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The Columbus Dispatch

Immigration panel to hear woman's case

• **Homa Amini, an Ohio State professor, fears she will be tortured if she is deported.**

Tuesday, July 27, 1999

By Kirk D. Richards
Dispatch Staff Reporter

Hilliard resident Homa Amini has been guaranteed the chance to argue before an immigration judge that she would face torture if forced to return to her native Iran.

Her attorney, David W. Leopold of Cleveland, received word by mail yesterday from the Board of Immigration Appeals. He promptly called Amini, 31, with the news.

"I was like, 'Oh, you're not kidding with me, right?' " Amini said.

"It's a little easier to breathe. Today is my happy day."

A hearing date has not been set. But the fact that she will get one relieves the worry that she will be jailed or deported without the chance to plead her case.

Leopold had been hoping for the ruling since Amini was placed in a Cleveland-area jail in May. Amini, an Ohio State University associate professor who works as a pediatric dentist at Children's Hospital, was released late last month under the condition that she report to immigration once a month -- a requirement that no longer stands.

"I'm ecstatic," Leopold said.

Amini believes she would be tortured in Iran because her uncle was an internal security official for Shah Mohammad Reza Pahlavi, who was overthrown in 1979. Iran has approved a death sentence on her uncle, who lives in the United States as a naturalized citizen.

Leopold says Amini should be protected under the Convention Against Torture treaty, which was passed by Congress last year and prevents the government from returning people to their native countries if they are likely to be tortured.

The State Department has reported that women inmates in Iran often are raped. Amini has said that some of her relatives have been tortured.

Amini's legal troubles stem from a sham marriage she engaged in to stay in the United States. She has said that the marriage took place in 1991, but she has been advised not to say where or to whom.

The U.S. Immigration Service released her from jail last month because officials were unable to pin down when the Board of Immigration Appeals would rule on her request for a hearing.

The board's decision to grant the hearing comes a week after the Immigration Service tried to revoke a stay on Amini's deportation, which had been granted by the 6th Circuit Court of Appeals.

The federal court in Cincinnati granted her the stay on May 24, just in time for her to avoid her closest call. She had been taken to Boston and placed on a plane going overseas.

When officials learned of the stay order, they removed Amini from the plane -- five minutes before takeoff.

Amini recently learned that some Iranian media have carried her story -- a development that worries her. "They have no freedom of the press -- they can't be objective."

The emotional roller coaster has been difficult.

"I cannot deny I wish it were all over, but I just take it one day at a time," she said.

Two weeks ago, Amini took a day off work to meet with immigration officials in Cleveland.

Leopold said the meeting lasted three minutes and was "something that could've been taken care of over the phone."

"They wanted to know if she was still living in the same place," he said.

"She has been through so much, it's unbelievable. But we're not out of the woods yet."



Two haitian women who were detained by police for illegally entering the U.S. sit on a curb side in downtown Miami last May.

Immigration tops U.S. prosecutions

**U.S. attorneys handle INS
cases more than any other**

By Valerie Kalfrin
APBNEWS.COM

SYRACUSE, N.Y., July 26 — U.S. attorneys prosecute immigration matters more than any other cases, including drugs, weapons, organized crime and civil rights, according to an analysis of Justice Department data released Monday.

'It's not that the Justice Department is going after illegal immigrants more aggressively than drug dealers.'

— **CAROLE FLORMAN**
DOJ spokeswoman

A STUDY BY the Transactional Records Action Clearinghouse (TRAC), a nonprofit research center based at Syracuse University, noted that the Immigration and Naturalization Service (INS) referred more than 72,000 cases to federal prosecutors between 1992 and 1998. U.S. Attorneys pursued an average 84 percent of them, leading to the biggest surge in federal prosecutions in 30 years.

Last year, federal prosecutors brought action in 14,616 immigration cases — double the number six years ago and 93 percent of those referred to them, TRAC says. The majority dealt with reentry or improper entry by illegal aliens, bringing in or harboring aliens, passport or visa fraud, and falsely claiming to be a U.S. citizen.

By comparison, in 1998 U.S. Attorneys prosecuted just 82 percent of all referred drug cases, 73 percent of weapons cases, 55 percent of those involving organized crime, 43 percent involving white collar crime, and 5 percent investigating violations of civil rights.

In addition, median prison time for immigration offenses increased fourfold, the study said, from two months in 1992 to 12 months in 1998 — the same median sentence for organized crime.

OVERHAUL OF LAWS CREDITED

Experts attribute the surge to a Clinton administration crackdown, tougher legislation, increased funding for the INS and the ease in prosecuting immigration cases.

"What we're seeing is the results of a major overhaul in immigration law," Russ Bergeron, an INS spokesman, told APBNews.com.

The INS lost credibility years ago because of limited funding and enforcement — something this data indicates the Justice Department is committed to correcting, Bergeron said. "This shows that ... given the resources, the men and women of the INS can fulfill their mission."

'EASY-WIN' CASES

‘Could it be that immigration people are brown and don’t have lawyers, and white collar crime people are white and can afford lawyers?’

— **DAVID BURNHAM**
TRAC

The government has indeed gone “gangbusters” with immigration issues in recent years, said TRAC’s co-founder and former New York Times investigative journalist David Burnham.

But Burnham suspects bias is also at work in what U.S. Attorneys decide to prosecute.

“Could it be that immigration people are brown and don’t have lawyers, and white collar crime people are white and can afford lawyers?” he said.

“In their rush to cure what they perceived as the immigration problem, they’ve gone too far,” said Anna Gallagher, an attorney at the American Immigration Law Foundation in Washington.

The agency now takes immigrants to federal court to “make examples out of them” when in years past it let a number of them depart voluntarily, she said.

“These are easy-win cases for the INS. Congress has been slamming the INS for years, and this is a way they can show that they’re doing their jobs,” she said. “What’s a shame is that a lot of people end up doing time who aren’t really criminals.”

“These numbers shouldn’t come as a surprise to anyone,” added Matt Tallmer, spokesman for the American Immigration Lawyers Association. “It’s not just the number of enforcements. It’s who are you enforcing it against?”

LEGAL RESIDENTS FACE DEPORTATION

More than 5 million illegal aliens presently live in the United States, says the INS, which deported or denied entry to 172,312 people in 1998. The agency also naturalized 500,000 new citizens, accepted 100,000 refugees and granted 12,700 people asylum last year.

Many legal, permanent residents have been incarcerated because of criminal offenses they committed years ago under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, said Washington immigration attorney Denyse Sabagh.

Now something as mild as shoplifting as a teen is now grounds for deportation, she said.

“A lot of people we see certainly didn’t get great representation the first time around. Nobody found out their immigration status, or told them the immigration ramifications of a guilty plea,” Sabagh added. “If this was happening to U.S. citizens, people would be up in arms.”

CASES DON’T TAKE AS LONG TO CLEAR

Justice Department officials denied any bias and

disputed the analysis, while saying immigration law enforcement is a priority of the Clinton administration.

"The numbers just don't tell the whole story," spokeswoman Carole Florman said. "It's not that the Justice Department is going after illegal immigrants more aggressively than drug dealers. They're just very different types of cases that take different types of time and effort."

INS cases take a median of 87 days to be dismissed from when they first cross the prosecutor's desk, the data shows. By comparison, cases from the Customs Service (170 days), Drug Enforcement Administration (272 days), FBI (296 days), Bureau of Alcohol, Tobacco and Firearms (310 days) and Internal Revenue Service (483 days) take much longer.

Of the country's 90 federal judicial districts, TRAC found that those along the southwestern border prosecuted the most immigration cases in 1998, with west Texas and Arizona recording the biggest increase in activity. Arizona handled 3,083 referrals for prosecution in 1998, compared with 403 in 1992.

TRYING TO CLOSE SMUGGLING ROUTES

The INS attributed many of these prosecutions to new initiatives to help close U.S.-Mexico smuggling routes. Other districts outside the southwest also rank high in the number of referrals per capita, namely central Florida, southern Illinois, Oregon, South Dakota, Utah and Washington state, TRAC says.

The Justice Department said Utah has U.S. Attorneys specifically assigned to handle immigration cases, while other districts have immigration courts that can process cases in bulk.

Yet the federal judicial districts with the most convictions per capita were not those with the most referrals, TRAC discovered. Idaho, Montana and several Midwestern states convicted more immigration cases per capita last year than central California, central and southern Florida and all of Texas.

And 90 percent of those prosecuted around the country were convicted in 1998, TRAC reports, with 70 percent receiving jail time -- a median of 12 months, the same median sentence for organized crime.

LOOKING AT 'HOT SPOTS'

Bergeron noted that a look at INS staffing nationwide better indicates some of the nation's immigration problems.

Today the agency employs 29,420 people

'Vermont is one of the country's hot spots for alien smuggling.'

— **RUSS BERGERON**
INS spokesman

nationwide, with 7,890 agents in the Border Patrol alone. TRAC reports that the highest numbers of personnel per capita are in Arizona, western and Southern California, southern Florida, eastern Louisiana, New Mexico, southern New York, Texas and Vermont.

"Vermont is one of the country's hot spots for alien smuggling," Bergeron said.

The fruit- and meat-packing industries of the Pacific Northwest and South Dakota are also "magnets for undocumented aliens seeking work. ... You have to get rid of the stereotypical image of a guy in a poncho wading across the border."

Valerie Kalfrin is an APBNews.com staff writer.

'I'm dying in here,' says woman held by INS

Thursday, July 15, 1999

By LARRY McSHANE
The Associated Press

NEW YORK -- Two days after a federal appeals court blocked her deportation, a woman who fled Ghana in 1997 to avoid forced genital mutilation said Wednesday that she was hoping for a quick release from federal custody.

"I'm not a criminal. I came here for help," Adelaide Abankwah, 29, said in a jailhouse interview. "And I've been here long enough. . . . I'm dying in here. They should consider my health and let me out."

Abankwah has several prominent supporters, including Rep. Carolyn Maloney, D-N.Y., lobbying for her release. She has been in poor health since coming to the United States on March 29, 1997, fleeing her isolated tribe of about 400 people in Ghana.

Despite the court ruling, Abankwah said she was still frightened by the possibility of deportation. On Wednesday, guards at the federal detention center in Queens were saying she would be deported, Abankwah said.

"They are talking . . . like they are going to send me back," she said. "Today is very, very bad because they're scaring me."

She was arrested upon arrival at John F. Kennedy International Airport. She told immigration officials that she feared village leaders would order her murder or genital mutilation because she violated tribal custody by losing her virginity.

An immigration judge denied her request for asylum, saying the testimony about her fears was not detailed enough.

But on Monday, the 2nd U.S. Circuit Court of Appeals blocked her deportation.

The three-judge appeals court panel, while calling Abankwah's story credible, stopped short of granting her asylum. It said there was strong evidence to demonstrate that her fear of forced genital mutilation was reasonable and that she had a well-founded fear of persecution, a legal requirement for asylum.

The case now goes back to the INS's Board of Immigration Appeals, which could take three weeks to rule. The INS did not immediately return a call for comment Wednesday.

INS set to release criminal immigrants

By August Gribbin
THE WASHINGTON TIMES

Court pressure is causing immigration officials to release hundreds of criminal immigrants and to alter what critics say are senseless and excessive criminal-detention policies.

Thirteen federal court decisions have faulted the INS for jailing all immigrants who had been convicted of a crime, had served their sentences and were awaiting deportation hearings. Thus the agency will soon begin releasing certain detainees considered "no danger to society" and unlikely to flee.

In a separate ruling, a five-member federal court in Seattle ordered the release of certain criminal immigrants whose deportation has already been ordered. Those detainees completed prison terms before their deportation was ordered, but they are being held indefinitely — in effect for life. That's because nations the prisoners came from won't allow their return, and the INS had hesitated to loose them on society.

The court ruled the INS policy violated Fifth Amendment guarantees protecting people from being unlawfully deprived of liberty. Although the decision affects only Washington state, lawyers say the ruling will influence the indefinite detention policy.

Courts fault policy of holding them in jail

The INS action regarding prisoners awaiting deportation proceedings represents what the agency's official announcement calls a change in "its legal interpretation" of requirements.

INS Commissioner Doris Meisner explained in a statement that the courts have "ruled the INS has greater flexibility ... than we had thought."

She said the INS "will conduct a case-by-case review and exercise discretion on those individuals who completed their criminal sentences prior to Oct. 9, 1998, do not pose a danger to the community and demonstrate a strong likelihood to appear for their hearing."

The requirements were established in tough 1996 immigration reform legislation that took final effect on Oct. 9, 1998.

INS interpreted the law as requiring that nearly all immigrants who have committed any of an expanded list of major and minor crimes must be imprisoned until their deportation hearing regardless when they finished serving their sentences.

The courts have ruled the law stipulates the INS must use discretion in detaining those who got out of jail or ended probation before Oct. 9, 1998.

Until this week, the INS also

Until this week, the INS also presumed the law had stripped it of the discretionary power to release certain stable, reformed immigrants who had committed crimes.

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Consequently, for example, when naturalized American Jesus Cojjado returned from a visit to the Dominican Republic and truthfully answered a question whether he had ever been arrested, the INS apprehended him. The married, middle-aged father of two subsequently waited 6 months in jail before his deportation hearing.

Mr. Cojjado's crime was that 20 years before, when he was 23, he

had an affair with a minor. The girl's outraged mother later reported him to police. Mr. Cojjado was hauled to court and given a minor sentence, which he served.

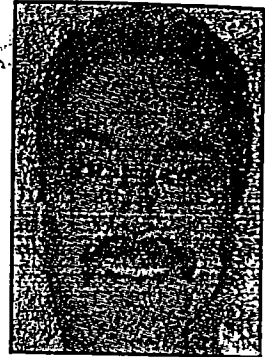
Rep. Sheila Jackson Lee, Texas Democrat, testified about the Cojjado case in a House hearing. She said that although the INS ultimately released Mr. Cojjado, "his business drastically suffered and his life was irreparably damaged."

At the same hearing, Bishop Nicholas DiMarzio, chairman of the U.S. Catholic Conference Committee on Migration, gave the example of a Salvadoran he called "Mr. G," a longtime resident who is married and the father of a 7-year-old.

Mr. G was recently arrested, charged as an "aggravated felon" and jailed after admitting on a permanent residence application that he had a brush with the law in 1987.

His crime: He was in a car 12 years ago with buddies who picked up a friend lugging a stolen stereo. Police stopped the car for a traffic violation, noted the stereo and arrested the group.

A public defender told Mr. G the simplest thing was to plead guilty to petty larceny, a misdemeanor. He was given a suspended sentence. Under the INS policy that is being changed, he could have been banished for life.



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.

D. Fahleson / Chronicle

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-

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(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."

For Criminal Aliens, The Deportation Boot Is a Very Swift Kick

Courts Crop Up in Prisons,
Judges Lack Leeway;
Mr. Denaro Faces Exile

A Pol Intervenes for a Pal

By BARRY NEWMAN

Staff Reporter of THE WALL STREET JOURNAL

FISHKILL, N.Y. — Quietly respectful, Marvin Lewis steps into the paneled room and sits in a soft chair. Behind his raised desk, Judge Mitchell Levinsky looks down at the lanky man with short dreadlocks and clears his throat to begin.

Mr. Lewis raises a hand. "Can I say something? I don't want to go through all this. I'm willing."

"You want to be deported?" asks the judge. Mr. Lewis nods.

"Indulge me," the judge says, and reads out the charges: "You were admitted to the United States in December 1988 as a legal permanent resident. You were convicted in April 1998 of manslaughter and sentenced to from 10 to 20 years. Does that sound right?"

When Mr. Lewis says, "Yes, sir," the judge says, "To what country do you wish to be removed? Would that be Jamaica?" Mr. Lewis nods. "I find you removable as charged," says the judge. "I'm not aware of any relief available to you. Do you accept my decision as final?" Mr. Lewis says he does, and the judge says, "Good luck to you."

Stark Efficiency

That, in full, is Marvin Lewis's deportation hearing. The setting is an open court in the most closed of places: Downstate Correctional Facility, a maximum-security New York prison. The hearings that fly by in this room—in fact, it is rarely open to the press and never to the public—are the fateful moments in a federal one-way-ticket travel plan known as the Institutional Removals Program. Revved up to speed in 1996, its mission is to finger convicts who aren't American citizens and, on the day they walk free, throw them out of the country.

Mr. Lewis is led away for a ride to Sing Sing. There, he will serve 10 years, minimum. Then the Immigration and Naturalization Service will put him on a plane, and America will be rid of him for good.

Catapulting undesirable ex-cons out of the country stands out as a display of nuts-and-bolts efficiency considering the nation's generally rusty immigration machinery. On the other hand, many civil libertarians who know its inner workings say the catapult has been given a coat of procedural grease it doesn't need. It exposes millions of foreigners, including legal permanent residents, to automatic, permanent and unappealable expulsion if they overstep the law, even a relatively minor one. And it all but eliminates the possibility of mercy.

"It is hard to think of any public policy less controversial than the removal of criminal aliens," says Peter Schuck of Yale Law School. Roxanna Bacon, enforcement-committee head at the American Immigration Lawyers' Association, can think of plenty. "These people don't count," she says. "They don't count even when they haven't committed a crime. They certainly don't count when they have."

The gap between these two isn't as wide as it looks. The U.S. has at least 300,000 foreign criminals. Many are free on probation and many have done their time already and given the INS the slip. But federal prisons hold 30,000 of them now, state prisons another 85,000. They are candidates for deportation. Nobody disputes that.

They should also be the easiest of all to find. Yet it was only three years ago that the deportation engine started humming in the nation's prisons. In that same year, at the end of its patience, Congress decided to speed up the procedure.

The new legal regime, in the form of amendments to the Immigration and Nationality Act, wipes away almost any chance potential deportees identified in prison ever had to argue that they should be allowed to stay. For while criminal-court judges weigh the pluses and minuses of crimes and their circumstances, immigration judges now have no such discretion. The INS, for its part, says it enforces the laws that Congress gives it.

A Case History

In Judge Levinsky's courtroom this day, nobody weighs Marvin Lewis's pluses and minuses. But here are some of them, culled from his INS affidavit, his police-station confession, a talk with him in prison, and his psychiatrist's report:

In late 1988, just turned 19, Mr. Lewis flew to New York. He went to work for his father, who was living in Queens and owned a construction business. In 1995, Mr. Lewis married. His life was stable. On the side, he peddled marijuana.

