. Combined, these represented the harshest crackdown on the rights and opportunities of immigrants in 70 years. During these past three years, many families have been hurt and individuals have been treated unfairly. Here are some of the consequences of the 1996 laws experienced in communities across America every day:

- ▣ Long-established, lawful permanent residents live with the constant threat of deportation.
- ▣ Families are kept apart by sponsorship restrictions. Restrictions based on proof of income often prohibit immigrants from having their families join them.
- ▣ 1996 immigration laws are unfairly being applied retroactively to cases originally brought to the courts well before these laws were enacted.
- ▣ Immigration law enforcement has expanded quickly and become overly aggressive, ignoring civil and human rights concerns. For instance, border patrol officers are now present in the interior of the country conducting immigration raids in otherwise "safe places" such as churches and clinics.
- ▣ Immigrants are being denied public benefits even though they pay the same taxes as citizens. The 1996 welfare reform denied lawful permanent residents access to the social safety net.

"We hope that the Fix '96 campaign and our other ongoing efforts will bring needed changes in a law that many now realize went too far. Much remains to be done before immigrants are treated with the fairness that many Americans take for granted," says Christina Chavez Cook, MALDEF Legislative Staff Attorney.

Right the Wrongs. Restore the Balance. Fix the 1996 Anti-Immigration Laws.

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MALDEF is a national nonprofit organization whose mission is to protect and promote the civil rights of the over 29 million Latinos living in the United States. Dedicated to securing rights in employment, education, immigration, political access and language, the organization achieves its objectives through litigation, advocacy, community education, and collaboration with other groups and individuals.

Statement of Pam Gaul

July 23, 1999

Good Afternoon. My name is Pam Gaul and I live in Tampa, Florida.

Twenty years ago, I adopted my son, John, in Bangkok through an international agency. The adoption was completed in the U.S., and John was issued an American birth certificate which was filed with the state. John and I later moved to Florida where he attended private school and, like his friends and classmates, played soccer, baseball and basketball.

At age 17, John applied for a U.S. passport for a family trip overseas. At that time, we discovered that John was not a U. S. citizen because we had not filed the proper paperwork with the Immigration and Naturalization Service.

As soon as we learned of this, we applied for John's citizenship. The INS rejected it because we submitted the wrong fee, even though we paid the exact amount that the INS had told us to pay.

We resubmitted the application with the correct fee, but by the time the INS processed it and scheduled an interview, John had turned 18. At that point, he was no longer eligible for automatic citizenship through adoption.

At 19, John got into trouble and was convicted of writing bad checks and stealing a car, for which he served 20 months in state prison. By the time he was released in December 1996, the immigration laws had changed and INS officials took him straight to an INS detention center.

When John finally got out of INS detention, he worked hard to pull his life together. He held two jobs and was offered a partnership by one of his employers. Unfortunately, he didn't

have a chance to accept.

Despite finding that the INS didn't process John's naturalization application in a timely manner, an immigration judge concluded that his hands were tied and he ordered John deported to the land of his birth.

On February 22, 1999, after being taken back into INS detention and unsuccessful appeals, John was deported to Thailand, an unfamiliar country where he does not know the culture, the language, or have any known family members.

Now 25, he has little prospect of ever returning to his family in the United States or to the country that he calls "home."

John paid for his poor choices and then paid again by banishment from his country. His punishment far exceeded the crime.

As a mother, my heart is devastated and vacant at the loss of his presence in my life.

As an American, I am disappointed and alarmed that my country would consider my son a dispensable item -- a mere file number - A35 479 606.

I pray that other families will never know the pain of separation from their loved ones that I live with daily. I have come here today to ask my fellow citizens across the country to please join me in seeking an end to these unfair laws.

Statement of Vongphachanh Rick Siridavong

July 28, 1999

My name is Vongphachanh Rick Siridavong. I am one of the many individuals that has been caught up in the nightmare of our immigration laws. I am here with my brother, Nou, and my mother, Thongsoune, who along with my entire family, has stood by my side throughout this ordeal.

I came to the United States at the age of five as a refugee from Laos. My father fought with the United States against the Communists before we were forced to flee.

In 1995, I graduated from Lee High School in Springfield, Virginia. Not long after, when I was 18 years old, I made a huge and stupid mistake, which I continue to pay for. My friends and I went out one night in my father's car. Three of my friends stole a car radio. Because they traced my father's car, I took the whole rap. I received a 2-year suspended sentence and community service, and was actually released from probation six months early because of excellent behavior. I also paid the restitution in full. I never served a single day in jail.

I believe I learned my lesson and tried to live a good and productive life. I went to college and got a job.

In 1998, I decided to apply for U.S. citizenship to show my appreciation for this country. I didn't know that it might mean that I would never see my family again. Last February, while I was preparing to take my mom shopping, two men showed up at my house without any warning. They said they were with immigration and were going to take me in and ask me some questions. My mom saw them handcuff me and broke down in tears. She didn't understand what was going on. Neither did I.

