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HEADLINE: IMMIGRANTS FLEXING THEIR POLITICAL MUSCLE

BYLINE: WILLIAM E. GIBSON ; Washington Bureau Chief

DATELINE: WASHINGTON --

BODY:

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 JosBe Lagos, president of Unidad HondureDna, 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 500,000 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."

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'Balance of Hardships'

BOSTON
Dickens gave us the classic picture of official heartlessness: the government Circumlocution Office, burial ground of hope in "Little Dorrit." It would take his savage wit to tell, properly, the story of Sherol Boles and the U.S. Immigration and Naturalization Service.

Mrs. Boles is a 33-year-old woman from Barbados. In 1996 she married Michael Boles, an American who served 12 years in the U.S. Marines. They have 2-year-old twins, born three months prematurely weighing less than two pounds each; they were hospitalized for months and are still under medical treatment.

The I.N.S. has ruled that Mrs. Boles's marriage entitles her to permanent residence here: a green card. But for reasons in the past she is legally deportable, and the I.N.S. says she must be deported. If she is, it may be as long as 10 years before she can enter the United States again.

Mrs. Boles wants to have her deportation case reopened, so account can be taken of her now-established right to a green card and her children's fragile health. If she is deported alone, her husband could not possibly take care of the twins by himself. If she takes them with her, the medical care they need may not be available in Barbados.

But the case cannot be reopened without the consent of I.N.S. officials, and they refuse to give it. Why? I.N.S. lawyers explained in a brief, "She has not shown that she would suffer irreparable injury or that the balance of hardships tilt in her fa-

A Dickensian tale of the I.N.S.

vor." Dickens could not have put more unfeeling words in the mouth of one of his fictional tormentors.

Mrs. Boles is still in the United States because her lawyer, Harvey Kaplan of Boston, sought and won a stay of deportation from the U.S. Court of Appeals for the First Circuit. The I.N.S. is urging the court to withdraw the stay.

The past chapters of the story deepen its harshness. Mrs. Boles came to the United States in 1990, to Boston. Some years later she tried to obtain legal permanent residence by using the services of one Joseph Chatelain, who called himself an "immigration adviser." By 1995 Mrs. Boles and others realized they had been defrauded by Mr. Chatelain. She testified in full and agreed to be a witness against him, but he fled and has not been found.

In 1995, on the basis of her own statements, an immigration judge ordered her deported. He allowed her to depart voluntarily — legally advantageous — by April 1996 "or any extensions as granted" by the I.N.S. Immigration officials in Boston, citing her cooperation in the Chatelain case, extended the date successively to March 1998.

In the meantime Mrs. Boles had married and moved to her husband's

home in Phoenix. In February 1997 Michael Boles filed an I-130 petition to get his wife permanent residence. The petition went to the I.N.S. Texas service center, covering Phoenix. It was then transferred to a California center, and from there back to the local I.N.S. office in Phoenix.

In May 1998, with the petition still pending and the date for voluntary departure just past, the I.N.S. office in Boston gave Mrs. Boles a year's stay of deportation. A year later she had still heard nothing about her green card. She asked an I.N.S. officer in Phoenix for a further stay. Denying it, he said the delay on the green card petition must mean that her marriage was fraudulent — in effect blaming her for the notorious inefficiency of the I.N.S.

"Based on a careful review of the facts of this case," an official wrote, "there do not appear to be any unusual humanitarian factors."

The petition for a green card was finally granted this past June, more than two years after it was filed. So far it has not helped Sherol Boles. If she is deported, she may come within provisions of the harsh 1996 Immigration Act that would bar her from this country for 5 or 10 years.

Tough as it is, the 1996 law gives the I.N.S. power to reopen this case. But the service seems determined in its refusal. In its First Circuit brief it argued that the court has no power to review its decision, right or wrong.

Why is the I.N.S. so adamant? It must want to establish the principle that nobody — not even a court — can make it pay attention to reason and humanity. □

When a Disease Gets Wings

By Durland Fish

NEW HAVEN
The West Nile virus outbreak has shocked New Yorkers with the realization that a single mosquito bite can be fatal. They may be even more shocked to know that such outbreaks are preventable.

While scientists may never know the source of the virus, which has now infected at least 37 people in the New York City area, we have long known that mosquito-borne viruses are always out there, ready to cause an epidemic in the right conditions. This time a prolonged drought produced a large supply of the northern house mosquito, *Culex pipiens*, which happens to be particularly efficient at transmitting certain viruses from birds to humans.