He couldn't have been lower on the drug chain: His cut on the sale of a "bag" was \$2. In early September 1997, his supplier—a man named Richard Miller—halved his cut to \$1 and demanded \$2,000. When Mr. Lewis protested, the supplier pulled a gun, hit him with it, and said, "Pay me or your wife and kid won't live to see Christmas."

His wife was nine months pregnant. He knew Mr. Miller had a reputation for sadistic brutality. For three weeks, the psychiatrist wrote, Mr. Lewis was in a "frantic state of all-consuming fear." At 8 p.m. on Sept. 24, with a gun in his pocket, he went to see Mr. Miller in an East Harlem grocery. The supplier threatened him and stepped forward.

Mr. Lewis didn't hear the shots from his own gun. He told the police later that night, "I just snapped."

A criminal-court judge, balancing all this, reduced the charge from murder to manslaughter. The INS gave Judge Levinsky nothing to balance, just a piece of paper stating the immigration category of the crime. Many Americans might think Mr. Lewis should be deported; many might not. Under the law, there is no arguing it. Banishment for life is mandatory.

When Marvin Lewis sees New York again, it will be from the window of a bus to JFK. Even before the 1996 rule changes, he might still have been deported. But under rules in effect then, two things were different: He could have sought mercy from an immigration judge. Or, he might not have bothered; once out of prison, he could have simply disappeared.

Procedural Fix

Criminals who face deportation show up for hearings more often when they are in prison than when they aren't. When locked up, 90% of deportable criminals get deported; when not locked up, 90% don't. These bolts of insight first hit politicians and bureaucrats 15 years ago. For nine of those years, nothing was done. Only in the past few years have courts been set up inside more than 70 state and federal prisons. Judges from the Executive Office of Immigration Review handle the whole case flow. "I don't see anybody getting cut loose to walk out at the end of their state time," says George Terezakis, who practices criminal and immigration law in New York. "It seems frighteningly efficient."

But a mechanical solution to a straightforward problem came too late to hold the interest of politicians in the thick of an emotional debate over the future of immigration. As Prof. Schuck puts it: "Compared to the costly reforms necessary to improve the system, procedural fixes seemed easy and cheap."

The list of crimes leading to deportation had begun to lengthen in 1988, when Congress created the "aggravated felony," a category known only to immigration law. Its definition was steadily broadened to engulf acts such as tax evasion, gambling, burglary, perjury and a \$10,000 fraud. Another hazily defined ground for deportation—a crime of "moral turpitude"—grew to encompass any crime that may draw a one-year sentence; in New York City, that includes jumping a subway turnstile.

Foreigners could still dodge the boot. Even some aggravated felons could show good hearts and suffering families. Judges didn't convince easily—inmates filed 1,522 petitions to waive deportation in 1996; 330 were granted.

That was leniency's last gasp. Congress blamed lax judges for much of the deportation roadblock. Except in the narrowest instances, it abolished judicial waivers for aggravated felons—nearly all foreigners in prison. It barred their asylum claims. It made any who had sneaked into the U.S. deportable without hearings. It required continued detention until deportation. It made deportation permanent. And it stripped federal courts of the jurisdiction to review almost any of this.

In 1998, the number of petitions to waive deportation filed from prison was 92; the number granted was eight.

Only the law's odder wrinkles have turned heads: A few countries—Cuba, Laos, Cambodia, Vietnam—won't take criminals back, which meant the U.S. would have to detain them eternally. And Attorney General Janet Reno ruled foreigners deportable for crimes committed before the law passed. That means the U.S. now has a class of legal residents afraid to renew green cards, apply for citizenship or travel abroad, lest the INS be prompted to reopen criminal files closed long ago, detain them, and deport them.

It took a hunger strike at an INS lockup in Miami to relax the *diktat* on eternal detainees; in April, the INS said it might let harmless ones go. In March, the Supreme Court let stand several appellate-court decisions that opened the possibility that deportation orders might yet be subject to judicial review, and that old crimes might not be subjected to the new law.

There is no question, however, about the law's impact on foreigners locked up for fresh crimes, or on the procession of inmates who pass through Judge Levinsky's hearing room at Downstate prison on this one day.

Prospects of Exile

Romano Denaro is next. He is 46, his gray hair short, his green fatigues rumpled after a ride from the prison near Canada where a judge in Westchester County sent him last October. Mr. Denaro is an accountant doing one-to-three years for grand larceny.

"How many convictions?" Judge Levinsky asks.

Mr. Denaro reddens. "This is it," says his lawyer, Ramin Rastegar. David Roy, the INS attorney handling this day's calendar, passes the judge photocopies of a few old visas—documents from Chapter One of Mr. Denaro's American history.

On Nov. 12, 1968, he and his parents, two brothers and a sister sailed into New York from Rome aboard the *Michelangelo*. Mr. Denaro was 15. An uncle had petitioned in 1956 for the family to join him; their number came up after 12 years.

The Denaros moved to Westchester, and while his father worked in a factory, Mr. Denaro studied. He graduated from college with a business degree in 1977, started out as an auditor for a supermarket chain and, by 1990, was a \$70,000-a-year controller at a New York media company. He'd married a U.S. citizen and had three children, citizens all, but didn't take pains to become a citizen himself.

"I was a permanent resident," he says, phoning from prison. "Well-established. I never thought I could face a situation like this—that any judge in their right mind could think about deporting me."

Judge Levinsky is thinking. "Under the law," he says, "a theft that draws a sentence of at least one year is an aggravated felony. That would appear to make this respondent an aggravated felon." But Mr. Denaro sees himself as a thing less loathsome: a downsized, overwrought middle manager.

In 1990, he lost his job, was out of work briefly, and took another job at half the pay. That company moved; he didn't. A third job didn't click. In 1994, he started a delivery service. By 1996, it had 13 vehicles, 15 employees and a cash shortage. Then came a man with a plot.

He was a manager at Nynex (now Bell Atlantic) in search of contractors willing to stick the phone company with phony bills. Mr. Denaro had a nice flow of business from Nynex. If he didn't play along, the man told him, he would lose it. So he submitted invoices for \$430,000. Mr. Denaro claims he pocketed less than \$80,000 for himself, before somebody snitched and a detective came calling.

He pleaded guilty. Mr. Denaro hadn't heard of the immigration hullabaloo in Congress. It seems his lawyer, Bruce Mandia, and his criminal-court judge hadn't either. Both knew Mr. Denaro wasn't a citizen. "I discussed this fact with the sentencing judge," Mr. Mandia said in a letter this past May, "and was satisfied that removal was only a remote possibility." Not until he went to prison—and promptly got a notice to appear at a hearing—did Mr. Denaro realize he was in trouble with the INS.

"Based on the documents," Judge Levinsky is saying, "it's clear the respondent is removable from the United States."

"May I make a statement?" says Mr. Denaro. "I would never have pleaded guilty had I known that my sentence would be turned into a life sentence of being thrown out of the country."

But the law has the judge in handcuffs. "I rarely do this," he says, taking a breath. "There are compelling circumstances here. Bring me proof that your conviction has been overturned." He grants Mr. Denaro a continuance until July 21.

A state court has agreed to hear a motion by Mr. Denaro on July 23. The prospects of having his felony sentence reduced in time to escape deportation seem as slim as his wallet. Mr. Denaro has lost his business. His house is in foreclosure. His wife wants a divorce. Mr. Denaro hasn't been to Italy for 31 years, but he may be there soon. What then?

"Suicide," he says. "You think I'm kidding? I'm very serious. It would kill me. It would destroy me totally. Who am I going to turn to in Italy? I have nobody there. How am I going to explain this?"

A lesson in the contortions of federalism might be a place to start.

Among the first to lay into criminal aliens was Sen. Alfonse D'Amato, the New York Republican. In 1985, he accused them of "savaging our society." More to the point, they were savaging the state's budget. In part because of fixed sentences for drug crimes, New York held 35,000 prisoners that year; 3,000 weren't American. (The numbers now are 70,000 and 9,000.) The INS was supposed to screen foreigners on arrival. Yet if they evaded the INS and then broke the law, the states had to pay their room and board.

Pressed by the states in 1986, Congress directed the INS to get deportation going as soon as foreigners checked into prison. The INS didn't. In 1988, Congress ordered prison hearings. Nothing happened. In 1990, it told the states to give lists of foreign convicts to the INS. The states didn't. They wanted the feds to pay up first.

(over)



The Denaro family

New York sued the federal government in 1992, and then the Justice Department got friendly. Janet Reno promised more agents, lawyers and judges. In 1994, Congress came through: It would pay to lock up foreigners who tiptoe past border guards and commit state crimes.

And by 1996, the prison deportation system hit its stride. Two of the country's 70 prison courtrooms are in New York state. The state shuttles convicts from its other prisons to meet their full-time immigration judges. And New York has added a sweetener: for deportation only, the possibility of early parole.

Federal outlays for these efforts added up nationally to \$500 million in the past two years; New York took in \$55 million in 1998. Its prisons handle 4,500 hearings a year and average 1,000 actual deportations; that's equal to loading a full prison onto a freighter and watching it sail over the horizon.

* * *

The no-smoking sign in Downstate's entry hall doesn't say "No Smoking," it says "Public Health Law 139-0 Prohibits Your Smoking In This Building." That's the kind of place it is. Though the court legally is open, state prison authorities limit a reporter's visit to "one day in a lifetime," as

a press officer puts it. No hearing transcripts are made unless a case is on appeal; few are. Details of INS charges and evidence against the inmates mentioned here had to be obtained through the Freedom of Information Act.

Of the dozen men who come before Judge Levinsky this day, only Mr. Denaro has a lawyer. The judge gives several time to look for one, but the state won't pay because these are civil cases. Among 18 legal-aid groups on a list he hands out, only two say they will travel to Downstate. One of those—Prisoners' Legal Services—has had its state funds cut off. The other isn't a group; it's a man named Bob Vitaglione. And Father Bob, as everyone calls him, isn't a lawyer but a bluff, squinty-eyed Roman Catholic priest from Brooklyn.

"I do it because these are the most unloved guys in the world," he says. "Jesus, my founder of the firm, came looking for those guys." The priest makes it to Downstate for a week every other month. He calls its courtroom "the foreign legion of immigration law."

Alone in a sandstorm of codes and statutes, Eugenio Rodriguez finds his chair and looks up at the judge. Prison hearings were made for him: a petty thief with 20 arrests reaching back to 1986. Born in the Dominican Republic, he came to New York legally in 1975, at age 14. The INS tried to deport him in 1991; he made bail and went missing. It tried again in 1993; Mr. Rodriguez was unable to appear. Why? Because he was in jail.

But today the INS has him cornered.

Judge Levinsky asks if he has a lawyer. "I didn't have the money to get an attorney for this here," Mr. Rodriguez tells him. Yet the INS isn't above making goofs lawyers might catch. Criminals can be U.S. citizens (if one parent was, for example) and not know it. Crimes resembling aggravated felonies sometimes aren't. The case against Mr. Rodriguez is eight years old. Technically, that entitles him to a deportation reprieve under the previous rules—but only if all his scraps of jail time add up to less than five years. His fate is a matter of arithmetic.

"It's not evident that he's served five years yet," the judge says. Mr. Roy, the

INS lawyer, flips through a rap sheet and says, "The applicant must show he has not served a total of five years." The judge, flipping too, tots up 4½ years—making Mr. Rodriguez eligible for relief. But Mr. Roy interrupts, noting a parole violation on the rap sheet that might carry the total over the top.

Then Mr. Rodriguez volunteers: "I did eight months on that."

Judge Levinsky raises an eyebrow; the man has just condemned himself. "That comes to more than five," the judge says. "I have no alternative but to order you removed from the United States. Do you accept my decision?"

"Yes," says Mr. Rodriguez.

Later, though, he has a chance to do his own sums. "First and foremost," Mr. Rodriguez writes in a letter from prison, "I haven't served over five years. I strongly feel the judge is being unfair, and I would like the opportunity to prove him wrong."

But Mr. Rodriguez has had his opportunity. When he gets out of prison this time, he will be flying south.

Tip of the Iceberg

Prison hearings are only part of the Institutional Removals Program, and the program is only part of an intense deportation push in America. Like a company with an earnings leap, the INS says that 1998 deportations reached 171,154, "breaking last year's record" of 114,386 in 1997. Criminals among them number 65,000; the INS is deporting 4,600 criminals a month.

The deportation machine, from one angle, still squeaks. Often, foreigners who go through the hearing mill and leave prison end up in INS detention because they lack travel papers that will make them acceptable back home. The INS detains 16,000 foreigners today, 12,000 of them aggravated felons waiting for a flight out. Putting them up, even for a few nights, costs the country a fortune.

Seen from another angle, the deportation machine has overheated. Sen. Daniel Patrick Moynihan, a New York Democrat, has offered an amendment to give foreign criminals free lawyers, and to let judges grant a little clemency. As more politicians chase immigrant votes, immigration law could be coming due for a political correction. Even Rep. Bill McCollum, a Florida Republican and immigrant-crime foe, allowed recently that the 1996 law may have

been "too harsh."

He said so after filing a private bill to undo the deportation of Robert Broley, a convicted Canadian thief and forger who is also the son of the Republican Party treasurer in Mr. McCollum's home district. The congressman, one of the strongest supporters of the crackdown on foreign criminals, recounted the pros and cons of Mr. Broley's life in the Congressional Record and called them "sufficiently compelling" to merit relief.

* * *

Two weeks after volunteering for deportation in Judge Levinsky's courtroom, Marvin Lewis is sitting in the Sing Sing visitors' room with couples smooching around him. He is asked why he was so eager to go. With a bright smile, he replies that an INS agent told him it meant his sentence for killing his marijuana supplier could be reduced: He might be out of prison in five years. "If I can spend any less time here," he says, "that's what I want."

But he can't. A violent foreign felon, deportable or not, must serve his full minimum sentence in New York. Mr. Lewis says no one told him that. He doesn't have an immigration lawyer. His father in Queens doesn't have any chums in Congress. When Mr. Lewis hears that he isn't going anywhere for at least 10 years, he is speechless.

Suzette Lewis is a bank clerk in downtown Manhattan. Her son, Darnell, is 18 months old now. She is 28, also from Jamaica. A year ago, she became a U.S. citizen. If she had petitioned to get Mr. Lewis a green card, she might have saved him from expulsion on grounds of hardship to herself and Darnell. A lawyer might have told her that, too. Now, all she can do is wait for her husband's release.

"Him working and being there for his son, that's important," she says in a coffee shop after work on a warm evening. So will they all return to Jamaica? Mrs. Lewis looks confused. "Go back?" she says. "I'm not going back. What's the good of my son being down there?"

It is explained that her husband won't be on a round trip.

"I thought deportation was for a certain time and then you file to go home." She stops and thinks. Then she puts her hands over her face and says, "Oh, gosh. I didn't know it was forever."

LULSEGED DHINE

Change unfair immigration laws

Lulseged Dhine recently was released by the Immigration and Naturalization Service from the Krome Detention Center.

After nine years and 45 days, my release from the Krome Detention Center in May was one of the most wonderful days in my life.

It also signified the start of a new struggle.

While my case is not completely resolved with the Immigration and Naturalization Service, my conditional freedom allows me to fight with more resources for thousands of other detainees still suffering under U.S. immigration policies.

My new life is not so different from the old; it is a blur of legal issues and campaigns for change. While in detention I fought successfully to start a law library, raise guards' salaries and establish Alcoholics Anonymous, Narcotics Anonymous and other 12-step programs. I also became a mentor for detained juveniles and gang members.

Now I plan to continue visiting alternative high schools for kids who are at risk of dropping out, to form a regional chapter of the American Jewish Congress and to devote most of my time to changing the Draconian immigration laws and detention conditions.

The 1996 laws to which I refer are the Illegal Immigration Reform and Immigrant Responsibility Act and the Anti-Terrorism and Effective Death Penalty Act. They are deep scars on the principle that the United States is a place for the world's huddled masses and poor.

The idea behind the law was on-track: to keep violent felons and terrorists out of the

United States and to prevent illegal immigrants from collecting welfare. Their implementation has caused untold misery for thousands of good people. They are an example of Congress overreacting, passing complex legislation with unforeseen effects.

Among those effects:

****** Nearly every crime retroactively has become an aggravated felony, meaning that people, some brought to this country as children, face deportation for offenses -- some minor -- committed decades ago. They may have served time in prison, have established families and have spouses and children who are American citizens, have become productive members of their communities and own businesses -- yet the United States will deport them.

****** Ironically, while one of the immigration-reform law's purposes was to eliminate welfare for illegal immigrants, that has backfired. What do you suppose happens to U.S.-citizen families of the immigrants who have been here for decades but suddenly are deported? When the breadwinner is deported, the U.S.-born children and spouse go on welfare.

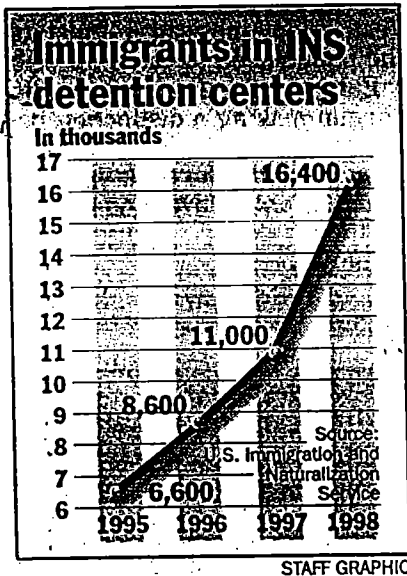
****** The law effectually removed all discretion from judges in deportation proceedings -- condemning many people. Prior to the law, a judge had the authority to release people who posed no danger to the community and were likely to appear in court.

Besides placing nonviolent asylum seekers in prison with felons, mandatory detention is costing the taxpayers millions of dollars to house legal immigrants while they await rulings. INS doesn't have the resources or space to detain all of these people.

The INS isn't happy about the new law. In a letter to The Herald, INS Commissioner Doris Meissner wrote: ``Releasing these individuals is the right thing to do. And allowing the government to consider relief from deportation for them, on a case-by-case basis, would permit the INS to use limited detention space to house not only dangerous criminal aliens but also to hold aliens such as gang members and alien smugglers whom the INS believes are a real threat to public safety."

The real answers to how the United States should deal with immigration won't be found in a law. Laws set guidelines and limits, but they cannot ensure compassion and humanity. It takes a person to dispense these things. A good start would be to restore some discretion to INS and immigration judges.