I was told I was going to be deported because of the mistake I had made and already paid for. But my native country, Laos, refuses to accept deportees from the United States. So I was essentially given a life sentence. I might stay in detention indefinitely.

I was sent to the Virginia Beach city jail. I was frightened and alone. They put me in the main jail for two weeks where I was not allowed outdoors. Then I was moved to the annex with other immigrants where we were allowed outdoors only one hour every week.

My dorm cell was very small and was shared by 30 people. There were only eight bunk beds so the rest of the men slept on the floor. Around the 4th of July, the air conditioning broke for several days. I never saw a real piece of fruit the whole time I was there. To kill time, I made chess pieces out of toilet paper and taught some people the game.

Most days were bad and depressing. It was very tense because many individuals had just completed their sentences in prison and expected to go home. Instead they were taken into custody by INS. I shared a dorm with men who committed much more serious crimes, like murder and rape. So I minded my own business and stayed out of trouble.

But I met a lot of other immigrants there who were always kind to me. They are fathers and husbands. When I got released, a few of the men cried for me.

I was detained for almost five months. But about two weeks ago I was released from detention. I am so happy to be back with my family, but I still live each day in fear. I am out on bond right now, but I am still deportable.

I have enrolled in college again and I am trying to find a job now.

My family and I have loved America for the freedom and opportunities it has provided. My brother even risked his life during the Gulf War. But what is happening to me, and so many others, defies the freedoms my family has fought so hard for.

I would like to thank my family, as well as my lawyer, Bruce Davidson, who is here today, for all their support through these hard times.

Please help me fight to change these laws so that my family, and thousands of others, can live without fear.

Thank you.



UNHCR's Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers¹

Introduction.

1. The detention of asylum-seekers is, in the view of UNHCR inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.
2. Of key significance to the issue of detention is Article 31 of the 1951 Convention². Article 31 exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Article also provides that Contracting States shall not apply to the movements of such refugees restrictions other than those which are **necessary**, and that any restrictions shall only be applied until such time as their status is regularised, or they obtain admission into another country.
3. Consistent with this Article, detention should only be resorted to in cases of **necessity**. The detention of asylum-seekers who come "directly" in an irregular manner should, therefore, not be automatic, or unduly prolonged. This provision applies not only to recognised refugees but also to asylum-seekers pending determination of their status, as recognition of refugee status does not make an individual a refugee but declares him to be one. Conclusion No. 44(XXXVII) of the Executive Committee on the Detention of Refugees and Asylum-Seekers examines more concretely what is meant by the term "**necessary**". This Conclusion also provides guidelines to States on the use of detention and recommendations as to certain procedural guarantees to which detainees should be entitled.
4. The expression "**coming directly**" in Article 31(1), covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a

¹ These Guidelines address exclusively the detention of asylum seekers. The detention of refugees is generally covered by national law and subject to the principles, norms and standards contained in the 1951 Convention, and the applicable human rights instruments.

² The Geneva Convention of 28 July 1951 Relating to the Status of Refugees.

short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept “coming directly” and each case must be judged on its merits. Similarly, given the special situation of asylum-seekers, in particular the effects of trauma, language problems, lack of information, previous experiences which often result in a suspicion of those in authority, feelings of insecurity, and the fact that these and other circumstances may vary enormously from one asylum seeker to another, there is no time limit which can be mechanically applied or associated with the expression “without delay”. The expression “good cause”, requires a consideration of the circumstances under which the asylum-seeker fled. The term “asylum-seeker” in these guidelines applies to those whose claims are being considered under an admissibility or pre-screening procedure as well as those who are being considered under refugee status determination procedures. It also includes those exercising their right to seek judicial and/or administrative review of their asylum request.

5. Asylum-seekers are entitled to benefit from the protection afforded by various International and Regional Human Rights instruments which set out the basic standards and norms of treatment. Whereas each State has a right to control those entering into their territory, these rights must be exercised in accordance with a prescribed law which is accessible and formulated with sufficient precision for the regulation of individual conduct. For detention of asylum-seekers to be lawful and not arbitrary, it must comply not only with the applicable national law, but with Article 31 of the Convention and international law. It must be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances, with the possibility of release where no grounds for its continuation exist.³
6. Although these guidelines deal specifically with the detention of asylum-seekers the issue of the detention of stateless persons needs to be highlighted.⁴ While the majority of stateless persons are not asylum-seekers, a paragraph on the detention of stateless persons is included in these guidelines in recognition of UNHCR’s formal responsibilities for this group and also because the basic standards and norms of treatment contained in international human rights instruments applicable to detainees generally should be applied to both asylum-seekers and stateless persons. The inability of stateless persons who have left their countries of habitual residence to return to them, has been a reason for unduly prolonged or arbitrary detention of these persons in third countries. Similarly, individuals whom the State of nationality refuses to accept back on the basis that nationality was withdrawn or lost while they were out of the country, or who are not acknowledged as nationals without proof of nationality, which in the circumstances is difficult to acquire, have also been held in prolonged or indefinite detention only because the question of where to send them remains unresolved.

³ Views of the Human Rights Committee on Communication No. 560/1993, 59th Session, CCPR/C/D/560/1993

⁴ UNHCR has been requested to provide technical and advisory services to states on nationality legislation or practice resulting in statelessness. EXCOM Conclusion No. 78(XLVI) (1995), General Assembly Resolution 50/152, 1996. See also Guidelines: Field Office Activities Concerning Statelessness. (IOM/66/98-FOM70/98)

Guideline 1: Scope of the Guidelines.

These guidelines apply to all asylum-seekers who are being considered for, or who are in, detention or detention-like situations. For the purpose of these guidelines, UNHCR considers detention as: **confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory.** There is a qualitative difference between detention and other restrictions on freedom of movement.

Persons who are subject to limitations on domicile and residency are not generally considered to be in detention.

When considering whether an asylum-seeker is in detention, the cumulative impact of the restrictions as well as the degree and intensity of each of them should also be assessed.

Guideline 2: General Principle

As a general principle asylum-seekers should not be detained.

According to Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum-seekers are often forced to arrive at, or enter, a territory illegally. However the position of asylum-seekers differs fundamentally from that of ordinary immigrants in that they may not be in a position to comply with the legal formalities for entry. This element, as well as the fact that asylum-seekers have often had traumatic experiences, should be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.

Guideline 3: Exceptional Grounds for Detention.

Detention of asylum-seekers may exceptionally be resorted to for the reasons set out below as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. These are contained in the main human rights instruments.⁵

There should be a presumption against detention. Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or

⁵ Article 9(1) International Covenant on Civil and Political Rights.(ICCPR)

Article 37(b) UN Convention on the Rights of the Child.(CRC)

Article 5(1) European Convention for the Protection of Human Rights and Fundamental Freedoms.(ECHR)

Article 7(2) American Convention on Human Rights 1969.(American Convention)

Article 5 African Charter on Human and People's Rights. (African Charter)

guarantor requirements [see Guideline 4]), these should be applied first unless there is evidence to suggest that such an alternative will not be effective in the individual case. Detention should therefore only take place after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.

In assessing whether detention of asylum-seekers is necessary, account should be taken of whether it is reasonable to do so and whether it is proportional to the objectives to be achieved. If judged necessary it should only be imposed in a non discriminatory manner for a minimal period.⁶

The permissible exceptions to the general rule that detention should normally be avoided must be prescribed by law. In conformity with EXCOM Conclusion No. 44 (XXXVII) the detention of asylum-seekers may only be resorted to, if necessary:

(I) to verify identity.

This relates to those cases where identity may be undetermined or in dispute.

(ii) to determine the elements on which the claim for refugee status or asylum is based. This statement means that the asylum-seeker may be detained exclusively for the purposes of a preliminary interview to identify the basis of the asylum claim.⁷ This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim. This exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

(iii) in cases where asylum-seekers have destroyed their travel and /or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum.

What must be established is the absence of good faith on the part of the applicant to comply with the verification of identity process. As regards asylum-seekers using fraudulent documents or travelling with no documents at all, detention is only permissible when there is **an intention** to mislead, or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason.

(iv) to protect national security and public order.

⁶ Article 9(1), Article 12 ICCPR,
Article 37(b) CRC
Article 5(1)(f) ECHR
Article 7(3) American Convention
Article 6 African Charter.

EXCOM Conclusion No. 44(XXXVII)

⁷ EXCOM Conclusion No. 44 (XXXVII)

This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he/she be allowed entry.

Detention of asylum-seekers which is applied for purposes other than those listed above, for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country. Detention should also be avoided for failure to comply with the administrative requirements or other institutional restrictions related residency at reception centres, or refugee camps. Escape from detention should not lead to the automatic discontinuation of the asylum procedure, or to return to the country of origin, having regard to the principle of non-refoulement.⁸

Guideline 4: Alternatives to Detention.

Alternatives to the detention of an asylum-seeker until status is determined should be considered. The choice of an alternative would be influenced by an individual assessment of the personal circumstances of the asylum-seeker concerned and prevailing local conditions.

Alternatives to detention which may be considered are as follows:

(i) Monitoring Requirements.

Reporting Requirements: Whether an asylum-seeker stays out of detention may be conditional on compliance with periodic reporting requirements during the status determination procedures. Release could be on the asylum-seeker's own recognisance, and/or that of a family member, NGO or community group who would be expected to ensure the asylum-seeker reports to the authorities periodically, complies with status determination procedures, and appears at hearings and official appointments.

Residency Requirements: Asylum-seekers would not be detained on condition they reside at a specific address or within a particular administrative region until their status has been determined. Asylum-seekers would have to obtain prior approval to change their address or move out of the administrative region. However this would not be unreasonably withheld where the main purpose of the relocation was to facilitate family reunification or closeness to relatives.⁹

(ii) Provision of a Guarantor/ Surety. Asylum seekers would be required to provide a guarantor who would be responsible for ensuring their attendance at official appointments and hearings, failure of which a penalty most likely the forfeiture of a sum of money, levied against the guarantor.