Please use your discretion, and let your representative and senators know that you want them to restore compassion and humanity to the law. Tell them to repeal the devastating, anti-immigrant laws of 1996.



Old crimes mean jail for legal immigrants

Some are challenging a 1996 law, aimed at dangerous felons, that has instead snared many minor offenders.

By Bill Douthat
Palm Beach Post Staff Writer

Two years ago, Ralph Richardson was a small businessman who coached his church soccer team and dreamed of turning his commercial cleaning firm in suburban Atlanta into a big success.

An unlucky convergence of a new immigration law, a weekend trip to Haiti and a 7-year-old cocaine-trafficking charge doomed the 33-year-old immigrant's plans. He's spent the last 20 months at the Krome Detention Center near Miami as a criminally tainted immigrant, awaiting deportation.

Richardson's luck could be changing. Converging in his favor are a growing dissent over the 1996 immigration law and a favorable June 1 ruling by the U.S. Supreme Court in his lawsuit, Richardson vs. the U.S. Immigration and Naturalization Service.

The ruling — which private immigration lawyers say promises relief for thousands of detained immigrants — ordered the 11th U.S. Circuit Court of Appeals in Atlanta to consider Richardson's claim that his indefinite detention violates the U.S. Constitution.

"I'm not out to be a celebrity," said Richardson, whose name is now known to civil rights lawyers and jailed immigrants across the country. "I just want to go home to my family. I want to be free."

Private immigration attorneys say the 1996 law's intent — to deport dangerous felons as they leave prison — entraps legal residents whose crimes, including some misdemeanors, were committed years ago. Some longtime legal residents are caught as they file for U.S. citizenship. Richard-

son was arrested in 1997 when he was passing through Miami International Airport after a two-day trip to Haiti with his mother.

Disenchantment with the law even extends to the immigration service, which has watched the number of detained immigrants double to 16,400 since the law's passage.

At Krome, 327 of the detention center's 501 beds are taken up by immigrants detained because of crimes in their past. The rest are immigrants caught sneaking into the country or working illegally.

"Frankly, we don't have the space to detain every petty criminal alien who committed a crime 20 years ago and has since turned his life around," said one high-ranking INS official who asked not to be named. "We are just following the law."

Constitutional issues

U.S. Justice Department attorneys representing the INS seemed to be arguing for the other side. They sided with Richardson, saying the constitutional issues raised should be reviewed.

The 1996 law lowered the threshold of crimes prompting deportation. Instead of the "aggravated felon" definition previously used, anyone convicted of a crime carrying a sentence of one year or more was subject to detention and deportation. The previous threshold was a five-year sentence.

"In some cases, the immigrant faces a virtual life sentence years after the commission of an often relatively minor offense," said Cheryl Little, director of the Florida Immigrant Advocacy Center in Miami. The law, which requires detention until deportation, makes "lifers" out of immigrants from Cuba, Vietnam and other countries that won't accept them back, she said.

The 1996 law also bars immigrants from challenging their detention in court, the issue raised by Richardson.

That violates their constitutional rights, says attorney Joan Friedland, Little's colleague at the advocacy center.

"It's a fundamental principle in this country that you have access to the courts to challenge government decisions," Friedland said.

Not a repeat offender

Richardson claims the INS refuses to recognize that he has lived a crime-free life since his 1990 conviction in Pensacola for possession of 1 pound of crack cocaine. He pleaded no contest to the felony and served 2½ years in prison.

The Supreme Court's ruling in Richardson's case is significant, but it might be muted because many immigrants cannot afford to hire attorneys to fight their detentions, Friedland said.

Richardson is being represented at no cost by Ira Kurzban, a Miami attorney known for his advocacy of immigrant rights.

While waiting for a ruling from the Atlanta appeals court, Kurzban is fighting in INS administrative courts for his client's right to be free on bond while challenging his deportation. An immigration judge in Miami last week said Richardson can petition to cancel his deportation.

"They are still taking a position that he's not eligible for release," Kurzban said. "Our position is that he should have never been detained in the first place."

West Palm Beach attorney Stuart Karden is fighting a similar battle for his client, Jamaican-born Sanguintti McHugh, 47, who was taken into custody in September on a 1993 marijuana possession charge.

McHugh, a West Palm Beach carpenter, pleaded guilty and served 42 days in jail in St. Lucie County. Even though a finding of guilt was withheld, the 1996 immigration law made the plea a deportable offense, Karden said.

While McHugh sits in an immigration jail in Louisiana, Karden is seeking bond for his client and trying to withdraw the 1993 plea, saying the judge never told McHugh that he could be deported.

Softening harsh sanctions

The Richardson case might be the legal breakthrough, but the INS and Congress also are taking steps to soften the harsh sanctions of the 1996 law.

After a 47-day hunger strike by relatives of Krome detainees ended in May, INS Commissioner Doris Meissner announced that all long-term detainees in the country would have their cases reviewed to see if any are eligible for release.

Since then, six from Krome have been freed, including five relatives of the hunger strikers. The sixth was an Ethiopian Jew, Lugseged Dhine, who had been held for nine years.

"There are thousands of non-violent, first-time offenders who deserve to be reviewed," Dhine said last week from his home in Arizona. "The law was not designed for these kind of people."

Senators jump on bandwagon

Some senators are trying to change the law. Earlier this year, U.S. Sen. Daniel Moynihan, D-N.Y., proposed restoring court review, providing court-appointed attorneys for immigrants challenging detention and allowing immigrants with criminal punishments of less than five years to petition for cancellation of deportation.

U.S. Sen. Bob Graham, D-Fla., supports those amendments, which are now being considered by a Senate subcommittee. Graham met last week with INS officials in Miami to encourage releasing nonviolent detainees. INS officials are considering an alternative that would place some in halfway houses or other rehabilitative programs.

Graham, one of three senators to vote against the 1996 act, said the "one size fits all" treatment of ex-offender immigrants is wrong. Those who cannot be deported to their native countries "receive the same sentence — life imprisonment — without regard to the seriousness of their crime," Graham explained.

Richardson says so far his battle is being won in small steps. On Thursday, INS detention officials allowed him to trade his red jumpsuit — the color worn by aggravated felons — to orange. Soon, he hopes to be reunited with his wife and three children in Norcross outside of Atlanta.

"I'm praying that that will happen soon," he said. "But, like everything with INS, it's unpredictable."

(over)

Look at INS prisoners for U.S. version of refugee tragedies

By LLEWELYN PRITCHARD

The refugee tragedy in Kosovo has alarmed and outraged many Washingtonians. The detention of people, separation of families, relocation of loved ones — how can such atrocities happen?

Similar activities are being carried out here in America every day by our own Immigration and Naturalization Service. The cliché, "If you can't do the time, don't do the crime," may be good advice and fair enough if the punishment fits the crime, but the INS has decided that for some folks, the appropriate punishment for even non-violent crimes is whatever sentence the judge imposes, plus life.

Four thousand administrative detainees not serving criminal sentences, but nevertheless languishing behind bars, are being held hostage to dysfunctional diplomatic relations because their native countries won't take them back and the INS won't release them.

Consider the case of Ukrainian-born Anatoly Biruk, who moved with his parents to the Seattle area in 1990.

In 1995, he was convicted of federal charges of interstate transportation of stolen vehicles. After he served a year in Arizona in federal custody, the INS released him when he paid a bond and promised to appear at future deportation hearings.

Biruk returned to Seattle, where he lived and worked quietly, following all his bond conditions. Then he was ordered deported. However, because Biruk is stateless and because Ukraine and Russia stubbornly deny he is their citizen, and the INS is equally stubborn in refusing to set bond, he sits in the INS facility at Sea-Tac, a prisoner of bureaucratic bullheadedness.

Currently the INS holds 16,000 administrative detainees at an annual cost of \$80 million and with strict new immigration laws, the INS has the fastest growing prison population of any federal agency. Even the INS admits it has a problem.

"There's no possible way we can detain all these people — nor should we," INS Commissioner Doris Meissner recently said.

The law recognizes this and requires the INS to review

cases of all detainees who have not been removed within 90 days of receiving final deportation orders and release on bond all those who are not a threat to society.

Sounds simple, but in some INS districts, reviews don't occur at all, while the reviews in other districts have amounted to nothing more than leafing through the detainee's file before applying a rubber-stamp denial.

Biruk is a good example of someone who should be released. He has a close and loving family living here who will provide food, housing and employment. He's proved he can stay out of trouble. He did not abscond when the INS earlier released him on bond. And his only conviction is for a non-violent crime.

Nevertheless, the INS has him locked up indefinitely.

INS District Director Richard Smith maintains that "the continued detention of Biruk is in the public interest because he is a threat to the safety of property." Keeping Biruk locked up for life because of a past mistake, for which he already has completed his punishment, offends our basic American notions of justice. Since when did a property crime result in a life sentence?

The INS must take steps to ensure that reviews are conducted in accordance with legally enforceable regulations. Detainees and their representatives must have the opportunity to sit down face-to-face with an independent decision maker and present evidence of community ties and support, hardship to the detainees and family members, and rehabilitation, if relevant. The INS must have the burden of proving with credible evidence that the detainee is a threat to society.

A fundamental concept of justice is that wrongdoers are required to pay their debt to society. But society must also ensure the punishment fits the crime. Indefinite detention must be abolished.

We have reason to be outraged by the tragedies in Kosovo. We should be even more outraged about injustice within our own state and country.

■ Llewelyn Pritchard is a Seattle lawyer and a past governor of the Washington State Bar. He is chairman of the Advisory Committee for the American Bar Association Immigration Pro Bono Development and Bar Activation Project.

NEWS

Immigrants Find Relief in Ruling Dissent Grows Over '96 Law

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The Daily Oklahoman

CITY

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WEST PALM BEACH, Fla. - Two years ago, Ralph Richardson was a small businessman who coached his church soccer team and dreamed of turning his commercial cleaning firm in suburban Atlanta into a big success.

An unlucky convergence of a new immigration law, a weekend trip to Haiti and a 7-year-old cocaine-trafficking charge doomed the 33-year-old immigrant's plans. He's spent the last 20 months at Krome Detention Center near Miami, Fla., as a criminally tainted immigrant, awaiting deportation.

Richardson's luck could be changing. Converging in his favor are a growing dissent over the 1996 immigration law and a favorable June 1 ruling by the U.S. Supreme Court in his lawsuit, Richardson vs. the U.S. Immigration and Naturalization Service.

The ruling - which private immigration lawyers say promises relief for thousands of detained immigrants - ordered the 11th U.S. Circuit Court of Appeals in Atlanta to consider Richardson's claim that his indefinite detention violates the U.S. Constitution.

Renato Rosetti, a Blackwell, OK, farmer, has been fighting the same law. He was not detained, but he filed a lawsuit to stop deportation for possessing a half-gram of heroin nearly 20 years ago in Italy.

The law threatened to divide him from his American wife and two American sons. While U.S. District Judge Ralph Thompson criticized the law and urged leniency in Rosetti's case, he couldn't stop it from being enforced.

But Sen. Don Nickles, R-Ponca City, sponsored a private Senate bill last month that protects Rosetti from deportation.

Private immigration attorneys say the 1996 law's intent - to deport dangerous felons as they leave prison - entraps legal residents whose crimes, including some misdemeanors, were committed years ago. Some longtime legal residents are caught as they file for U.S. citizenship. Richardson was arrested in 1997 when he was passing through Miami International Airport after a two-day trip to Haiti with his mother.

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The 1996 law also is controversial because it bars immigrants from challenging their detention in court, the issue raised by Richardson.

Richardson is being represented at no cost by Ira Kurzban, a Miami attorney widely known for his advocacy of immigrant rights.

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Immigration anguish: Man stuck in Mexico

BY KEN MCLAUGHLIN

Manuel Fernandez had a choice. He could follow his heart. Or he could follow the letter of U.S. immigration law.

Because he chose his heart and rushed to Mexico to see his dying father, Fernandez, an award-winning tennis pro who teaches hundreds of Bay Area kids, is now stranded in Guadalajara.

Without his wife. Without his successful career. Without any certainty about returning to Santa Clara anytime soon.

Fernandez's case highlights one of the many vagaries of immigration law: Leaving the United States for a family emergency can immediately change your immigration status. And, no matter how good the reason, there's no guarantee that Immigration and Naturalization Service officials will let you back into the country.

"You are abandoning your application for adjustment of status once you leave," explained Sharon Rummery, spokeswoman for the INS regional office in San Francisco.

Fernandez's nightmare began on April 21, when his mother called from Mexico to tell him his 69-year-old father was gravely ill and that he needed to come to Guadalajara immediately.

Waiting for green card

But there was one huge problem. Although he had always strictly adhered to immigration laws and is married to an American citizen, Fernandez had yet to receive his green card after nearly a two-year wait. That meant he was not allowed to travel outside the country without the approval of immigration officials.

"My mom told me I would probably not see my dad again if I didn't come," Fernandez, 28, said in a phone interview from Guadalajara. "No matter what, I had to go. My dad was my best friend."

Despite the bureaucratic hurdles in Fernandez's way, Rummery indicated Friday that Bay Area INS officials are sympathetic and are trying to come up with a solution to help him find his way home.

Fernandez would not be in the spot he's in today if he had obtained what the INS calls "advance parole." Essentially, it's a permission slip that allows non-permanent residents to return to the country from which they came.

But Fernandez did not receive the call from his mother until about 1:30 p.m., when he was at the San Francisco Tennis Club giving lessons. He

immediately called his lawyer, Charlie Sutton, who prepared the INS documents while Fernandez raced down to Sutton's Sunnyvale office.

It was too late, however, because San Jose's INS office had closed at 3 p.m.

So Fernandez's wife, Lori, called the immigration office at San Francisco International Airport. An officer there told her there would be no problem if her husband showed U.S. immigration officers in Mexico a copy of his father's death certificate.

"I was told not to worry, that this was something that happened all the time," said Lori, 23.

Manuel's father, who had taught him how to play tennis, died of an apparent heart attack before he and Lori arrived in Guadalajara on the morning of April 22. After the funeral, the Fernandezes entered an immigration Twilight Zone of poor timing, bad advice and bureaucratic pingpong.

U.S. Consulate officials in Guadalajara advised the couple to head to the embassy in Mexico City or the border in Tijuana. After the Fernandezes took an eight-hour bus ride to the capital, embassy officials told them that it would take one to three months to get the necessary paperwork approved -- assuming it was approved. They suggested the couple head to Tijuana.

In Tijuana, a friendly officer assured Manuel Fernandez that the office routinely issued "humanitarian parole" in such cases. Don't worry, he said.

The next morning, though, an INS officer in the Special Cases Office told Fernandez that he needed to get the humanitarian parole from the office handling his green card application. So Sutton, his attorney, went to the San

Jose INS office, only to learn that humanitarian parole was issued at the San Francisco district office. But, an official in San Jose warned Sutton, it was nearly impossible to get.

The news meant that Lori, an honors student studying nutrition at San Jose State University, and her parents, Jim and Kathleen Buckmaster, had to drive back to Santa Clara while the tennis pro flew back to Guadalajara.

"It broke my heart"

"It seemed that all my dreams and years of hard work were suddenly gone," Fernandez said. "Everyone was crying so hard. Lori was going north. I was going south. It broke my heart."

As soon as they returned to the Santa Clara home Lori and Manuel shared with her parents, the Buckmasters went to the San Francisco INS office. The visit, said Kathleen Buckmaster, "made me lose faith in America."

One INS clerk would not accept the death certificate of Fernandez's father because it was in Spanish, rudely telling Jim Buckmaster to send it back to Guadalajara to get it translated, the Buckmasters said.

Lori, a lifelong resident of Santa Clara, had met her husband while on vacation in Cabo San Lucas in August 1996. They got married in Santa Clara in July 1997.

Fernandez, who came here on a tourist visa, went to the San Jose INS office to get a work permit while he applied for permanent residency. Because of a severe paperwork backlog at the office, he's still waiting for his green card. He had been hoping to get the required INS interview this summer.

In the meantime, Fernandez's career as a tennis pro took off like a Mark

Philippoussis serve. When Fernandez was forced to leave for Mexico, he was teaching 60 or 70 hours a week. In addition to working for the city of San Jose and the San Francisco Tennis Club, he also gave private and semiprivate lessons.

Laura Hardy, the tennis program coordinator for San Jose's parks and recreation department, said Fernandez is great with children and normally teaches about 100 of them during the summer at Paul Moore Park.

``It's been kind of crazy -- a lot of upset parents and kids, Hardy said. ``They really miss him. They just don't understand what the problem is."

Weston Reese, master professional at the San Francisco Tennis Club, had recently nominated Fernandez to be the United States Professional Tennis Association's rookie pro of the year in Northern California. He won the award and was scheduled to receive it on April 24.

``He's a wonderful tennis pro," Reese said. ``He's charismatic and motivates people, yet puts them at ease. Unfortunately, now we're at the point where we may have to replace him."

Colleen Yaccarine of Almaden Valley, her 9-year-old daughter, Alexandra, and her 6-year-old son, Jared, all take lessons from Fernandez.

``My daughter is really upset," Yaccarine said. ``She keeps saying, 'Mommy, can we just take the papers and bring it to him so he can come home?' "

Rep. Zoe Lofgren, D-San Jose, who has written a letter to the INS on Fernandez's behalf, said Friday that she hopes the agency makes an extra effort to help him. ``There's no benefit to America or to his wife or his

students to keep him in Mexico," she said.

Said Fernandez: ``I feel frustrated, angry and really sad. But if I had to make the decision again, I'd do it exactly the same way."

Fair Treatment for Legal Immigrants

When Congress makes a mistake that inflicts undue hurt on individuals and their families, it has a duty to correct the injustice.

Harsh deportation rules adopted in 1996 condemn many productive legal residents to automatic expulsion based on low-level offenses they committed long ago, and for which they have paid their debt to society. The problem arises because Congress failed to draw a distinction between immigrants who committed murder, rape and other serious crimes worthy of deportation and those who committed a minor theft or were found in possession of a small quantity of drugs. Hundreds of longtime legal residents with minor offenses have been abruptly wrenched from their families and sent back to their birth countries.

A corrective measure sponsored by Representatives Barney Frank of Massachusetts and Martin Frost of Texas, both Democrats, and Lincoln Diaz-Balart of Florida, a Republican, would restore judicial discretion and due process rights that Congress unwisely obliterated three years ago. Meanwhile, Attorney General Janet Reno should provide some immediate relief by allowing waivers in cases already pending when the law went into effect.