⁸ Sub Committee of the Whole of International Protection Note EC/SCP/44 Paragraph 51(c).

⁹ Art 16, Art 12 UDHR

(iii) Release on Bail. This alternative allows for asylum-seekers already in detention to apply for release on bail, subject to the provision of recognisance and surety. For this to be genuinely available to asylum-seekers they must be informed of its availability and the amount set must not be so high as to be prohibitive.

(iv) Open Centres. Asylum-seekers may be released on condition that they reside at specific collective accommodation centres where they would be allowed permission to leave and return during stipulated times.

These alternatives are not exhaustive. They identify options which provide State authorities with a degree of control over the whereabouts of asylum-seekers while allowing asylum-seekers basic freedom of movement.

Guideline 5: Procedural Safeguards.¹⁰

If detained, asylum-seekers should be entitled to the following minimum procedural guarantees:

- (i) to receive prompt and full communication of any order of detention, together with the reasons for the order, and their rights in connection with the order, in a language and in terms which they understand;
- (ii) to be informed of the right to legal counsel. Where possible, they should receive free legal assistance;
- (iii) to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuation of detention, which the asylum-seeker or his representative would have the right to attend;
- (iv) either personally or through a representative, to challenge the necessity of the deprivation of liberty at the review hearing, and to rebut any findings made. Such a right should extend to all aspects of the case and not simply the executive discretion to detain;

¹⁰ Article 9(2) and (4) ICCPR

Article 37(d) CRC

Article 5(2) and (4) ECHR

Article 7(1) African Charter.

Article 7(4) and (5) American Convention

EXCOM Conclusion no. 44 (XXXVII)

UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. 1988

UN Standard Minimum Rules for the Treatment of Prisoners 1955

- (v) to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available.

Detention should not constitute an obstacle to an asylum-seekers' possibilities to pursue their asylum application.

Guideline 6: Detention of Persons under the Age of 18 years.¹¹

In accordance with the general principle stated at Guideline 2 and the UNHCR Guidelines on Refugee Children, **minors who are asylum-seekers should not be detained.**

In this respect particular reference is made to the Convention on the Rights of the Child in particular:

- Article 2 which requires that States take all measures appropriate to ensure that children are protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members;
- Article 3 which provides that in any action taken by States Parties concerning children, the best interests of the child shall be a primary consideration;
- Article 9 which grants children the right not to be separated from their parents against their will;
- Article 22 which requires that States Parties take appropriate measures to ensure that minors who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance;
- Article 37 by which States Parties are required to ensure that the detention of minors be used only as a measure of last resort and for the shortest appropriate period of time.

Unaccompanied minors should not, as a general rule, be detained. Where possible they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements should be made by the competent child care authorities for unaccompanied minors to receive adequate accommodation and appropriate supervision. Residential homes or foster care placements may provide the necessary facilities to ensure their proper development, (both physical and mental), is catered for while longer term solutions are being considered.

All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.

¹¹ See also UN Rules for the Protection of Juveniles Deprived of their Liberty 1990

If none of the alternatives can be applied and States do detain children, this should, in accordance with Article 37 of the Convention on the Rights of the Child, be as a measure of last resort, and for the shortest period of time.

If children who are asylum-seekers are detained at airports, immigration-holding centres or prisons, they must not be held under prison-like conditions. All efforts must be made to have them released from detention and placed in other accommodation. If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families.

During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play which is essential to a child's mental development and will alleviate stress and trauma.

Children who are detained, benefit from the same minimum procedural guarantees (listed at Guideline 5) as adults. A legal guardian or adviser should be appointed for unaccompanied minors.¹²

Guideline 7: Detention of Vulnerable Persons.

Given the very negative effects of detention on the psychological well being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers falling within the following vulnerable categories:¹³

Unaccompanied elderly persons.

Torture or trauma victims.

Persons with a mental or physical disability.

In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation, medication counselling etc. should it become necessary.

Guideline 8: Detention of Women.

¹² An adult who is familiar with the child's language and culture may also alleviate the stress and trauma of being alone in unfamiliar surroundings.

¹³ Although it must be recognised that most individuals will be able to articulate their claims, this may not be the case in those who are victims of trauma. Care must be taken when dealing with these individuals as their particular problems may not be apparent, and it will require care and skill to assess the situation of a person with mental disability or a disoriented older refugee who is alone.

Women asylum-seekers and adolescent girls, especially those who arrive unaccompanied, are particularly at risk when compelled to remain in detention centres. As a general rule the detention of pregnant women in their final months and nursing mothers, both of whom may have special needs, should be avoided.

Where women asylum-seekers are detained they should be accommodated separately from male asylum-seekers, unless these are close family relatives. In order to respect cultural values and improve the physical protection of women in detention centres, the use of female staff is recommended.

Women asylum-seekers should be granted access to legal and other services without discrimination as to their gender,¹⁴ and specific services in response to their special needs.¹⁵ In particular they should have access to gynaecological and obstetrical services.

Guideline 9: Detention of Stateless Persons.

Everyone has the right to a nationality and the right not to be arbitrarily deprived of their nationality.¹⁶

Stateless persons, those who are not considered to be nationals by any State under the operation of its law, are entitled to benefit from the same standards of treatment as those in detention generally.¹⁷ Being stateless and therefore not having a country to which automatic claim might be made for the issue of a travel document should not lead to indefinite detention. Statelessness cannot be a bar to release. The detaining authorities should make every effort to resolve such cases in a timely manner, including through practical steps to identify and confirm the individual's nationality status in order to determine which State they may be returned to, or through negotiations with the country of habitual residence to arrange for their re-admission.

In the event of serious difficulties in this regard, UNHCR's technical and advisory service pursuant to its mandated responsibilities for stateless persons may, as appropriate, be sought.

Guideline 10: Conditions of Detention¹⁸

¹⁴ See UNHCR Guidelines on The Protection of Refugee Women.

¹⁵ Women, particularly those who have travelled alone, may have been exposed to violence and exploitation prior to and during their flight and will require counselling.

¹⁶ Art 15 UDHR. See EXCOM No. 78(XLVI)

¹⁷ Article 10(1) ICCPR

1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

UN Standard Minimum Rules for the Treatment of Prisoners 1955

1990 UN Rules for the Protection of Juveniles Deprived of their Liberty

¹⁸ Article 10(1) ICCPR

Conditions of detention for asylum-seekers should be humane with respect shown for the inherent dignity of the person. They should be prescribed by law.

Reference is made to the applicable norms and principles of international law and standards on the treatment of such persons. Of particular relevance are the 1988 UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, 1955 UN Standard Minimum Rules for the Treatment of Prisoners, and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

The following points in particular should be emphasised:

- (I) the initial screening of all asylum seekers at the outset of detention to identify trauma or torture victims, for treatment in accordance with Guideline 7.
- (ii) the segregation within facilities of men and women; children from adults(unless these are relatives);
- (iii). the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups;
- (iv) the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary;
- (v) the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate;
- (vi) the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities;
- (vii) the opportunity to continue further education or vocational training;
- (viii) the opportunity to exercise their religion and to receive a diet in keeping with their religion;

1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

1955 UN Standard Minimum Rules for the Treatment of Prisoners.

1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

- (ix) the opportunity to have access to basic necessities i.e. beds, shower facilities, basic toiletries etc.;
- (x) access to a complaints mechanism, (grievance procedures) where complaints may be submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.

Conclusion.

The increasing use of detention as a restriction on the freedom of movement of asylum seekers on the grounds of their illegal entry is a matter of major concern to UNHCR, NGOs, other agencies as well as Governments. The issue is not a straight-forward one and these guidelines have addressed the legal standards and norms applicable to the use of detention. Detention as a mechanism which seeks to address the particular concerns of States related to illegal entry requires the exercise of great caution in its use to ensure that it does not serve to undermine the fundamental principles upon which the regime of international protection is based.

Geneva, 10 February 1999

July 16, 1999

Honorable Lamar Smith
Chairman, Subcommittee on Immigration and Claims
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Smith:

It is apparent from your correspondence of April 29, 1999, that you and I disagree on the impact of the 1996 laws and the urgent need for reform. There is no question in my opinion that many individuals have been treated unfairly and American families are being torn apart.

First, the law made people deportable for things they did years before the statute was enacted. In the criminal law context such ex post facto laws are unconstitutional. They should also be avoided in the immigration context.

Second, the law lacks proportionality; it penalizes small infractions as severely as serious crimes. Minor offenses, including misdemeanors such as shoplifting or joy-riding, are classified as "aggravated felonies" for which deportation is mandatory if a one-year sentence is imposed. A person whose sentence is entirely suspended and never spends a night in jail is treated no differently from someone who has served decades in prison. Moreover, an offense that is expunged or vacated under a state rehabilitative statute is considered a final conviction for immigration purposes even if it is not a "conviction" under the state law.

Third, Congress stripped away various forms of discretionary relief from deportation that had been available. Today, many deserving immigrants cannot be considered for a "second chance" even if the United States has been their home for decades. These changes, moreover, were accompanied by mandatory detention without bond. Several federal courts have recently held that mandatory detention without consideration of release is unconstitutional.

Fourth, the 1996 laws authorize INS officers and inspectors to make removal decisions without the involvement of any judicial or quasi-judicial officer. They also eliminate federal court review in many cases. An essential aspect of the American justice system is that important decisions are made following a fair process. A fair process requires a fair hearing before an impartial adjudicator and judicial review. The decision to deport someone who has lived most of his or her life in this country, and to separate that person from his or her family, can be devastating and must be made in accordance with our traditional expectations associated with due process.