On a related issue, Congress has not fully corrected the unfair treatment of legal immigrants under the 1996 welfare reform law. The welfare law was primarily intended to move welfare recipients to work. But it exacted a much harsher, unjust toll on legal immigrants. It declared them ineligible for many kinds of cash and nutritional aid, even though legal immigrants pay taxes to support safety-net programs like everyone else.

Since then Congress has scaled back some of the most drastic cuts to immigrant children and the disabled, but not enough. A new bill sponsored by Senator Daniel Patrick Moynihan would fully restore Supplemental Security Income assistance and food stamp benefits to all eligible immigrants who were in this country legally prior to welfare reform, and would restore S.S.I. eligibility to those who have come after 1996 if they become disabled. It would also allow states to enroll immigrant children in the new Child Health Insurance Program and provide Medicaid coverage to pregnant women and children whenever they arrive. The cost of the Moynihan proposal would be about \$2.7 billion over five years. That is a small price to restore basic fairness to immigrants who are a vital part of this society.

Deportations for Petty Crimes

I write in response to the article by William Branigin and Gabriel Escobar about the Immigration and Naturalization Service's deportations of criminals [front page, April 12].

As a social service agency that works with immigrants and refugees, Lutheran Social Services has seen the effect that the harsh new law and policy on deportation of immigrants with criminal convictions has had on immigrant families in the Washington area. Refugees, legal permanent residents and those who have been granted asylum have seen family members deported, sometimes to countries where they fear persecution, because of criminal offenses that are sometimes minor.

For example, a Lutheran Social Services client, a divorced mother of three children, is now in jail waiting to be deported to a war-torn African country where she fears arrest and torture for her political beliefs. Her crime? Shoplifting. She pled guilty to shoplifting several years ago and was given a one-year suspended sentence. Under the new immigration law, a one-year sentence for theft, even a suspended sentence, is a crime considered serious enough to require automatic detention and eventual deportation, with almost no provision for relief

Meanwhile, one of her children lives in foster care and visits her mother once every week for the half-hour of visiting time that the jail allows; the other children live with their father.

While this woman is in jail awaiting deportation, thousands of aliens who do pose a danger to the community remain free, because INS does not have the resources to detain and deport them all. Who bears the blame for this? The Clinton administration blames Congress, and Congress blames the administration and INS. In reality, all three bear some responsibility: Congress for passing immigration laws that are too harsh to families and too difficult to enforce; the Clinton administration for interpreting these laws in the harshest way possible; and INS for failing to set sensible priorities in administering the law.

Congress, the administration and the INS need to stop blaming one another to make political points and to start looking in a rational way at the issue of deportation of aliens with criminal convictions. As a nation, we need to balance our need to maintain public safety with our desire to protect refugees and keep families together. Only when all parties look at this issue rationally

and fairly can we have an effective policy on the removal of aliens with criminal convictions.

CHRISTOPHER J. EINGORF
Asylum Advocate
Lutheran Social Services
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El rostro humano de la nueva ley de inmigración

By Jose Pertierra

Washington — El Servicio de Inmigración (INS) quiere deportar al padre de Gloria Salas. Por eso, ella viajó a Washington, DC, esta semana desde El Paso, Texas, para decirle al Congreso que eso no es justo. El papá de Gloria ha sido residente permanente de Estados Unidos desde hace 28 años. Está preso y a punto de ser deportado porque ya fue condenado por tercera vez, acusado de manejar ebrio.

Gloria no tiene mucho dinero y pensó que no iba a poder pagar un viaje a Washington. Dice que nunca ha visitado el Congreso y que mucho menos ha conversado con congresistas. Pero teme que, si no lo hace, el INS deportará a su padre dentro de poco. "La nueva ley de inmigración no es justa", dice Gloria, "porque ¿cómo es posible que deporten a mi padre sin tomar en cuenta que él es un hombre trabajador, que ya no bebe, que su esposa y sus cuatro hijos son ciudadanos estadounidenses?"

Decenas de familiares estadounidenses de inmigrantes que han cumplido sus sentencias pero que están en peligro de ser deportados llegaron de todas partes del país a Washington esta semana para pedirle al Congreso que revise y cambie la nueva ley de inmigración. Pertenecen a una organización llamada Citizens and Immigrants for Equal Justice (CIEJ), que fue fundada el año pasado con el propósito de darles un rostro humano a las consecuencias nefastas de la ley. "Los congresistas no pueden esconderse detrás de leyes abstractas cuando se les demuestra que los padres son separados de sus hijos estadounidenses", les dijo Judy Golub, del American Immigration Lawyers Association a los familiares de los presos.

Tina Estrada, de 36 años, vino a Washington, DC, desde Minnesota para contarle al Congreso sobre la tragedia que ha vivido desde que el INS detuvo a su esposo, Héctor. Ellos tienen dos hijos: Sophia de 12 y Nathan de 5 años. Los tres nacieron en Minnesota, pero Héctor nació en Guatemala y es solamente residente permanente. Hace dos años lo sentenciaron por tener cocaína. "Se convirtió en un adicto", dice Tina, "y ahora, a pesar de que no toma drogas y que ha completado los cursos del GED (el bachillerato) en la prisión, y que su esposa y sus hijos son ciudadanos de EU, el INS lo deportará sin ni siquiera darle una oportunidad para demostrar que se ha rehabilitado".

El senador Rod Grams de Minnesota le dijo a Tina que no viniera a Washington. "Me dijo que no perdiera mi tiempo, porque el Congreso no iba a cambiar las leyes", dijo ella, "pero aquí estoy. No sé qué otra cosa hacer para ayudar a mi esposo". A pesar del pesimismo de su senador, ella piensa que el Congreso cambiará de opinión cuando la escuche y la vea en persona a ella y a sus dos hijos: "No creo que este país sea tan cruel que divida a nuestra familia. Quiero que cambie la ley para darnos la oportunidad de contarle el caso a un juez de inmigración, algo que la nueva ley de inmigración no nos permite hacer".

Quizás sus deseos estén a punto de realizarse. El congresista Barney Frank, demócrata de Massachusetts, presentará durante los próximos días un proyecto de ley para rectificar algunos de los excesos de la nueva ley de inmigración. Específicamente, el proyecto del congresista Frank le daría potestad a los jueces de inmigración para perdonar la deportación de las personas que ha sido residentes permanentes de EU por más de cinco años, con tal de que quede demostrado que la persona ha sido rehabilitada y que merece (por sus cualidades especiales y por la extrema penuria que sufrirían sus parientes estadounidenses) quedarse en EU como residente permanente. "A pesar de que mi esposo hizo algo malo", dice Tina Estrada, "él no es malo. Es un esposo y un padre muy cariñoso, y estoy segura de que si nos dan la oportunidad de demostrárselo a un juez de inmigración, no lo deportarán".

Time is running out for immigrants

**Group lobbies Congress for immigration law
changes so they can stay with their families.**

04/18/99

**By CHRISTIAN D. BERG
Of The Morning Call**

WASHINGTON -- Dusk was quickly giving way to night Tuesday as about 15 people emerged from the South Capitol Metro station and scurried down C Street.

The group quickened its pace as the last few rays of daylight cast a purple glow around the Capitol dome and the street lamps shone into the darkness creeping in around them.

With only five minutes left before the doors to the Rayburn House Office Building would be locked until morning, a sense of urgency emerged.

Time was running out.

But for this group, made up of immigrants and their families, the clock is always ticking.

Most of the immigrants face deportation for past crimes, some committed more than a decade before the law requiring their removal was enacted.

For family members who live each day under a cloud of uncertainty -- not knowing how long their husbands and wives, mothers and fathers,

sisters and brothers will be allowed to remain in the country — the situation is heart-wrenching.

More than 60 of these immigrant families from 13 states, including two Lehigh Valley couples, walked the marble-floored halls of Congress last week, hoping their stories would persuade lawmakers to repeal laws that could tear their families apart.

"They're the only ones we can turn to," said Steve Dee of Salisbury Township, whose Canadian wife, Gabriella, was ordered deported for helping an Israeli boyfriend sneak across the U.S.-Canada border in 1985.

The three-day lobbying effort, which began Tuesday and ended Thursday, was organized by Citizens and Immigrants for Equal Justice, a nationwide coalition of more than 350 families adversely impacted by federal immigration laws.

The coalition opposes a variety of federal immigration policies, but its most vehement opposition is reserved for two laws Congress passed in 1996 -- the Illegal Immigration Reform and Immigrant Responsibility Act and the Effective Death Penalty Act.

According to the American Immigration Lawyers Association, some of the laws' harshest provisions are:

Mandatory detention and deportation for many criminal aliens. According to the Immigration and Naturalization Service, the number of criminal aliens in detention has quadrupled since 1994 to 14,500. And the number of immigrants deported has doubled since 1993, reaching 56,100 last year.

Retroactive application of the laws to immigrants who committed crimes and paid penalties prior to their enactment. The U.S. Constitution forbids retroactive laws, but courts have ruled that does not apply in certain civil proceedings, including immigration cases.

Elimination of judicial review, stripping the courts of their authority to review INS decisions.

Expansion of the definition of aggravated felony to include such minor crimes as shoplifting and writing bad checks. In 1988, only murder, drug trafficking and firearms trafficking were considered aggravated felonies.

Deportation based on secret evidence.

Using their stories to illustrate the impact of the law on people's lives, coalition members spent their time in Washington pleading with Senate and House members and legislative aides to eliminate retroactivity and mandatory detention, give immigration judges discretion to decide who can stay and create a waiver process by which American citizens hurt by immigration policy can get relief.

Gabriella Dee has lived in the United States since 1989. She holds a doctorate from Lehigh University, is active in community organizations and, aside from her 1985 alien-smuggling conviction, has been in no other trouble.

She was fined only \$25 for her crime, but changes to the law in 1990 and 1996 made her crime a felony, then an aggravated felony, and made her a deportable alien.

INS initiated deportation proceedings against her in 1996 after she applied for permanent residency to remain with her husband, Steve, who is a U.S. citizen. She hasn't been able to work or leave the country since, forcing her to give up a teaching position at Lehigh University and miss the funerals of both her grandparents in Montreal.

A federal judge ordered her deported in February 1998, but the Dees have appealed to the Immigration Board of Appeals, the country's highest immigration tribunal. The appeal has been pending for more than a year and could drag on for another year before a decision is made.

If she loses, Steve Dee must decide whether to move to Canada with his wife or remain in the Lehigh Valley with his two children. Or, he said, he could use his retirement savings to pursue another appeal in federal court.

"We need it if we have to move to Canada," Steve said. "But you've got to spend it to fight for a chance to stay. Because there's no guarantee of how this is going to turn out, it does feel like we're gambling with the future."

Cases such as the Dees' have not gone unnoticed by the government, and INS Commissioner Doris Meissner last month wrote a column in the Dallas Morning News newspaper in which she said the 1996 immigration laws went too far.

"The immigration service is seeing a growing number of permanent residents who were convicted of non-violent offenses decades ago, but who, under the 1996 reforms, must be detained and removed from the country," Meissner wrote.

"Releasing these individuals pending their hearings is the right thing to do, and allowing the government to consider relief from deportation for them, on a case-by-case basis, would avoid unjust, harsh results.

"Justice is more than words in a statute or a deportation order. It is doing what is right and fair for each and every person."

Despite Meissner's views, INS spokesman Carl Rusnock said he's aware of no effort by the agency to lobby Congress for changes. Until those changes are made, Rusnock said, the laws will be enforced the same way they are now.

For coalition members, who spent three days lobbying more than 60

Congressmen and picked up only a handful of their constituents' help, that's a tough pill to swallow. The longer it takes, coalition members say, the more families will be hurt.

For example, the INS has detained the brother of Ayan Valdes of Grand Rapids, Mich., for the past six months at

a maximum security prison in Illinois because of a 1994 drug conviction.

Al Valdes, a Cuban immigrant, completed his criminal prison sentence in Wisconsin last October, but on the day he was scheduled to be released, INS agents came to the prison, placed him shackles and transferred him to a detention center outside Chicago.

Because of an immigration policy that requires criminal aliens to be detained and deported, he has remained behind bars since.

And because the United States has no official relations with Cuba, the INS cannot deport Al Valdes, which means he will remain in prison indefinitely, with no avenue for legal remedy.

"Cuba won't take him back and the U.S. can't get rid of him," Ayan Valdes said. "So they keep him in a cell."

Ayan Valdes, who hoped his Washington visit would garner support for his imprisoned brother, said he was disappointed by the lack of commitment made by an aide for his congressman, Rep. Vernon Elders, R-Mich.

"It's politics," he said. "It's a lot different from my world, where when something needs to be done, you get it done."

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Tough deportation law derails hard-earned life for immigrant

By Robert Rudolph
STAR-LEDGER STAFF

Jose Velasquez came to the United States as a teenager nearly 40 years ago. He married his high school sweetheart, raised three children and put in 80-hour weeks at a small neighborhood deli to build a life for himself and his family.

But 20 years ago, at a party, someone asked Jose Velasquez about cocaine. According to court accounts, Velasquez, who admits he used the drug himself at the time, said he couldn't provide it, but pointed the individual to another guest.

As a consequence of that action, Velasquez was charged with a drug conspiracy offense and pleaded guilty. He was fined \$5,000 and placed on probation.

It was his only brush with the law.

Now, decades later, the U.S. government wants to use that incident to have Velasquez deported.

The reason: A law passed in 1996, which INS officials claim gives them the authority to arrest, detain and de-

port aliens with criminal records, regardless of how long ago the violations took place or the circumstances of the crimes.

Velasquez was taken into custody by the INS shortly before Christmas — after he returned to Newark International Airport

following a brief visit with his ailing 71-year-old mother in Panama. He has been kept prisoner, without bail, in the Hudson County Correctional Center in Kearny for the past four months.

"This is a savage act of random cruelty," charged Velasquez's attorney Thomas Moseley. "It really makes no sense."

"We're still shocked, we're still horrified — we're angry," said his son, Edward Velasquez.

Immigration experts say the Velasquez case is only the most recent example of the way INS laws can be abused. The law under which he was arrested and held, experts say, was originally designed to make it easier for the INS to remove aliens with serious criminal records and as a way of expelling suspected terrorists.

But INS officials in New Jersey, Moseley said, "seem to be pursuing this (law) with a vengeance."

U.S. District Judge Maryanne Trump Barry, after reviewing the record of the case, was clearly sympathetic to Velasquez and his plight during a hearing in federal court in Newark this week. She called the government's position in the matter "scary."

"This man had led an exemplary life for 40 years," she said.

Referring to the drug conviction, Barry expressed skepticism over the severity of the offense: "I've seen drug trafficking," she said, "and this is not drug trafficking."

Barry said she will issue a formal opinion in the case within the next several days, but at the same time ordered that the INS give Velasquez a bail hearing within 10 days.

"I can't imagine a more persuasive case for a bond (release)," the judge said.

Denis Johnston, director of New Jersey's Immigrant Rights Program of the American Friends Service Committee, said the heavy-handed application of the law is threatening to "break up families" by forcing a husband or wife to leave the country while their spouse and children remain behind.

"It's a terrible law, it went way too far," said Johnston.

Dan Kesselbrenner, director of the National Immigration Project of the National Lawyers' Guild, said thousands of persons with similar minor violations are now facing deportation.

The ACLU is among the organizations that have stepped into the fray to challenge the constitutionality of the law, which critics say strips subjects of their basic constitutional rights, and the organization has directly intervened on Velasquez's behalf.

One of the most notorious examples cited by the ACLU is the case of a 43-year-old Brooklyn man who was faced with deportation to the Dominican Republic because of an incident that took place when he was 19 years old. He had been convicted back then of contributing to the delinquency of a minor because he had sex with his

**"I can't
imagine a
more
persuasive
case for a
bond
(release)."**

— JUDGE
MARYANNE TRUMP
BARRY, on Velasquez
case

15-year-old girlfriend.

Some 24 years later, the INS sought to use that arrest in an attempt to have him detained and deported.

After a nationwide outcry that included speeches on the floor of the U.S. Senate, however, he was eventually freed and the deportation charges were dropped.

Kesselbrenner noted that until passage of the new law, law-abiding immigrants could have obtained "forgiveness waivers" from the INS courts for such minor past violations, but that the new legislation has taken that option away.

"There is an increasing awareness," he said, "that Congress went way too far."

Russ Bergeron, director of media relations for the INS in Washington, acknowledged that the law has produced "difficult and sometimes tragic circumstances" but maintained that the agency is hamstrung by the law itself.

"INS has not gone out and actively sought such cases," he stressed, but added that the agency "has a responsibility to enforce the law."

Bergeron said the agency had disagreed with a number of the key components of the law, including the mandatory detention requirements and said the INS had favored restricting application of the law to persons who had been sentenced to five or more years in prison.

The only way to cure the problem, he said, is for Congress to rewrite the law to restore greater authority to immigration judges and to give the agency greater discretion to waive the mandatory confinement requirements.

Although Velasquez, a resident of Aldan, Pa., was not present when Barry issued her ruling, he filed an affidavit with the court in which he called his situation a nightmare for both himself and his family.

"My wife and I have known each other since we were teenagers and have rarely been apart from each other," he said. "Before all this happened, we had just bought our first home and were hoping to spend time enjoying our life together in the new house."

The son of a member of the Panamanian diplomatic service, Velasquez came to the U.S. with his father as a teenager and stayed to attend high school in Philadelphia, where he met his wife-to-be. Today, Velasquez's wife is a U.S. citizen; his brother and sister, who were born in the Panama Canal Zone, are U.S. citizens. His mother is a U.S. citizen and his three children are U.S. citizens.

Although Velasquez himself never obtained citizenship status, he became a legal permanent resident in 1960. That status makes him eligible to work, serve in the military, and meet other obligations, such as paying taxes, but stops short of the full rights granted to a citizen.

Fighting Mandatory Deportation

Veterans Lead a New Charge



Ozler Muhammad/The New York Times

Ralph Hesselbach, Vietnam veteran and candidate for deportation in 1999 (left), and as a soldier at Ft. Benning, Ga., in 1967.

FEAR of crime and resentment against immigrants are perennial themes of American politics, and Congress touched both when it revised American policy toward legal residents in the mid-1990's. Non-citizens, even permanent residents, were made subject to deportation for a wide range of crimes that had previously been considered too minor. There was, at least according to immigration officials, no flexibility in deciding whom to deport.