Enforcement agencies should, as you say, exercise "prosecutorial discretion," and the INS is no exception. The agency does, and should, identify enforcement priorities. The removal system

Honorable Lamar Smith

July 16, 1999

Page 2

would be further improved if INS district counsel screened cases to determine whether proceedings should be instituted and declined to prosecute certain cases in the interests of justice, as their counterparts do in the criminal justice system. But this alone is not enough.

In most situations INS officers and district counsel have large caseloads. They do not have the time or information, which would be necessary to make an individualized decision about whether a long-term resident should be arrested and put in proceedings or given a break. Inevitably, compelling hardship cases would slip through the cracks either because the district counsel is not aware of the relevant facts or may be reluctant to act favorably. One problem with relying on "prosecutorial discretion" alone is that it provides no safety net.

But even the best system of prosecutorial discretion would leave families in a perpetual legal limbo. A person who is removable but not removed today could always be placed in removal proceedings in the future. It is not only difficult to function without a secure status, but such systems offer no certainty or consistency from one officer to the next, or from one administration to the next.

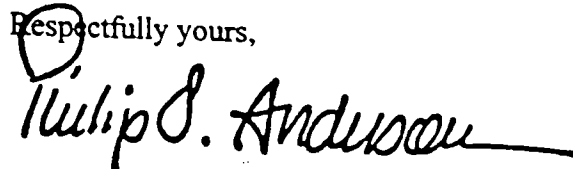
Your suggestion that the Attorney General "parole" individuals to avoid deportation also is insufficient. As you know, parole is not a secure status. It is a temporary measure to enable otherwise inadmissible individuals to come into the U.S. temporarily for a specific purpose, and then to leave when that purpose is accomplished. It also can be revoked at any time for any reason. Moreover, the individual is legally viewed as being outside the United States and, therefore, outside the protections of the U.S. Constitution. Parole simply is not an adequate remedy for a long-term permanent resident, especially one who has lived a productive and law-abiding life since committing a transgression years ago.

Given the current statutory framework, simply restructuring the internal processes and investing INS officers or district counsel with prosecutorial discretion cannot compensate for a defective law.

Congress should enact corrective legislation to bring balance to the immigration laws, correct their retroactive application, restore discretionary relief for deserving individuals, abandon mandatory detention in all cases, and respect due process principles that are so fundamental to our American justice system.

Thank you for taking the time to write to me.

Respectfully yours,

A handwritten signature in black ink that reads "Philip S. Anderson". The signature is written in a cursive, flowing style with a long horizontal line extending from the end.

Philip S. Anderson

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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April 29, 1999

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Mr. Philip S. Anderson, President
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RECEIVED

MAY 04 1999

OFFICE OF PRESIDENT

Dear Mr. Anderson:

Your April 9 Miami Herald column correctly stated that the 1996 immigration reform law that I authored was designed to keep dangerous criminals out of the United States. The column also claimed, however, that non-citizens convicted of minor offenses long ago were being treated unfairly.

Aggravated felonies involving violence or theft for which individuals can be deported must result in a prison sentence of at least one year. And fraud must involve an amount over \$10,000. Most Americans don't consider such crimes "minor" and don't want those convicted released back into their neighborhoods.

Prior to the law that made such crimes aggravated felonies, individuals could game our legal system and indefinitely postpone their deportation. In fact, during the last six-month period reported by INS, 1,300 aggravated felons were put back on the streets, at great cost to the public's safety.

As your column mentioned, there are some compelling hardship cases that deserve consideration. But solutions already exist. First, the Immigration and Naturalization Service has the right to exercise "prosecutorial discretion." The INS doesn't have the resources to deport all non-citizens convicted of felonies so they should target the worst offenders. And second, if the INS does prosecute a genuine hardship case, then the Attorney General may "parole" the individual to avoid deportation.

Current law should not be changed, only enforced in a judicious manner that recognizes hardship cases.

Sincerely,

Lamar Smith

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Chairman

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“Fix ‘96”:

Restoration of Government Assistance to Legal Immigrants Is Badly Needed

The 1996 immigration and welfare laws went too far and stripped many lawfully present immigrants of their eligibility for basic health care, nutrition, and other important programs supported by their own tax dollars. Those most deeply affected include children (and their families), the elderly, and people with disabilities. The impact of the restrictions goes way beyond the actual numbers of immigrants affected because confusion is rampant in immigrant communities about who is eligible for assistance under current law, and citizen children in mixed families are harmed. All Americans are hurt when we weaken the public health and welfare of some members of our communities.

To address this issue, Senator Daniel Patrick Moynihan (D-NY), Representative Sander Levin, and over 70 other members of Congress have introduced the "Fairness for Legal Immigrants Act of 1999" (H.R. 1399, S. 792).

Overview of the Fairness for Legal Immigrants Act of 1999

The Fairness for Legal Immigrants Act of 1999 would not restore all benefits affected by the 1996 laws, but would assist the most vulnerable legal immigrants. The legislation would give states the flexibility, if they choose, to provide full coverage to all lawfully present children and pregnant women under Medicaid and the State Children's Health Insurance Program (CHIP). It would restore access to Supplemental Security Income (SSI) and Medicaid to persons who become disabled after immigrating to the U.S. Finally, it would permit victims of domestic violence to obtain assistance if doing so would help them to escape the violence.