The Draconian nature of the change brought immediate cries from civil libertarians and advocates for immigrants, but so far court challenges have had little effect.

Now a new tactic is being pursued, and last month it reached the floor of the Senate, where Senator Patrick Leahy, a Democrat

from Vermont, spoke on behalf of five legal residents who face deportation even though they have served in the United States military, some of them in combat.

"The zealousness of Congress and the White House to be tough on aliens has successfully snared permanent residents who have spilled their blood for our country," Senator Leahy said.

The five, and other veterans, have come forward as extreme examples of the law's inflexibility. Some earned medals fighting in Vietnam, and at least one is disabled as a result of service there. Through legal challenges and a campaign for public attention, they have targeted what they hope is the law's Achilles heel: its rigidity.

Can enforcement of the law stand up to public scrutiny in their cases? If it can't, will exceptions be made? And if that happens, they argue, wouldn't it undermine the notion of mandatory deportation without

exception?

Take, for example, the case of Rafael Ramirez, a 35-year-old New Yorker. Nine years after his honorable discharge from the Army as a sergeant, he faces deportation to the Dominican Republic. His offense: In 1990, just months after leaving the Army, he pleaded guilty to possessing marijuana.

Mr. Ramirez left the Dominican Republic 28 years ago, and today his life is in the United States. He has a home in Washington Heights, four children, a job and a small construction business. His Army record as a truck driver in Germany and the United States — he enlisted in 1984 and left six years later — is unblemished.

Immigration officials in Washington have been unmoved by such cases, aware that making an exception can demolish the principle behind its enforcement policies.

"There is nothing in the law that says if you are a veteran and a criminal you are

exempt from deportation," said Russell A. Bergeron, an Immigration and Naturalization Service spokesman in Washington. "It is inconceivable to me that someone who is willing to die to defend the Constitution of the United States can then turn around and violate it."

MR. RAMIREZ, of course, argues just the opposite: He says that when he enlisted, his superiors did not ask where he came from, and that his loyalty to the United States was assumed. His offense, he says, hardly amounts to an assault on the Constitution, and the fact that he was sentenced to five years probation and never went to prison proves the point.

The lawyers and veterans involved in the campaign don't argue against using criminal behavior as grounds to deport people who endanger American society. But they argue that the I.N.S. should only go after hardened criminals. Even these cases, they say, should be open to judicial review.

Immigration officials say they have no choice but to follow the mandate of Congress. In the past two years, 106,442 immigrants have been deported. But advocates for immigrants, their lawyers and some members of Congress insist that the immigration service distorts the law.

"Both Congress and the Administration want to wash their hands," said Lucas Gutentag, director of the Immigrants' Rights Project of the American Civil Liberties Union. "Both are responsible and, by neither one accepting responsibility, nothing gets changed."

What Congress did in 1995 and 1996 was to expand the definition of a felony and make all felonies and crimes of moral turpitude punishable by deportation. It stripped immi-

gration judges of the power to reverse deportation orders. The immigration service, for its part, chose to apply the law retroactively, although the law is not specific on that point. The agency has also chosen to go after all convicted immigrants.

"The law goes too far," said Laura Kozuba, who heads an anti-deportation group in Dallas. "We want to change it for all, but it seems particularly egregious to try to deport someone who has served this country." She is married to Danny Kozuba, a 46-year-old kitchen installer, who has been ordered deported. He came to the United States from Canada when he was 5 and was in the Army from 1970 to 1973. He has been convicted of possessing methamphetamines several times, the last in 1990, and spent three years in a Texas state prison.

Students at the Clinical Law Center at New York University School of Law, under the guidance of Prof. Nancy Morawetz, are focusing on several other veterans. One is Perry Gumbs, 35, of Newburgh, N.Y., who

was born in St. Kitts and served in a field artillery unit during the gulf war. In 1995, he was convicted of conspiracy to distribute cocaine and served a year in jail. Another is Ralph Hesselbach, who came to the United States from Germany when he was 11 and was disabled while serving in Vietnam. At 49, he is H.I.V. positive and has been convicted several times of possessing heroin.

Professor Morawetz said the L.N.S. could have chosen to leave Mr. Hesselbach and Mr. Gumbs alone. They are not in jail now, are not involved in crime and are not abusing drugs, she said.

"I don't see anything in the law that says that the L.N.S. doesn't have prosecutorial discretion," she said. "Where does it say that you have to deport everybody that you can deport? Why would you want to?"

Alien Criminals Get the Boot

DOJ claims courts can't review most deportation cases

BY JOHN GIBEAUT

Daniel Magana-Pizano was just 5 years old in 1977 when his parents brought him to the United States from his native Mexico.

Like the rest of his family, Magana-Pizano is a lawful permanent resident of the United States. He also has had some minor scrapes with the law. In 1995, he was convicted of a misdemeanor for being under the influence of drugs.

Now, Magana-Pizano is facing deportation because of that mistake. But he still can fight deportation in court, right? After all, a judge might be sympathetic to the former forklift operator's plight.

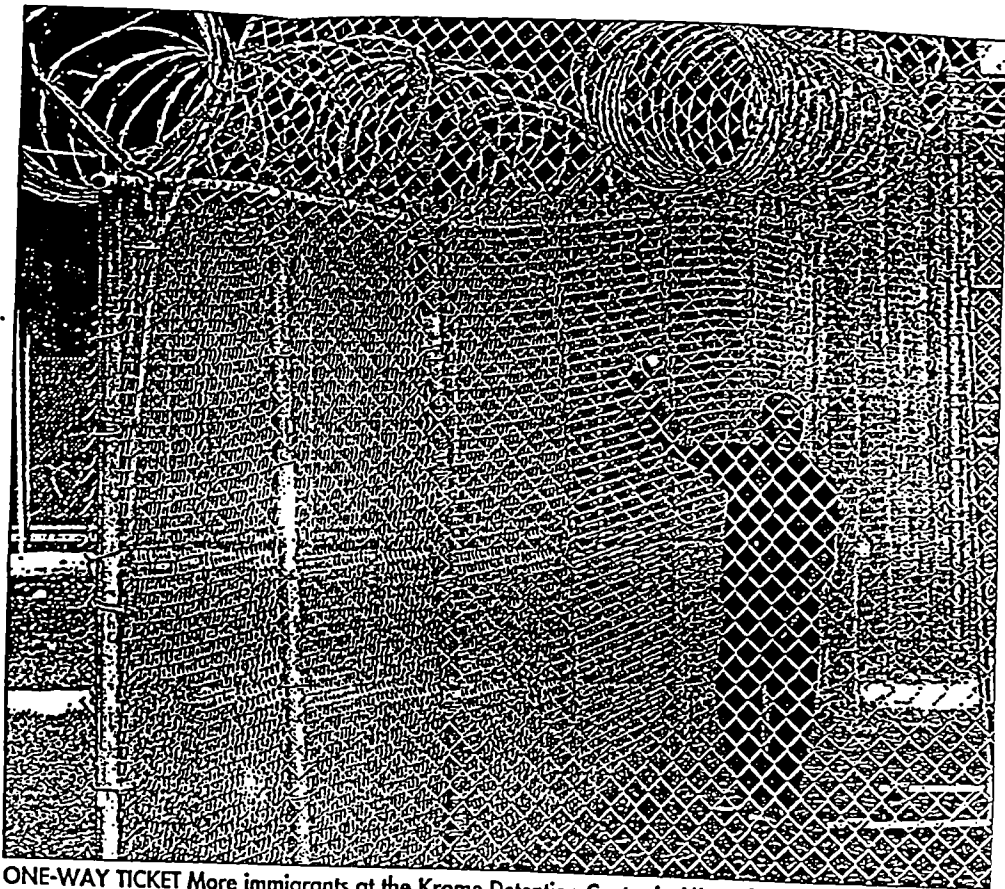
Wrong, says the Justice Department. It claims to hold sole control of Magana-Pizano's fate and that of thousands of other longtime legal resident aliens with criminal records.

Justice officials are using their interpretation of tough immigration laws Congress enacted in 1996 to round up and deport immigrants with criminal convictions—some going as far back as 20 years—and to deny them a day in court.

The policy has created a rift in the federal appellate courts. In Magana-Pizano's case, the 9th U.S. Circuit Court of Appeals in San Francisco ruled last September that aliens retained their right to judicial review of deportation orders under the new laws. *Magana-Pizano v. Immigration and Naturalization Service*, 152 F.3d 1213. Three other appeals courts took similar positions, while two sided with the government.

Robbing the courts of their authority to review cases raises constitutional issues of *Marbury v. Madison* proportion that critics say could affect other unpopular segments of society.

The U.S. Supreme Court in February issued a ruling in its first case dealing with the new immigra-



ONE-WAY TICKET More immigrants at the Krome Detention Center in Miami face deportation since the Justice Department made tough 1996 immigration laws retroactive.

tion laws, denying judicial review for some illegal aliens before administrative hearings run their course. *Reno v. American-Arab Anti-Discrimination Committee*, No. 97-1252. (See "Deportation Must Go On" at page 38.)

In early March, the Court ordered the 9th Circuit to reconsider *Magana-Pizano* in light of that decision, but let stand two other decisions where immigrants won.

It's not the first time Congress has attempted to strip the federal courts of their power to decide certain matters. Controversial issues like busing and abortion also have been targeted over the years.

"When it was busing, school desegregation and so on, there was this huge political battle, and the measures were defeated," says San Francisco lawyer Lucas Guttentag, director of the immigrant rights

project for the American Civil Liberties Union. The group has filed briefs in several of the cases, including Magana-Pizano's. "In 1996, Congress actually enacted these measures, and they targeted the most vulnerable groups," namely, immigrants and prisoners.

Playing Many Roles

Under the scheme in immigration cases, the Justice Department serves not only as judge, jury and executioner, but also as cop, prosecutor and appeals court.

The department oversees the Immigration and Naturalization Service, which is charged with policing the nation's borders and keeping track of aliens admitted into the country.

Deportation cases typically begin before immigration judges—administrative hearing officers who

work for Justice's Office of Immigration Review. The government usually is represented by an assistant U.S. attorney or a lawyer for the Office of Immigration Litigation, again a part of the Justice Department. An unsuccessful alien can take his or her case to the Board of Immigration Appeals, which also falls under the immigration review office.

Although the arrangement sounds cozy, at least two avenues to the courts were open before 1996 for aliens barred from entering the country or facing deportation.

An alien challenging a deportation order could ask a circuit court of appeals to directly review it. In addition, writs of habeas corpus provided alternative approaches for arriving aliens detained at the border or in custody awaiting deportation.

All that changed in 1996 with enactment of the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. The laws sought to give undesirable aliens the quick boot.

The legislation greatly expanded the list of crimes that can result in deportation to include relatively minor offenses, such as simple drug possession.

It also clamped down on ominous-sounding but vaguely defined "crimes of moral turpitude," making them grounds for deportation regardless of whether jail time is imposed.

"Turnstile jumping in the New York City subway system leading to a theft of services misdemeanor conviction is considered a crime of moral turpitude," observed U.S. District Judge Jack B. Weinstein in *Mojica v. Reno*, 970 F. Supp. 130 (E.D.N.Y. 1997).

The new laws also eliminated immigration judges' discretion to waive deportation for criminal aliens who demonstrated strong personal and family ties to the United States, good work records and evidence of rehabilitation.

The Justice Department claims that Congress cut the courts out of the loop and left the last word on deportation decisions to the attorney general. What's more, Attorney General Janet Reno in February 1997 reversed her own Board of Im-

migration Appeals and ordered the laws enforced retroactively, even in cases where immigration judges already had granted waivers. Reno claims the courts are powerless to second-guess her.

After Reno's decision, the number of criminal aliens kicked out of the country increased from 37,340 in 1996 to 56,139 in 1998. Deportations in all areas more than doubled for the same period.

"There are more people coming in than ever before, and there's less and less you can do for them,"

review violates the Constitution, which allows suspension of habeas only "in cases of rebellion or invasion." Other courts concurring with the immigrants have sidestepped the constitutional issue by holding that Congress never actually abolished habeas in the first place.

The government and circuits siding with it concede that the courts retain the authority to decide constitutional issues in habeas to avoid a "fundamental miscarriage of justice." But it's no small feat to determine where garden-variety injustices end and fundamental miscarriages begin.

"Nobody knows what the difference is," says New York Law School Professor Lenni B. Benson, who has worked on amicus briefs filed for aliens by almost two dozen academics. "We haven't had to know, because we've always had a statute."

Hearing First, Bail Later

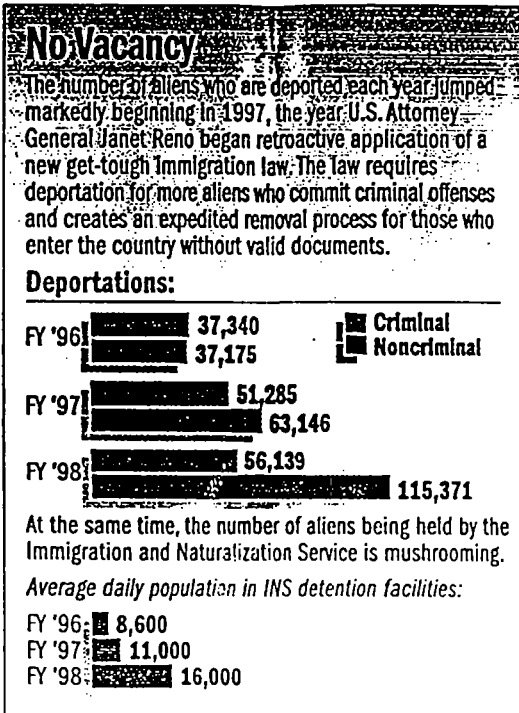
Sometimes even predominantly constitutional claims get short shrift. Consider Haitian-born Ralph Richardson, who has been sitting in Miami's Krome Detention Center for more than two years.

A permanent resident since 1968, Richardson says he pleaded guilty to cocaine trafficking in 1990 because he believed his family and business connections to the United States would earn him a waiver. His wife and three children are U.S. citizens, and he doesn't speak Creole, the Haitian language.

But first Richardson just wants to be released on bail. A district judge acting on a habeas petition ordered a bail hearing. But the 11th U.S. Circuit Court of Appeals in Atlanta told Richardson his bail request would not be considered until his case ended before immigration authorities. *Richardson v. Reno*, 162 F.3d 1338 (1998).

That's just dumb, say Richardson's lawyers. If he loses, he'll be shipped back to Haiti and won't need bail. "It's like a Kafka story," says Helena Marie Tetzeli, who is co-counsel with Kurzban.

Or maybe more like *Gilligan's Island Meets the Twilight Zone* for Richardson and thousands more facing deportation. ■



says Miami immigration lawyer Ira Kurzban.

Meanwhile, appeals courts began to agree that they no longer had the authority to directly review deportations. After all, Congress wields considerable power in immigration matters. But immigration lawyers were not about to allow Reno to get away with making the law retroactive. So they began filing habeas petitions in the district courts for review of her position.

Although habeas usually is associated with constitutional questions in criminal cases, the 210-year-old law used in the immigration cases also allows challenges on statutory grounds, such as Reno's reading of the new laws.

In Magana-Pizano's case, the 9th Circuit determined that the purported elimination of judicial

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Immigration laws creating climate of fear

By JO ANN ZUIGA
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The latest immigration and welfare laws go far beyond original intentions, creating a climate of fear among immigrants, the University of Houston Center for Immigration Research said Monday.

It studied 578 households of about 2,300 residents in El Paso, Hidalgo, Tarrant, Webb and Harris counties and 68 respondents in the Mexican border communities of Nuevo Laredo, Reynosa and Ciudad Juarez.

Interviewing Mexican-American U.S. citizens and immigrants, the study concluded that the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 inhumanely separated families and curtailed due process of law.

Co-directors and associate professors of sociology Nestor Rodriguez and Jacqueline Hagan said the breadwinners are usually deported, leaving families in financial straits.

"Were these new laws intended to create fear in mothers and children?" Rodriguez said.

"One byproduct of the new laws is a closer working relationship with law enforcement agencies and the standard of questioning many who look Latino, not just along the border, but on the street, at the bus stop, in restaurants and in schools."

Legal residents are also being deported because changes in the law consider driving while intoxicated convictions as felonies, said immigration attorney Nancy Falgout.

One of her clients fighting deportation is a legal resident and worker with several DWI convictions who is now a leader of his Alcoholics Anonymous group and in rehabilitation.

Law Without Mercy

Rep. Bill McCollum (R-Fla.) does not present himself as a man of self-doubts or second thoughts. On his Web site, he informs us that he "is considered the House of Representatives' foremost authority on crime." He has relentlessly pursued the president as a House impeachment manager. He has pushed resolutely for tougher crime and immigration laws.

So it's interesting to see McCollum, who represents Orlando and surrounding territory, pleading the case of a drug-using, check-kiting, parole-busting immigrant from Canada.

The immigrant was ordered deported under tough legislation McCollum backed in 1995 and 1996 that aimed to deport immigrants as quickly as possible, even for minor offenses. But this one deserves a break, McCollum says. And the fact that the immigrant's father is a Republican county treasurer in the congressman's district has nothing to do with his decision. "I feel great sympathy for his family's struggles," McCollum said on the House floor last month, introducing a "private bill" that was first reported on by the St. Petersburg Times.

Now, it would be easy to knock McCollum for hypocrisy, given that hundreds of immigrants with more compelling cases and fewer resources are being deported thanks to laws McCollum backed. It would be easy to dig up past statements ("By removing from our society those aliens who do not respect our laws, we make our streets safer for citizens and noncitizens alike") and to question why, if political connections were irrelevant, this is the only such bill McCollum has filed.

But McCollum told me he believes that the 1996 bill was, in key respects, "too harsh"—and that he will submit legislation to correct some of its unfairness. If that hints at a change of mood in Congress, then a major injustice may be corrected.

"It was pretty clear in 1996 that there were going to be a lot of terrible, sad stories—a lot of American families being torn up by this," says Carol Wolchok, an immigration expert at the American Bar Association. Those to be

affected were not illegal immigrants but lawful permanent residents of the United States who in many cases had lived here virtually all their lives.

Congress first widened the definition of deportable crimes from murder, rape and drug trafficking to encompass minor theft, possession of small quantities of drugs and other offenses punishable by a year in jail. Then Congress

One strike and you're out—unless you know someone.

removed judicial discretion. Whereas before an immigration judge or the attorney general could weigh many factors, including someone's rehabilitation, now there are no waivers and no mercy.

Finally, Congress made it all retroactive. The result: People who had been living peaceably in this country for decades, their long-ago offenses well-known and honestly disclosed to immigration authorities, suddenly became illegal, subject to mandatory detention and deportation. Unsuspecting legal immigrants in some cases showed up to apply for citizenship, only to be carted off to jail.

Gabriella Dee, 34, had tried in 1984 to smuggle her Israeli boyfriend from her Canada home into the United States. She was caught, fined \$25 and released. In subsequent years, she was granted U.S. student visas and work visas, having disclosed her past arrest. She married an American and became stepmother to his children. She won prizes and plaudits for her work as a college biology teacher, as the Morning Call of Allentown, Pa., recounted in a profile last year. But when she applied for permanent resident status, not knowing the rules had changed, she was put on the deportation list.

Ralph Richardson's mistake, at age 33, was to visit Haiti for the first time since he had left that country at age 2. Upon his return, he was detained at the airport because of a drug conviction

nine years ago. He has been in detention for 16 months, with no right to post bond, according to his lawyer, Ira Kurzban, though he is married to an American, has three young children and has—had—a small office-cleaning business in Atlanta.

Across the country, there are hundreds, probably thousands of such stories. A Vietnamese immigrant with an American husband and young American children faces deportation for forging a check nine years ago. A Texas kitchen installer who won his case in 1993 now faces deportation because the government's appeal was delayed for four years—by which time new rules applied. McCollum's constituent is just one more: a sad story of a kid on drugs, according to the congressman, who hurt no one but himself and his parents and wants another chance with his 2-year-old American son.

Doris Meissner, commissioner of the Immigration and Naturalization Service, says that 90 percent of the 160,000 people deported last year were illegal aliens, and that many of the rest are serious criminals who don't deserve to stay. But among the 16,000 legal residents deported, she says, are "some very sympathetic cases."

It was an insupportable accumulation in past years of "private bills" like McCollum's that originally prompted Congress to give the executive branch some discretion. In 1996 the Republicans complained that that discretion had been abused. Their remedy "went too far," Meissner says.

Now the administration supports "a very limited waiver authority, with very clear criteria," Meissner says. Sen. Daniel Patrick Moynihan already has introduced such a bill.

Will anything pass this year? Meissner says she isn't sure. It may take some time, she says, for the pendulum to swing back, as private bills again accumulate, pressures build and evidence of unfairness mounts. "In the meantime," she says, "a lot of people are being unnecessarily hurt."

The writer is a member of the editorial page staff.

Keep Your Tired, Your Poor



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](#)

a jumpsuit and taken by guards to a large room where dozens of other detainees milled around.

It was a Kafkaesque mirror of what he had just left behind.

"I thought when I got to this country, everything would be over, but it's still the same thing, what I went through in Nigeria," he says 13 months later, sitting in his khaki jumpsuit in a small interview room.

As automatic steel doors bang shut, he says, "I am in the same prison."

The Rule, Not the Exception

Olufemi's experience with the INS sounds depressingly familiar to human rights groups and immigrant aid advocates.

"I think the American public would be shocked if it knew what was going on," says Eleanor Acer, director of the asylum program at the Lawyers Committee for Human Rights. "I don't think that most Americans know that a political or religious refugee who comes to this country and asks for asylum ... is taken in handcuffs and shackles to basically what is a prison."

LCHR argues that America tarnished its reputation as a welcoming land for the oppressed in 1996, when it passed the Illegal Immigration Reform and Individual Responsibility Act, also known as "expedited removal."

Before 1996, an asylum-seeker could only be turned away by order of an immigration judge, and after being allowed to find legal counsel. Now, an immigration officer at the airport can send an asylum-seeker back home.

"The process is so expedited and summary ... the barriers are just too high ... that it risks mistakenly excluding even refugees fleeing persecution and torture in their homeland," the group said in a 1998 report.

Immigrant advocates say that letting agents make decisions at airports — sometimes followed by automatic detentions that can last a year or more — make Emma Lazarus' words on the Statue of Liberty ring hollow in the ears of refugees. Those advocates are pressing Congress for changes, arguing that refugees are already in traumatic situations, often fleeing for their lives, and need more consideration when asking to be protected.

“obsolete.”

A Handcuff Handshake

If an asylum-seeker is not turned back, rights advocates say treatment by the INS often echoes the oppression left behind.

Asylum-seekers have told lawyers and advocacy groups about harassment, leg shackles and poor translation help at ports-of-entry. Olufemi says he was so stunned by his treatment at JFK, he asked a guard if he was in the right country.

Three asylum-seekers interviewed for this story, and the experiences of others, detail strikingly similar stories of shoddy processing at New York and New Jersey airports.

A 27-year-old Algerian asylum-seeker who spent 16 months in the INS detention facility in Queens before winning his case on appeal says he was taunted by officials at JFK airport and told he would be sent back. Mourad, an alias for his real name, does not speak Spanish. But, he says, the INS provided him with a Spanish-speaking translator.

“I had an idea about the United States,” he says now. “I believed that in the United States, human rights are respected ... everyone is given a chance to explain their situation. I never expected that I was going to be thrown in jail.”

The INS’ Ryan says her office has had no reports of abuse similar to what Olufemi and Mourad say they experienced. But if it had, “We would take a complaint like that seriously and talk to the officer about it.”

A Life Interrupted

At the detention center, sleep comes fitfully for Olufemi — when it comes. “I don’t sleep in this place at all,” he says. “Every night I have nightmares that I’m still in prison in Nigeria. When I wake up, I feel like I’m still in Nigeria, in the same prison.”

Even when he went before the immigration judge in March for his hearing, he says the rapid-fire questions, and his fear at getting a date wrong or forgetting a name, was like his interrogation by his Nigerian torturers. Ultimately, the judge denied Olufemi’s claim.

Now he and his lawyer, Meaghan Tuohey-Kay — an attorney in private practice who took his case pro-bono — are now waiting to see whether the Board of Immigration will agree with the decision, or overturn it and set him free.

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. ■

New Rules at U.S. Borders Provoke Criticism

By ANTHONY DePALMA

TORONTO, Nov. 13 — Early one morning in August, Neil G. Shearar, a Canadian yachtsman bound for a Pacific sailing excursion, got in his car at his home in Vancouver, British Columbia, and headed for Seattle-Tacoma International Airport, as he had done many times before.

He did not make it across the border. American immigration agents in Washington State turned him back and barred Mr. Shearar from entering the United States for five years.

Similarly, Velia Hernández de Sherwood left her home in Guadalajara, Mexico, one day in June to visit her husband in Houston. While there, she was to have surgery to repair a hernia that had developed two months earlier when she gave birth,

in Houston, to her son Christian.

But at the El Paso border checkpoint, she and Christian were turned away by American agents and prohibited from trying to enter the United States again for five years.

Such on-the-spot expulsions are one result of a new law that gives immigration agents sweeping powers to exclude non-citizens summarily, powers that previously belonged only to judges. The aliens had no access to legal help and, in most cases, the law permitted no appeal. In the seven months since the law took effect, these broad powers have become another test of America's tolerance for immigrants.

The new procedures were part of last year's comprehensive immigration reform, which was pushed through Congress with the intent to control illegal immigration and re-

claim control of the United States' borders.

But in the hands of thousands of individual agents with minimal training and supervision, critics say, families are being separated, individuals' ability to work is being restricted and lives are being disrupted without warning and, in some cases, seemingly without cause.

"It's absolutely horrifying," said Anna Marie Gallagher, a lawyer with the American Immigration Law Foundation in Washington, D.C.,

Continued on Page A30

where her organization has filed a class action suit in Federal District Court challenging the law and the way agents apply it.

"The most frightening aspect of it," Ms. Gallagher said, "is the power it gives to low-level Government officials. They are judge, jury and executioner."

A sponsor of the law, Representative Lamar Smith, Republican of Texas, said border agents needed the ability to deal swiftly and harshly with immigrants trying to enter the United States fraudulently.

"By being able to turn people around at the border before coming across," Mr. Smith said in a telephone interview, "we are better able to maintain our sovereignty and better able to maintain our border security. Congress was responding to the desire of the American people to really know who is coming into the country, why, for how long, and whether they are coming in legally or illegally."

Since April 1, about 36,000 people — more than 1,200 a week, on average — have been stopped during so-called secondary inspections while trying to enter the United States under what were considered fraudulent circumstances. About one-third were given the chance to turn back on their own. Approximately 1,800 were given asylum interviews. And more than 23,000 were sent back and barred from trying to re-enter for at least five years.

The new procedure, called "expedited removal," allows an immigration agent, after a brief examination, to bar an alien from the United States for five years. The only review in most cases is done by the agent's supervisor.

The idea was to clamp down on rampant immigration fraud. Tens of thousands of aliens frequently use bogus credentials, either bought illegally or doctored, to conceal their true identities. In the past, agents who uncovered suspicious documents often just told the aliens to go home.

In other cases, immigrants tore up or threw out their legitimate travel documents after crossing the border or landing at an airport, and claimed asylum. Doing so usually got them entry into the country and a scheduled hearing before an immigration judge. But few ever showed up for the hearings; they simply disappeared.

Now, after three days of formal training, any agent can challenge the authenticity of an alien's credentials right at the border checkpoint. If agents determine that the alien simply made a mistake or did not bring sufficient documentation, the alien can be sent home as before. If agents determine that the documents are false, or that a misrepresentation was made, they now have the power to prohibit that person from entering the United States for five years

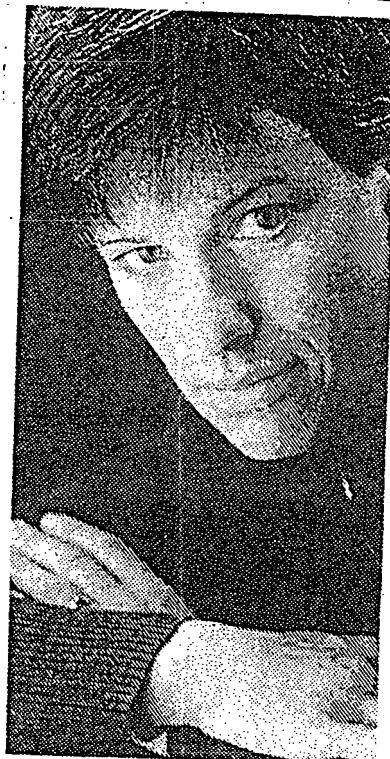
"Expedited removal gives us the ability to establish the credibility of a claim to enter the country expeditiously," said Russell A. Bergeron Jr., a spokesman for the Immigration and Naturalization Service.

If aliens ask for asylum and an interview shows they have a "credible fear" of persecution if returned home, they will get a hearing before an immigration judge.

In the legal challenge against the new procedure, Ms. Gallagher contends that agents sometimes act arbitrarily, challenging incoming aliens with proper credentials for purely subjective reasons, like their accent, their skin color or something about their appearance that arouses suspicion.

The Immigration service refuses to discuss individual cases, like Mr. Shearar's, that are involved in a legal challenge. But Mr. Shearar, a long-haired 31-year-old Canadian citizen born in South Africa, said he was simply singled out when he arrived with a friend in a beat-up Volkswagen at the Peace Arch border crossing near Blaine, Wash., at 5:15 A.M.

"We were the single car in there at



Alex. Waterhouse-Hayward for The New York Times

Charlotte Rose Leaming, who was barred from the United States.

the time," Mr. Shearar said.

He said he used to cross the border about eight times a year for his work, which is to help transport sailboats from one port to another for their owners. On that morning, he was to catch a flight to Hawaii, where he was to captain a sloop back to San Diego

Although Mr. Shearar and his friend presented valid Canadian passports and driver's licenses, they were refused entry into the United States when they were unable to produce adequate rent receipts or utility bills demanded by immigration officers to further prove Canadian residence. In most cases, a Canadian passport is sufficient.

Worried about missing his flight, and feeling he had been unfairly treated, Mr. Shearar tried another crossing at nearby Lynden, Wash. As soon as he presented his documents, he was directed inside. He was detained for two hours, he said, searched, allowed to use the bathroom only after making repeated pleas, and then told to fill out a questionnaire that asked whether he had ever been refused entry, willfully removed or deported from the

United States.

He mentioned a 1985 incident in which he had overstayed his visa, but not what happened earlier that day.

"It seemed as though they were asking if you had been refused before today," he said in a statement given to border agents.

Half an hour later, he was locked in a cell. He was told he would be barred from the United States for five years because he had misrepresented himself by not mentioning what had happened at the Peace Arch. His explanation that it was a misunderstanding was rejected.

Other cases cited in the suit, like Mr. Shearar's, are similar. Mrs. Hernández de Sherwood, a Mexican citizen, said she had all the proper documents when she was turned back at El Paso. She said her baby is an American citizen, having been born in Houston. Her husband, a teacher, is there because he can earn far more in Texas than in Guadalajara.

But immigration agents suspected she was going to Houston not to visit, but to live. They refused to let her in, and based on what they took to be her misrepresentation, prohibited her from entering for five years.

"If I had tried coming in by swimming the river, then I could understand it," Mrs. Hernández de Sherwood said in an interview from Mexico. "But I was there with papers and my baby, with all the intention to return home after the operation."

Another of the dozen cases cited in the suit involves Charlotte Rose Leaming, a 37-year-old Canadian citizen who works in Canada for C. F. Fresh, an American produce company. She checks the quality of fruit that Canadian growers sell to her company.

In June, Ms. Leaming tried to enter the United States near Oroville, Wash., as she had done many times before, to meet a Washington apple grower. She was turned away by an agent who thought she needed a work visa to enter. She had never needed one before

She asked colleagues to fax her a letter stating that she was coming in for a meeting, and the next day tried to cross again at a nearby Night Hawk, Wash., only to find herself facing the same agent. She was then barred for five years.

"It does limit my future with my present employer, and my possibility for advancement," Ms. Leaming said, noting that her ability to travel is severely restricted by being un-

able to enter or even land in the United States aboard a plane bound overseas.

"And," she added, "I guess I won't be taking my 5-year-old stepdaughter to Disneyland for the next five years."

It is not just Canadians and Mexicans who say they have been treated unfairly. A couple from England were shackled with ankle chains to a bench while they were questioned. A Scottish man got into trouble after crossing from Texas, where he was vacationing, into Mexico to have dinner. The class action suit also includes complaints from Chinese, Russians, Israelis and Nicaraguans.

When told about the cases, Mr. Smith, the Representative who co-sponsored the law, said that, given the hundreds of millions of border crossings that take place each year, "maybe the surprise is that there are not more."

But Ms. Gallagher said the immigration agents were using the law to bully and abuse those who cannot defend themselves.

"If the American people knew what was really happening along the borders, they would be shocked," she said. "I don't think this is what the American people want."

*With a stricter law,
another test of this
country's tolerance
for immigrants.*

"Judgment calls are inevitable," he said. "The fact that there may be a few dozen miscues, if they in fact really did occur, is an expected and natural part of the process."

Charles J. Murphy, executive vice president of the union representing immigration agents, said the agents received special training to handle the new expedited removal procedure and would be vindicated in court.

"I wouldn't concede for even a minute that our people are exceeding their authority," Mr. Murphy said. "We're not here to protect the rights of these people to enter the United States. We're here to protect the rights of the people of the United States."

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? □



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.

"KLOS [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.



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

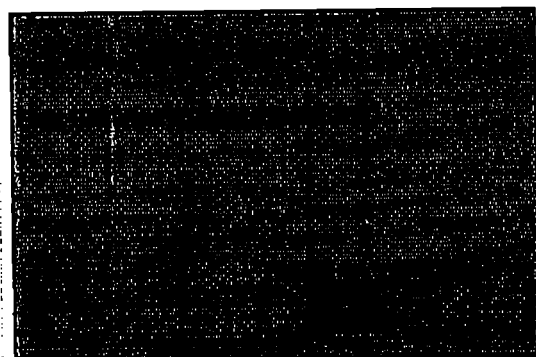
When Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, it unleashed a set of unintended consequences that have harmed America's newcomers out of proportion to any real problems the law attempted to address. One of many of the unintended consequences has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



Fix '96:

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

PRESS CONFERENCE

FOR IMMEDIATE RELEASE
September 13, 1999

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

OVER A THOUSAND IMMIGRANTS AND SUPPORTERS TO JOIN MEMBERS OF CONGRESS AT CAPITOL RALLY A Call to Fix the Harsh 1996 Laws

WHAT? At a press conference and rally on September 17, over a thousand immigrants and their supporters from throughout the country will be joined by Members of Congress to call for a restoration of balance in our immigration laws. 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. The bitter legacy of the laws' excesses is felt everyday by average Americans and immigrants.

WHEN? Friday, September 17, 1999

WHERE? 1:00 - 1:45 p.m. - PRESS CONFERENCE
U.S. CAPITOL BUILDING, ROOM SC-5
1:45 - 3:30 p.m. - RALLY
WEST STEPS OF THE U.S. CAPITOL (facing the Mall)

WHO? **Members of Congress:** (as of September 13. More are likely to attend.)

Rep. Danny Davis (D-IL)	Rep. Patrick Kennedy (D-MA)
Rep. Bob Filner (D-CA)	Rep. Patsy Mink (D-HI)
Rep. Barney Frank (D-MA)	Rep. Connie Morella (R-MD)
Rep. Luis Gutierrez (D-IL)	Rep. Jerrold Nadler (D-NY)
Rep. Sheila Jackson Lee (D-TX)	Rep. Ileana Ros-Lehtinen (R-FL)
Rep. Janice Schakowsky (D-IL)	

Immigrants and advocates from the following states will also participate: California, Florida, Illinois, Indiana, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Tennessee, Virginia, Washington, D.C., and Texas.

Right the Wrongs - Restore the Balance

CONGRESSWOMAN**CONNIE MORELLA****8th District, Maryland**2228 RAYBURN HOB
WASHINGTON, D.C. 20515
(202) 225-5341 www.house.gov/morella**FOR IMMEDIATE RELEASE**
September 2, 1999**CONTACT: Jonathan Dean**
202-225-5341**Morella Joins Call to "Fix '96"**

Congresswoman Connie Morella today joined immigration advocacy groups and several immigrant families and children to urge reform of obstacles created by changes to immigration law in 1996. The "Fix '96" campaign stresses the need to enact corrective legislation to restore our tradition as a nation of immigrants, and a nation of laws and justice.