Fairness: Immigrants Pay Taxes

Restoration of immigrant benefits is a matter of basic fairness and decency. Respected studies confirm that immigrants pay their own way. According to the National Academy of Sciences, the average immigrant contributes \$1,800 each year more in taxes than he or she costs the federal, state, and local governments. These net contributions by the average immigrant and his or her children will total \$80,000 during an average immigrant's lifetime, helping to reduce the national debt and shore up Social Security. Since immigrants pay taxes that support benefits for others, they, too, should be eligible to receive assistance in time of need.

(more)

Immigrants already living and working in the U.S. at the time the 1996 welfare law was passed had their eligibility for benefits taken away, although they have paid taxes and contributed enormously to their new country. For example, those whose eligibility for food stamps would be restored by the Fairness for Legal Immigrants Act include elderly individuals over 65 years old who were under 65 in 1996, and ineligible working parents who must now share the food stamp allotments of eligible children.

Health Care Decisions Should Be Based on Public Health Considerations, Not on the Date an Immigrant Entered the U.S.

The public health goals of the Medicaid and CHIP programs are undermined when states are not permitted to use federal funds to provide basic health services to immigrants. The nation saves \$3 for each dollar it spends on prenatal care; it makes no sense to deny care under Medicaid to women simply because they are immigrants who arrived after a specific date.

Similarly, it is shortsighted to health care to immigrant children because of their date of entry. Tragically, such a policy will inevitably mean that some children will develop health complications that could have been prevented. In addition to causing needless suffering, the long term effects of lack of basic care can prevent children from making a full economic contribution as they grow into adulthood.

Immigrant Restrictions Don't Just Hurt Immigrants

Even if it were desirable, it is impossible to restrict assistance to immigrants without hurting other Americans. Immigrants do not live alone, isolated from the rest of us. Rather, we all work together, shop together, live together in families, and our children play together. Health care is a good example. If basic health care is withheld from some children, as under the current restrictions, all children are put at risk. Similarly, withholding public benefits from immigrants burdens community charitable institutions that have relatively few resources.

Restrictions on Federal Programs Burden State and Local Governments

Under the '96 laws, state and local governments will be forced to pay for the looming immigrant health care crisis without federal help. There are already cases of immigrants who have developed critical medical conditions since coming to the U.S. Because their treatment is not covered under Medicaid, states and localities are forced to provide care without federal reimbursement. This is particularly unfair to state and local governments because most taxes paid by immigrants go to the federal government.

A Message of Inclusion

We should not send America's newcomers a message of antipathy and exclusion from the American mainstream. After all, today's newcomers are tomorrow's citizens and civic leaders. They will be our partners in shaping America's future. Therefore, it is important to set a tone of inclusion and compassion. The '96 laws signaled to immigrants that their basic needs are less important to America than those of others, and that we are unwilling to return to them the full value of their tax dollars. It's time to fix '96.



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SUPPORT THE SECRET EVIDENCE REPEAL ACT H.R. 2121

BACKGROUND

Since 1996 the INS has increased its detention and deportation of non-citizens based on evidence kept secret from the detainees and their attorneys. The use of secret evidence has resulted in the detention of non-citizens based on unreliable allegations or erroneous information. Many allegations could easily have been clarified or contested had the detainees or their attorneys been informed of the specific evidence for detention. The use of secret evidence to keep people in detention is in violation of the fundamental notions of fairness and therefore, has no place in our legal system.

The Secret Evidence Repeal Act will re-affirm the Fifth Amendment's guarantee that no person shall be deprived of liberty without due process.

The basis behind our strong opposition to the use of secret evidence is that neither the detainees nor their attorneys will ever have the opportunity to see the specific evidence that is used to detain and deport them. The detainees will be denied any opportunity to confront the government's information in court and test its credibility, reliability and accountability. The use of secret evidence undermines our judicial system's truth seeking functions. Secret evidence cannot be tested under rigorous cross-examination. In commenting on one attempt to use secret evidence, a court said, *"One would be hard pressed to design a procedure more likely to result in erroneous deprivations.... No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and the opportunity to meet it."* American-Arab Anti-Discrimination Committee v. Reno, 883 F.Supp 1365.

A review of cases in which previously secret evidence was made public revealed that much of the evidence is worryingly unreliable. For example, in a case that reached the Supreme Court, U.S. ex

rel. Kanuff v. Shaughnessy, 338 U.S. 537, secret evidence was used to deny a bride the opportunity to come to the U.S. and join her husband. When eventually she was granted a hearing, the secret evidence was found to be worthless because the "confidential source" that offered it turned out to be a vengeful former girl friend of her husband. All the recent cases, in which secret evidence was made public, revealed that the secret evidence is as unreliable as the evidence used in Shaughnessy.