Congresswoman Morella said, "Today, we call on Congress to restore balance and basic fairness to our nation's immigration laws. We must renew our American heritage of justice, law, and fairness."

The morning press conference included testimony from immigrant children and families seriously impacted by the 1996 laws. The Congresswoman remarked, "The 1996 laws violate basic American standards of justice and fairness. They deny people their day in court; they change regulations mid-stream; they deny people the opportunity for a second chance; and most damaging, these laws tear families apart."

The Congresswoman added, "We recognize and support our government's efforts to provide for the welfare and public safety of its citizens. For example, we support efforts to keep dangerous criminal aliens from entering and remaining in the United States. However, we also acknowledge that the provisions of the 1996 immigration laws are too harsh, and must be amended."

In 1996, Congress passed several laws which contributed to a dramatic crackdown on immigrants. The new laws enacted several new restrictions on immigrant rights. For example, the 1996 laws severely limited the courts' ability to oversee actions of the Immigration and Naturalization Service.

"The current immigration laws contradict our American values of fairness, and they must be amended," concluded Congresswoman Morella.

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As the Third Anniversary of overly harsh laws approaches,
We Need to Restore Balance to Our Immigration System, It's
time to...



FIX '96

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

**JOIN THE CAMPAIGN!
STAND UP FOR JUSTICE & DEMAND FAIRNESS
TODAY!**

**September 17, 1999
West Steps of the Capitol
1:30 pm Rally**

Right the Wrongs - Restore the Balance

RSVP to Tara at the National Immigration Forum (202) 544-0004 X42

Contact:

FOR IMMEDIATE RELEASE
September 2, 1999

Joel Najjar
Marcela Urrutia
(202) 785-1670

NCLR DEMANDS CONGRESSIONAL ACTION ON IMMIGRATION LAWS **Highlights Humanitarian Crisis Created by 1996 Reforms**

Washington, D.C. - The National Council of La Raza (NCLR), the nation's largest national Hispanic organization, today called upon Congress to end the humanitarian crisis caused by the immigration and welfare reform laws of 1996. Calling the laws' effects a disgrace to American values, NCLR President Raul Yzaguirre cited numerous examples of American families torn apart, children going without medical care, and legal immigrants being treated in ways which undercut the nation's laws and values. "Americans are beginning to wake up to the injustices which are being visited upon their neighbors," said Yzaguirre, "and they're saying, 'America cannot allow this.'"

Yzaguirre highlighted the kinds of humanitarian crises which have resulted from the 1996 reforms. Hard working, upstanding legal immigrants are being separated from their U.S. citizen children because of minor offenses they committed years ago. Even in the most compelling cases, the courts have no authority to provide humanitarian relief. "Our nation's tradition of laws is based on the principle that what is past is past especially for those who paid their debt to society and have since led productive lives. These people are being punished in a way that no American would

1111 19th Street, N.W., Suite 1000, Washington, DC 20036
LA RAZA: The Hispanic People of the New World



accept. Indeed, major political figures tell us that a troubled past should not be held against them if they have changed their ways. Surely America's immigrants deserve to live under the same standard," Yzaguirre continued.

Yzaguirre also noted examples of children going without medical care as a result of the 1996 welfare reform act. "Legal immigrants should not be forced to choose between treating their children's ear infections and paying the rent," he said. "Surely all Americans can agree that the protections that we provide for children should be shared by children who happen to be immigrants."

"We have also denied full justice to those who qualified for the legalization program of the mid-1980s, and to Central Americans who fled to the United States during those years, seeking safe haven on our shores," Yzaguirre continued. "The 1996 immigration law singled out these groups to ensure that they would remain in legal limbo; it is long past time to fully extend our hands to these immigrants who have built their lives and raised their children in our communities for more than 15 years."

Yzaguirre concluded by pointing out that the restoration of justice to legal immigrants is a major priority for the Latino community. "It is now well documented that as many as 20% of America's children live in families with at least one immigrant parent. The effects of these laws extend well beyond the immigrant community into the larger American family. Our elected officials should not be surprised if their failure to act on reforms of these terribly unjust laws is met with a firm response at the ballot box."

Statement
Maria Gomez,
Executive Director,
Mary's Center for Maternal and Child Care
regarding Breydi S.

Good morning,

My name is Maria Gomez and I am the Executive Director of Mary's Center for Maternal and Child Care. Mary's Center is a prenatal, pediatric and adolescent health center dedicated to increasing access to comprehensive care for low-income pregnant women and their children residing in the District of Columbia.

Many of the women and children who come to us have no access to health care. Even though they are often very poor and live in extremely distressing situations, they must scrape together whatever money they have to treat their children when they are sick. They have to make choices between food and getting medicine. Since 1996, many of the immigrant families who are here legally, who contribute to Medicaid with their taxes, cannot even access Medicaid to help them when their children are sick.

We are seeing more and more of these cases everyday. Children who need operations but cannot get them. Children with asthma who cannot the care and medicine they need. Families who cannot afford to buy antibiotics for their children. Women who cannot afford to pay for prenatal care.

One of the little boys who comes to Mary's Center is here with us today.

Breydi is 6 years old. He and his mother and father came from the Dominican Republic on August 20, 1997. Almost an exact year after the implementation of welfare reform. He also has a little sister who was born in the US.

Both parents were attorneys in the Dominican Republic but due to the desperate economic conditions of the country they were unable to find work and opportunities so like our parents and grandparents they held on to the American dream and came to the U.S. with the hope of making a better life for themselves and their children. The father is now working as a chef and Altagracia, the mother, volunteers at Mary's House - a nonprofit organization - and does cleaning at a gymnasium. She's also studying English and looks forward to a day when she can pursue a career and provide better opportunities for her family.

Breydi is a typical little boy with a series of ear and throat infections. For about 2 years he had severe ear infections and needed an operation to get drainage tubes placed. Otherwise he risked permanent hearing damage. Luckily, we found a doctor who, as an act of charity, performed the surgery.

More recently he developed tonsilitis and he badly needs an operation because the enlarged tonsils are constricting the airflow to his brain. His tonsils are regularly infected and are too large for his throat. He often gets sick and experiences fever and pain, and he can't eat or drink. He often misses school because he is too sick to go. His parents have to time off work to stay with him. There is no medical reason for him to continue to suffer through this. His condition can be cleared up through a simple and routine operation that would leave him completely healthy. I would love to see him be able to go to school without interruption and to not risk the dangers of more serious complications.

Since Breydi doesn't have access to Medicaid nor to CHIP, his parents have to scrape their money together each time he gets sick so they can take him to Mary's Center and buy him antibiotics. They make whatever sacrifices necessary to make sure their children get the care they need. But sometimes that isn't enough. Unfortunately, they haven't been able to find someone to perform the surgery. They can't afford to pay for the tonsil surgery but are trying to save money as best they can.

Until then, Breydi will continue to have problems with his throat and he continues to risk further infections and complications. From my position as a health professional it seems extremely arbitrary to deny children access to health care based on their date of entry into the US.

I'm hopeful that Congress will make the necessary changes so that in the future, all children will be able to get the care they need.

Breydi says he wants to be a chef and a family man like his dad...its up to Congress and the rest of us to make sure that we allow him to grow up strong and healthy so he can contribute to our society as he pursues his dreams.

THE FAIRNESS FOR LEGAL IMMIGRANTS ACT OF 1999
(MOYNIHAN/LEVIN BILL, H.R. 1399, S. 792)

**STORIES OF CHILDREN WHO NEED
GOVERNMENT ASSISTANCE**

*** The parents of six year old Breydi have no way to pay for a badly needed tonsillectomy.*

Breydi Sanchez is six years old and arrived in the U.S. in 1997 from the Dominican Republic with his parents. He has a baby sister who was born after his parents arrived here. Both of his parents are Dominican attorneys who emigrated because the economy in their homeland offered little opportunity. Since coming to this country, they have worked at low-wage jobs that do not provide health insurance. But they have been taking English lessons, and hope that one day soon they will be able to obtain better paying jobs. In addition to her part-time job and child care responsibilities, Mrs. Sanchez volunteers at Mary's House here in the District.

Breydi dreams of having a family of his own one day and becoming a chef.

Some months ago, Breydi was diagnosed with tonsillitis. His enlarged and infected tonsils are accompanied by a high fever. He is in frequent pain, and has difficulty eating. He has been forced to miss several days of school, and each time he does so one of his parents misses work. It has been difficult, but the family has always managed to scrape together enough money for doctor's visits. The doctors have told Breydi's parents that the boy badly needs a tonsillectomy because his enlarged tonsils are constricting air flow to his brain. The family is trying to save money for the operation, but this will take a long time, and delay may result in grave consequences. If he gets the operation, there is no reason that Breydi cannot live a long, healthy, and productive life.

A while back, Breydi suffered a serious ear infection, and the family was able to convince a surgeon to do the needed operation without pay. Unfortunately, this doctor has informed the family that he will not be able to perform Breydi's needed tonsillectomy.

(The Fairness for Legal Immigrants Act and the Immigrant Children's Health Improvement Act (S. 1227) would give states the option of providing children with health care under Medicaid and the State Children's Health Insurance Program.)



***** A refugee child needs medication and treatment that her family can't afford.***

Five year old "Martha" (not her real name) and her family are Jewish refugees who fled with her parents from Russian anti-semitism. They arrived in Cleveland, Ohio just a few months ago. For technical reasons, Martha and her family were given "humanitarian parole" instead of refugee status, which would have qualified them for government assistance, including Medicaid and State Child Health Insurance (CHIP).

Almost immediately after arriving, Martha's parents went to Jewish Family Service Association (JFSA) to search for a job. They are ready and willing to work, but are handicapped because they have not yet learned English. Nevertheless, her parents' long term job prospects are good because both are highly educated. Martha's mother is trained as an electrical engineer and her father is a mechanical engineer.

Martha suffers from hyperactivity. She cannot get along with, or play with, other children including the other children in her extended family. Her parents say that the Russian doctors prescribed some medication, but that it was not much help. JFSA has provided Martha with a medical exam at its own expense, for which it will not be reimbursed. The exam included an evaluation by a child psychiatrist, but because no health coverage is available, there is no possibility for follow-up treatment and medication. Doctors say that with treatment, Martha has good prospects for recovery and a normal adolescence and adulthood.

(The Fairness for Legal Immigrants Act and the Immigrant Children's Health Improvement Act (S. 1227) would give states the option of providing children with health care under Medicaid and the State Children's Health Insurance Program.)



***** Four siblings and their two parents receive enough food stamps for only three people.***

In Gaithersburg, Maryland, a family of U.S. citizens and legal immigrants share the food stamp allotment of the three eligible children. They came here more than 10 years ago to escape the troubles in their homeland of El Salvador. The father receives a modest income from his landscaping business, which is the sole support for his wife and minor children ages 2, 8, and 12, and his 18 year old daughter who is still in school. Only the three youngest children are eligible for food stamps, even though the family has been here for more than 10 years, and even though they all have their green cards (the two youngest children are U.S. citizens, having been born here). Under the 1996 welfare law and subsequent restorations, only children, disabled, and elderly immigrants are eligible for food stamps.

(The Fairness for Legal Immigrants Act would extend food stamp eligibility to the rest of the family, ensuring that no one goes hungry.)



***** An asthmatic child's mother cannot pay for medical testing and treatment.***

S.J. is an 11 year old boy who came to the U.S. from Sierre Leone in 1997 with his mother. S.J.'s mother works in Washington, D.C. as a nursing assistant. S.J. has asthma, but is not eligible for Medicaid so the only time his mother can take him to the doctor is when his mother has enough money. Recently they were able to get help at a free clinic but they still have to pay for the inhaler. Whenever S.J. needs X-rays or other tests, his mom has to pay out of pocket or forgo the tests. Like others who suffer from asthma, S.J.'s condition could be life threatening. But with treatment, he can achieve as much as anyone else in America.

(The Fairness for Legal Immigrants Act and the Immigrant Children's Health Improvement Act (S. 1227) would give states the option of providing children with health care under Medicaid and the State Children's Health Insurance Program.)



Compiled by Marcela Urrutia, National Council of La Raza
and Dinah Wiley, National Immigration Law Center



NATIONAL IMMIGRATION LAW CENTER

1101 14th Street, NW, Suite 410
Washington, D.C. 20005
202 216-0261 • fax 202 216-0266

*Chere -
Here's the
info Josh B
faxed me*

FACSIMILE COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES

TO: *Cynthia Rice*
FROM: *Karen Naani*
DATE: *9-9-99*

NO. OF PAGES: 13
(Including cover page)

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August 11, 1999

The Honorable Donna E. Shalala
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Shalala:

The undersigned organizations invite you to be our honored guest at a "Health Care Parity for Immigrants" event at HHS on the morning of September 17, 1999. We, along with 50 - 100 immigrant advocates from California, Texas, Florida, Massachusetts, New York and New Jersey, wish to publicly thank you and the Administration for following through on the promise to help restore immigrant access to America's safety net. We will also stress the necessity of restoring the benefits that were stripped from legal immigrants as a result of the 1996 welfare and immigration laws. We plan to invite media to the event and we would appreciate your remarks following our brief presentation.

The event is part of a wide immigrant advocacy effort taking place that week. Advocates from across the nation will join together in Washington, D.C. in the National Citizenship Day and the "Fix '96" campaign aimed at repealing the harsh impact of the 1996 immigrant laws.

With growing support in Congress for the Administration's proposal to restore the states' option to provide Medicaid and State Children's Health Insurance Program (CHIP) to lawfully present children and pregnant women who entered the U.S. after enactment of the welfare law on Aug. 22, 1996, we believe this is an opportune time to urge passage of legislation that provides access of vulnerable populations to Medicaid and CHIP. We are hopeful that with your continued support we may add further momentum to this important proposal.

During the event, we plan to present to you approximately 5,000 to 10,000 "tax form messages" (like the one attached) that highlight the fact that legal immigrants, like citizens, finance the safety net through their taxes, and should be eligible for basic safety net services. Immigrant communities across the country have been writing these messages to President Clinton, the First Lady, and Vice President Gore.

We anticipate the event lasting no more than 20 - 30 minutes, and would appreciate scheduling it for a time between 9:00 a.m. and 11:00 a.m. We are planning to hold the presentation outdoors in front of HHS, weather permitting.

We look forward to your participation in this important event. We will contact your office to request scheduling within the next week. In the meantime, if you have questions, please contact

Marcela Urrutia, National Council of La Raza, at (202) 776-1722 . Thank you very much for your consideration of this request, and for your support for immigrant access to health care.

Sincerely,

Florida Immigrant Coalition
Illinois Coalition for Immigrant and Refugee Rights
Massachusetts Immigrant and Refugee Advocacy Coalition
National Asian Pacific American Legal Consortium
National Council of La Raza
National Immigration Law Center
New Jersey Immigration Policy Network
New York Immigration Coalition
Northern California Coalition for Immigrant and Refugee Rights
Texas Immigrant and Refugee Coalition

Enclosure

cc: Thomas E. Perez, Director
Office for Civil Rights
U.S. Department of Health and Human Services



FIX '96:

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

4 pages

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

September 24, 1999

Attached:

Miami Herald, *Protect American Ideals: Fix '96*

Chicago Tribune, *For a Tough But Fair Deportation Law*

IMMIGRANTS, FAMILIES, AFFECTED BY 1996 LAWS BRING THEIR CONCERNS TO WASHINGTON

On September 17th, Citizenship Day, immigrants and their American families from across the country came to Washington to plead with Congress to fix the overly harsh immigration-related laws enacted in 1996. A press conference on that day featured members of Congress, advocates, immigrants affected by the laws, and the family members of immigrants who could not be there. All pointed to the need to restore balance in our immigration laws.

Rep. Barney Frank (D-MA), noted that Congress went too far in 1996 with a provision that sends immigrants to jail for minor crimes they may have committed years ago—for which they have long since paid their debt to society. He and other Democratic and Republican members, have introduced legislation, the *Family Reunifica-*

tion Act of 1999, that will ameliorate the 1996 law for long-time resident immigrants.

Rep. Charles Rangel (D-NY) spoke, as did Rep. Shiela Jackson Lee (D-TX), who has many constituents in Houston harmed by the 1996 laws. She has introduced legislation that would restore jurisdiction to federal courts stripped of the power to review legal action brought by those wrongly denied legalization in the mid 1980s.

But no one can better illustrate the problems created by the 1996 laws than the immigrants affected by them. Several of those immigrants spoke at the event, and gave a flavor of the tragic consequences of the 1996 laws:

(Continued on page 2)

Right the Wrongs - Restore the Balance
National Immigration Forum

Page 2

(Continued from page 1)

- ⇒ *There was Charlie Jaramillo, who has been in the U.S. since he was an infant. He applied for citizenship three years ago, and is now facing deportation because of a minor crime he committed 10 years ago. Though he never was required to serve a day in jail, long ago completed his probation, and has never been in trouble since, the new law treats him the same as it would a hardened criminal. His pending deportation has so outraged those who know him, that even his sentencing judge and arresting officer have come to his aid, asking the Governor of Pennsylvania to pardon him. If the law is not changed, Charlie might be deported to Columbia, leaving his family to fend for themselves.*
- ⇒ *There was Gloria Seron, a Central American teenager who has been thwarted from her dream of attending college because her status in this country continues to be uncertain after over a decade of unfair and even illegal discrimination by the government against Central Americans who fled civil war in the 1980s.*

Several other immigrants or their family members spoke, driving home the breadth of the problems created by the 1996 laws. In the room were about 200 immigrants who did not have an opportunity to speak, but who have also been affected by the 1996 laws.

As one participant put it, "our family members made mistakes and they lived up to it. It's time Congress lived up to their mistakes and fixed the 1996 laws."

Editorials in newspapers across the country are taking this position as well. Attached are two. The *Chicago Tribune* says that Congress went too far when they defined as an "aggravated felony" even relatively minor offenses, left no flexibility for assessing punishment, and made the definition, and punishment, retroactive.

In an editorial titled, "Protect American Ideals: Fix '96," the *Miami Herald* is harsh in its judgment of the 1996 laws: "The America that was built by immigrants," the *Herald* writes, "is being demeaned by extremist laws that target the foreign born to the point of being xenophobic." Listing examples of how Congress went too far in 1996, the *Herald* calls on Congress to soften the impact of the offensive laws, concluding that, "...this nation owes respect to its immigrants."