Presently, the INS has in detention approximately 33 people based on secret evidence. Attorneys for the detainees are reporting disconcerting procedural due process violations in the INS' prosecution of these cases. For example, media individuals who file Freedom of Information (FOIA) requests, and interview government officials are receiving more FOIA information than attorneys of record who request the information on behalf of their clients. In one instance, an attorney learned of the secret evidence through a Washington Post story after having filed numerous FOIA requests with the FBI and INS.

Among the victims of secret evidence are six Iraqis airlifted by the U.S. from Northern Iraq because they were part of a failed CIA plot to destabilize the regime in Iraq. The INS is keeping them in detention based on secret evidence. They are represented by a legal team including former Director of Central Intelligence R. James Woolsey. Mr. Woolsey was himself denied the opportunity to see the evidence against his clients.

The case of the six Iraqis is a perfect example of how the use of secret evidence can lead to disturbing results. On October 8, 1998, before the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information, Mr. Woolsey testified that *"...the government's lack of competence and professionalism has been appalling. Government witnesses got confused about the difference between Iraq and Iran. Translation between English and Arabic during the interrogation was so bad that one man spent a year in prison because an interpreter flippantly invented an acronym and produced confusion about a Kurdish organization."* (See Woolsey Testimony at Page 5). As it turned out the government interpreter believed the acronym for the Dutch airline KLM to be a Kurdish organization. When the evidence was finally declassified it was discovered that the secret evidence used by the INS was ridiculous. According to Mr. Woolsey: *"It turned out that the INS had singled him out because he very suspiciously: (a) appeared to insist that he was part of a Dutch airline; (b) provided large amounts of information about himself; and (c) believed that some Kurds live in Baghdad."* Id. at P. 5. Mr. Woolsey further testified that *"In ex parte testimony, belatedly declassified, more than one interrogator explicitly expressed bias (e.g., Arabs 'lie an awful lot,' 'there is no guilt in the Arab world') to the immigration court."* (Id. at P. 7). Mr. Woolsey stated in his testimony that the INS did not corroborate rumors collected against his clients, instead classifying those rumors and using them against the Iraqis.

"[T]he INS' procedure in these sorts of cases – uncannily reminiscent of Franz Kafka's The Trial – is to collect rumors and unfounded allegations, not investigate them, submit them in camera to the immigration judge, and then demand that the individual in question be held a threat to national security if he

does not succeed in refuting the charges of which he is unaware. . . .”

Due to substantial congressional and press attention, the INS was finally forced to admit that it had erroneously classified hundreds of pages of documents. The government has never explained how the erroneous classification occurred. Without the use of secret evidence these mistakes would have never occurred. Without the use of secret evidence the attorney of the Iraqis could have easily explained that KLM is a Dutch Airline and not a “terrorist” organization, that Iraq is different from Iran and that in fact some Kurds do live in Baghdad.

Does the Secret Evidence Repeal Act Hinder the INS’s prosecutorial function?

The Secret Evidence Repeal Act does not hinder the INS’ prosecutorial function in any way. If the government has in its possession sensitive information suggesting that a non-citizen is guilty of wrongdoing or criminal activity it can file criminal charges against the non-citizen and rely on the Classified Information Procedures Act, (CIPA) 18 U.S.C. App. 3, to protect the classified information. CIPA has been used successfully in cases dealing with highly sensitive information such as espionage. CIPA allows the use of confidential information as long as the accused is presented with the evidence against her/him.

The Secret Evidence Repeal Act merely eliminates the use of secret evidence in situations that deprive non-citizens of their liberty without due process. The Act also ensures that non-citizens are not wrongly detained because of unreliable evidence, misinterpretations or other mistakes that could easily have been corrected by informing the detainee why he/she is being detained. In regular removal proceedings where the Government is attempting to prove deportability, this is already the practice. The Secret Evidence Repeal Act would expand this practice to cases involving denial of bond, immigration benefits, and to lawful residents seeking admission.

The Act deletes from current law the secret court established in 1996. It deletes provisions that deny immigration benefits such as asylum to non-citizens based on secret evidence. It also provides that a non-citizen cannot be held in detention and denied bond based on secret evidence. Non-citizens could still be held while their removal proceedings are pending if, based on evidence presented in court, the non-citizen is a flight risk or a danger to the community. The Act would prevent the use of secret evidence to bar lawful permanent residents from returning to their homes after having traveled outside the United States. Finally, the Act directs that pending cases be re-heard and an opportunity given to the detainees to confront and rebut the evidence used to deprive them of their liberty.

Conclusion

We strongly support the Secret Evidence Repeal Act, and we applaud Representatives: Tom Campbell (R-CA), David Bonior (D-MI), Bob Barr (R-GA) and John Conyers (D-MI) for bringing forward this bi-partisan legislation. We also thank Representatives: Lynn Rivers (D-MI), Nick Rahall (D-WV), Ciro Rodriguez (D-TX), Ray Lahood (R-IL) and Dale Kildee (D-MI) for co-sponsoring this bill.