EDITORIALS

Published Friday, September 17, 1999, in the Miami Herald

PROTECT AMERICAN IDEALS

FIX '96

Harsh 1996 anti-immigrant laws must be rolled back.

The America that was built by immigrants is being demeaned by extremist laws that target the foreign born to the point of being xenophobic.

Today, appropriately enough on Citizenship Day, a coalition of immigrants, their advocates, and several members of Congress are calling for a desperately needed change in those laws, the worst of which took effect in 1996.

These measures have torn many families apart, caused untold suffering and deprived people of human rights. Ample reason for lawmakers to revisit those laws and repeal many of its provisions can be found in scores of personal tragedies.

Consider the suffering of Pam Gaul of Tampa, who adopted her son John when he was 5 years-old and brought him from Thailand. Her attempts to naturalize him were doomed by Immigration and Naturalization Service snafus. Now in his mid-20s, he has been deported to the homeland he hadn't seen since, whose language he didn't speak. That's because the 1996 law retroactively punishes with deportation all noncitizens for even minor crimes -- in John's case for stealing a car and writing bad checks as a teenager.

Had John been from Vietnam, Cambodia, Laos or Cuba, he might well have been condemned to indefinite detention in INS jails. That's the fate of immigrants whose homelands won't take them back. The 1996 law dictates that people convicted of even minor crimes be detained until deported. Though the INS has a review-for-release program in place, many of these "lifers," like other detainees who are fighting deportation orders, will spend years in cells after already having served their sentences.

Still others have arrived at the U.S. border fleeing persecution, only to be turned away after an arbitrary decision by a single INS agent. That was the case of "Dem," a Kosovar Albanian who had been terrorized by Serbian police last year. He fled, made his way to the Southern California border where an unsympathetic INS officer gave him the boot. Fortunately, Dem returned -- and another INS agent allowed him entry as a credible asylum candidate.

Other unreasonable immigration provisions have barred foreign-born spouses of U.S. citizens from entering the United States for 10 years and prevented law-abiding, longtime residents from legalizing their status. Yet other laws, in the guise of welfare reform, still deny federal benefits such as food stamps to taxpaying immigrants.

Fortunately, some in Congress are trying to soften the offensive effects of anti-immigrant laws. A bill by Sen. Daniel Patrick Moynihan, D-N.Y., and Rep. Sander M. Levin, D-Mich., would restore needed public benefits; one by Reps. Lincoln Diaz-Balart, R-Miami, and Barney Frank, D-Mass., would save some longtime residents with criminal records from being deported.

These deserve wide support. On Citizenship Day, as every day, this nation owes respect to its immigrants.

FOR A TOUGH BUT FAIR DEPORTATION LAW
Chicago Tribune
August 25, 1999

U.S. citizenship or a permanent visa to live here have got to be two of the most coveted privileges the world over. Applicants should expect to go through some tight hoops to get either one. But that process ought to be fair and reasonable—not Draconian and destructive like some of the provisions of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. When it reconvenes after Labor Day, Congress ought to correct some of these inequities, particularly those concerning immigrants who may have had relatively minor legal problems in the past.

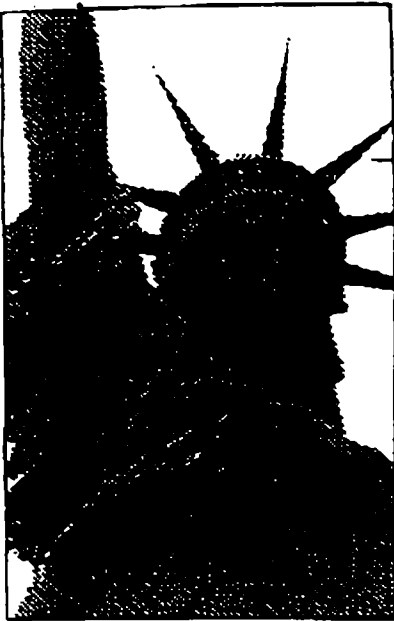
The intent of the 1996 law was sound: Immigrants convicted of major offenses, listed in the legislation as "aggravated felonies," ought to be deported. Such include treason, rape of a minor, involvement in prostitution, and major violent offenses such as murder, among others.

Apparently not knowing when to quit, however, the sponsors went on to stretch the definition of aggravated felonies to include a host of lesser offenses and made the law's sanctions retroactive and enforceable by immediate detention and deportation—without legal relief except in the most extreme cases. This sweeping "aggravated felonies" dragnet has ensnared thousands of immigrants convicted of minor offenses, some committed long ago.

That includes, for example, a Latin American engineer in his mid-30s living in Chicago, convicted of using an unregistered gun to shoot a dog 13 years ago or an African mother caught shoplifting in Atlanta six years ago, who received a suspended sentence. Anywhere else these offenses would be considered petty—certainly not worthy of a response as severe as immediate detention and deportation. But under the definition of the 1996 law, they've been transformed into "aggravated felonies."

Retroactive penalties have been consistently declared unconstitutional in criminal law and, while deportation is not technically a criminal penalty, the principle and the sense of unfairness seem the same. There also needs to be some flexibility built into the deportation machinery to weigh individual circumstances, severity of the crime and other mitigating factors.

A system of assembly-line deportations serves no one well: Not the immigrants and certainly not the all-American tradition of justice and fair play.



HERE'S AN INTERESTING FAX...

... From the Office of Public Affairs
U.S. IMMIGRATION & NATURALIZATION SERVICE

425 I Street, NW, Washington, DC 20536



(202) 514-2648



(202) 514-1776

Date:

10-1-99

Fax to:

Irene Bueno

Fax Number:

456-5581

From:

Karen Kraushaar for Maria Cordona

Pages (Including Cover):

3

Comments:



U.S. Department of Justice
Immigration and Naturalization Service

425 I Street, NW
Washington, DC 20536

October 1, 1999

Letters to the Editor
The New York Times
229 West 43rd Street
New York, NY 10036
Fax: 212 556-3622, 556-4100

To the Editor:

The INS does not shrink from criticism. To the contrary, a circle of fair critics and the willingness to listen are key measures of a government's ability to get better. But Anthony Lewis' September 21 column ("Is this America?") was not fair criticism.

First, the column takes issue with INS' decision to oppose the claim to United States citizenship by Ms. Hawa Said. Yet Ms. Said's claim to have derived citizenship from her father as a minor, rather than being automatic as Mr. Lewis suggested, required that she have been in his legal custody after he and her mother were legally separated. The evidence in the case indicated strongly that there was neither custody nor a separation. The immigration judge hearing the case—who is independent of INS—determined as much late last week.

Second, once the INS sought to remove Ms. Said from the United States because of her drug trafficking conviction, the INS must by statute detain her during her removal proceedings. The INS agrees that, in certain respects, the mandatory custody provisions of the 1996 immigration law went too far, and it has proposed legislation that would restore more flexibility in immigration custody decisions. The column questions why INS detained her first in San Diego and then returned her to a facility in Alaska. Because Ms. Said was pregnant, INS placed her in San Diego, the nearest available INS facility able to offer the medical care appropriate to pregnant women. It was only after a federal district

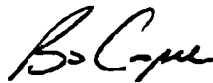
Editor, The New York Times
Page 2

court ordered her returned to Alaska that INS moved her to a local correctional facility there, where INS has no detention facilities of its own.

Third, the column suggests that government lawyers argued that Ms. Said should not have her day in federal court. Instead, the law is clear that, before going to a federal judge, persons in situations such as Ms. Said's must make their claims in immigration court. Moreover, far from trying to obstruct a decision in her case, INS intervened with the immigration court to find room in an already closed docket to schedule Ms. Said's case early, precisely because INS recognized that it needed prompt treatment.

These are only some of the inaccuracies, and we would welcome the opportunity in the future to be consulted in advance to help ensure accurate reporting, whether or not favorable to INS. If Mr. Lewis's real point is that law enforcement agencies must strive for good judgment about when to prosecute, we agree. But this case, described by Mr. Lewis in the most severe terms as a lapse from that principle, does not make that point.

Sincerely,



Bo Cooper
General Counsel
(212) 514-9863

FIX '96:

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



5 pages

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

October 22, 1999

MEMBERS OF CONGRESS ADDRESS IMMIGRANTS SEEKING FAIRNESS IN OUR IMMIGRATION LAWS

Attached:

The Boston Globe: "Fairness to Immigrants"

The Miami Herald: "Fighting Immigration Laws"

***The Ft. Lauderdale Sun Sentinel: "Immigrants flexing their
political muscle"***

On October 14th, hundreds of immigrants and their advocates again converged on Capitol Hill to press Congress for changes in the 1996 laws that represented the harshest crackdown on the rights and opportunities of immigrants in 70 years. The immigrants who came to Washington have been affected by that crackdown in different ways.

A growing number of members of Congress are seeing the need to restore balance in our immigration laws, and are vowing to take action to help repair the damage done in 1996. Many of these members of Congress spoke last week as the immigrants gathered on the Capitol grounds. Speaking were Representatives **Xavier Becerra** (D-CA), **Lincoln Diaz-Balart** (R-FL), **Bob Filner** (D-CA), **Martin Frost** (D-TX), **Luis Gutierrez** (D-IL), **Christopher Smith** (R-NJ), **Shella Jackson Lee** (D-TX), **Carrie Meek** (D-FL), **Patsy Mink** (D-HI), **Connie Morella** (R-MD), **Jerrold Nadler** (D-NY), **Frank Pallone** (D-NJ), **Robert Menendez** (D-NJ), **Ileana Ros-Lehtinen** (R-FL), **Jan Schakowsky** (D-IL), and **Lucile Roybal-Allard** (D-CA). With that showing of growing support in Congress, those who came to Washington left with the feeling that their voices are being heard, and are hopeful that Congress will act.

Attached are two stories about the gathering in Washington, as well as an editorial from *The Boston Globe* about the issue.

Right the Wrongs - Restore the Balance
National Immigration Forum

The Boston Globe

SATURDAY, OCTOBER 16, 1999

Fairness to immigrants

Hundreds of immigrants rallied on the steps of the Capitol this week to make a simple, sound plea for fairer laws. This should be second nature in a country with a centuries-old plotline of arriving newcomers.

Let author Frank McCourt tell some of this story in his books, and the lives, challenges, and contributions of immigrants leap off the page. But Congress too often sees only the illegal immigrants, and it passed laws in 1996 to crack down on the problem. The result was a distortion: laws that unjustly target legal immigrants along with those who break the law.

Under the 1996 Illegal Immigration Reform and Immigration Responsibility Act, immigrants who commit crimes can be punished twice. Those who have completed a sentence can still be deported. Even those who committed minor offenses years ago and have since been law-abiding members of society burn with new criminal status. Often their children's attention is pulled away from school into legal debates and activism to keep their

parents from being deported.

In a scary shift of benefits, legal immigrants were left with the right to pay taxes, but those who came to America after Aug. 22, 1996, cannot access key benefits that those tax dollars support. This includes Medicaid and Supplemental Security Income. House and Senate bills would restore these benefits, but meanwhile immigrants are left without a safety net to stave off family disasters.

The Massachusetts Immigrant and Refugee Advocacy Coalition went to Washington, D.C., to lobby Congress last month. Instead of anger or bitterness, the prevailing emotion was pride to be walking the halls of Congress, shaking the hands of representatives and senators, working to fix the wrongs of the 1996 law by passionately participating in government.

This week's rally let lawmakers see and hear immigrants from around the country, whose lives will become a layer of American history. They deserve the justice that Congress can provide by changing the 1996 laws.

MIAMI-DADE

Published Saturday, October 16, 1999, in the Miami Herald

Fighting immigration laws

Legislators vow battle will continue next year

BY FRANK DAVIES

fdavies@herald.com

WASHINGTON — The push to roll back some of the tough restrictions on immigrants passed by Congress in 1996 probably will not achieve its goals this session, advocates say, but they're organizing to make it a prime issue next year on Capitol Hill and in the election campaign.

"I'm not giving up hope for this year, but were near the end of the session — I think our chances are good for 2000," Rep. Lincoln Diaz-Balart, a Miami Republican, said Friday.

Diaz-Balart and two other Miami-Dade House members — Democrat Carrie Meek and Republican Ileana Ros-Lehtinen — spoke at a Capitol Hill rally Thursday on "Fix 96," as the campaign has been dubbed.

The rally and a march scheduled for today at Malcolm X Park in Washington attracted several dozen people from South Florida, from groups ranging from Honduran Unity and the Haitian American Grassroots Coalition to the Florida Immigrant Coalition, an umbrella group of advocates.

The groups and their backers in Congress have many legislative goals. Some of the most prominent:

Restoring benefits to legal immigrants lost in 1996, including Medicaid coverage, food stamps and health insurance for children. This measure could aid about 8,000 elderly and disabled in Miami-Dade alone.

Providing Central Americans and Haitians a chance to gain legal status comparable to the rules for Nicaraguans and Cubans.

Grant discretion to immigration judges in dealing with nonviolent immigrants who face deportation for crimes, including some committed many years ago. Critics of the 1996 law say its deportation provisions have been unduly harsh and have arbitrarily expelled law-abiding immigrants.

Diaz-Balart said there's still a chance some of these proposals could be attached to last-minute spending bills as the session winds down. Congress is due to adjourn at the end of the month, but leaders concede the session could go to mid-November.

He also hopes another measure he is supporting with Rep. Bill McCollum, an Orlando Republican, might get through — reducing the income requirement on a sponsor trying to bring in a family member, as long as the immigrant has a job offer.

Diaz-Balart said that proposal, sought by many in the Dominican community, is "modest, reasonable and includes a job offer requirement."

He also believes that many Republican leaders are more willing to take a second look at some of the 1996 restrictions, especially during the 2000 election year when presidential and congressional candidates are wooing Hispanic voters.

Ft. Lauderdale Sun Sentinel
Immigrants flexing their political muscle
By WILLIAM E. GIBSON Washington Bureau
Web-posted: 11:47 p.m. Oct. 17, 1999

WASHINGTON — Flaunting their new-found political clout, thousands of immigrants swarmed Capitol Hill last week, chanting slogans, waving signs, cheering members of Congress who support their cause and threatening to punish at the polls those who do not.

They rallied around the theme "Fix '96," demanding that Congress repeal or at least reverse some parts of legislation enacted in 1996 that restricted the rights and benefits of immigrants.

Similar rallies in past years, during a time of higher unemployment and a backlash against immigration, were mostly confined to shouts in various languages outside the Capitol.

This time, members of Congress joined the shouting, Republicans as well as Democrats. And this time, after the usual rally on the steps of the Capitol, the immigrants and their advocates, many of them from South Florida, fanned out to meet with members inside their Senate and House office buildings.

No longer mere demonstrators, immigrants are becoming a mass lobbying force prepared to play the political game from inside the system, not just clamoring from the outside.

"Numbers always talk. Numbers talked for the Irish immigrants of the 19th century, and numbers now talk for the Latino and Asian populations in the same way," said Alan Kraut, professor of history and an expert on immigration at American University in Washington.

"The Irish came to master the art of the political machine and how to distribute favors to constituents," Kraut said. "I think contemporary Latino community leaders understand the importance of interest-group politics, not just holding rallies but following up with a systematic lobbying effort."

Facing this kind of pressure, Congress already has retreated from laws passed in the early months of the so-called Republican Revolution that denied welfare benefits and food stamps to legal immigrants and made hundreds of thousands of Haitians and Central Americans subject to deportation.

In the past two years, benefits have been restored to large groups of immigrants, especially the disabled and elderly.

Cubans and Nicaraguans who fled leftist regimes were given permanent status as legal U.S. residents. Tens of thousands of Central Americans and Haitians, who fled economic deprivation or political turmoil, were allowed to remain in this country on a temporary basis, a status due to expire next year.

The "Fix '96" campaign is designed to rally support for various bills that would restore legal rights to immigrants facing deportation and grant permanent legal status to Central Americans and Haitians. The immigrant demonstrators said they should be given the same rights as Cubans and Nicaraguans.

"It's unfair," said Adolfo Vargas, 36, a Honduran immigrant who rode a bus from Miami to attend the capital rally. He said his homeland was devastated during the U.S.-backed war against the Nicaraguan Sandinistas in the 1980s, forcing many thousands to flee.

"We were your best allies in Central America," Vargas said. "Now we need amnesty, because our TPS (temporary protective status) will be over next year."

Three busloads of immigrants came from South Florida to pressure Congress, joining thousands who drove or flew from cities along the Eastern Seaboard.

Several members of Congress from both parties joined the rally and pledged their support, including Cuban-American Reps. Lincoln Diaz-Balart and Ileana Ros-Lehtinen, Republicans from Miami.

"The Hispanic voters are seeing these bills as a good thermometer to measure the level of support by our members of Congress and even the candidates for president," said José Lagos, president of Unidad Hondureña, a Honduran group in Miami. "If we get their support, then we will reciprocate with our votes. That's our gratitude for their understanding."

The Immigration bills are unlikely to clear Congress in the last few weeks of this year's session, but they may become a high priority early next year.

Most likely to pass are bipartisan bills that would restore legal due process for immigrants in deportation proceedings. One bill, for example, would prevent use of classified secret evidence against immigrants. Another would prevent deportation of immigrants based on conviction of relatively minor offenses that occurred before the restrictive immigration law was passed in 1996.

Some of those who helped write the 1996 law -- including Rep. Bill McCollum, R-Fla., a candidate for U.S. Senate now competing hard for Hispanic votes -- acknowledge that it went too far in some ways to restrict the rights of immigrants. Many members, however, remain resistant to repealing the law altogether.

"Republicans want to seem friendlier to Hispanics, but an amnesty for 600,000 illegal Salvadorans, Guatemalans and Hondurans seems improbable," said Mark Kirkorian, executive director of the Center for Immigration Studies, a Washington think tank that favors sharply reduced immigration. "That would be too much for Republicans to swallow."

Kirkorian, while agreeing that some parts of the law should be altered, opposed giving permanent legal status to more Central Americans. "This would be nothing but an invitation for continued and expanded illegal immigration."

Most observers foresee a gradual erosion of the '96 immigration law, not wholesale changes. The election campaign, however, could prompt many politicians of both parties to make sweeping promises to immigrant communities, especially in large Hispanic states of Florida, California, Texas, New York and Illinois.

"The political climate is very good," said Marleine Bastien of the Haitian American Grassroots Coalition in Miami, after speaking at last week's rally.

"The election is coming soon," she said with a smile, "and I think people want to do the right thing."

William E. Gibson can be reached at 202-824-8256 in Washington.