This mosquito likes stagnant water with rotting leaves that help provide abundant food for its larvae. Storm-sewer catch basins are favorite habitats; in New York City, nearly every street corner is a potential breeding pool. Although frequent rains normal-

ly flush out the pools, low rainfall concentrates the food for the mosquito larvae and generates adult mosquitoes by the thousands.

Culex pipiens is just one of probably 30 or more mosquito species living in New York City. The problem is, we don't know how many species — or how many mosquitoes — there really are because there apparently has never been a survey to find out.

The spraying program the city has now undertaken is probably reducing

New York is too lax on monitoring mosquitoes.

the overall number of mosquitoes (as well as many other insects), but its effectiveness in reducing the risk of disease cannot be evaluated because we don't have any estimates of how many *Culex pipiens* there were.

Counting insects may sound like searching for needles in a haystack, but information on the kinds of mosquitoes that exist and where they are numerous can be obtained relatively easily. Monitoring programs involve

using traps to capture adult mosquitoes or their eggs; doing larval surveys of ponds, marshes and stagnant pools, and even putting out "sentinel animals" like chickens or rabbits in mosquito-infested areas to see if they contract mosquito-borne diseases.

There are many effective, long-term programs around the country — particularly in Florida and California. In the New York region, however, knee-jerk responses to health crises have been the rule. Westchester County instituted a mosquito surveillance program in 1981, partly in response to a fatal case of La Crosse encephalitis in Pound Ridge. The program quickly revealed another encephalitis virus, Jamestown Canyon virus, in Lewisboro. However, the program was abandoned in 1985.

Connecticut didn't establish a statewide surveillance program until two years ago, after the deadly Eastern equine encephalitis virus was found in mosquitoes from the southeastern part of the state. Officials only thought to look for the virus after health workers in Rhode Island, which has a good monitoring program, found it in mosquitoes near the Connecticut border.

The West Nile virus may soon be contained, but the threat of mosquito-borne disease won't go away on its own. There's no reason to wait for people to fall ill before we take action. □

Durland Fish is an associate professor of epidemiology and public health at Yale University.



Fix '96:

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

PRESS CONFERENCE

FOR IMMEDIATE RELEASE
October 7, 1999

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

NEARLY A THOUSAND TO RALLY AT CAPITOL CALLING FOR A FIX TO HARSH 1996 IMMIGRATION LAWS Immigrants and Supporters to Join Members of Congress

WHAT? At a rally on October 14, nearly 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. As the continued consequences of these laws become more widely publicized, there is a growing and bi-partisan awareness in Congress that more must be done.

WHEN? **Thursday, October 14, 1999**

WHERE? **1:30 - 3:00 p.m.**
West Steps of the U.S. Capitol (facing the Mall)

WHO? **Members of Congress:** (as of October 7. More are likely to attend.)
Rep. Howard Berman (D-CA) Rep. Connie Morella (R-MD)
Rep. Danny Davis (D-IL) Rep. Jerrold Nadler (D-NY)
Rep. Luis Gutierrez (D-IL) Rep. Ileana Ros-Lehtinen (R-FL)

Immigrants affected by the 1996 laws will tell their stories and advocates from the following states will also participate: California, Florida, Illinois, Maryland, Massachusetts, New Jersey, New York, and Washington, D.C.

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Right the Wrongs - Restore the Balance



FIX '96:

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

2 pages

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

October 7, 1999

HUNDREDS OF IMMIGRANTS, AND THEIR FAMILIES, WILL AGAIN COME TO WASHINGTON TO DEMAND THAT CONGRESS FIX '96

On October 14th, hundreds of immigrants and their families will travel to Washington again to appeal to Congress to change anti-immigrant laws passed in 1996 that have resulted in disastrous consequences for hundreds of American families across the country. The 1996 **Illegal Immigration Reform and Immigrant Responsibility Act** expanded the definition of what is considered a serious crime, and applied that definition retroactively. As a consequence, immigrants who committed relatively minor crimes in the past are being treated as if they committed more serious crimes in the present. Even though many of these immigrants have paid their debt to society and have moved on to lead normal, law-abiding lives, they are being hunted down and locked up again—this time with no chance to show they can be, and have been, productive members of society.

As much of a nightmare as this is for

(Continued on page 2)

Excerpts from statement of Carly Caza, a whose mother is being deported for a crime committed 17 years ago

Carly Caza is 8 1/2 years old. In 1982, her mother, Catherine, sold some pills to an undercover police officer, a crime for which she was never required to serve a day in jail. For that crime, even though she has received a pardon from the governor of Florida, the INS is trying to take Catherine away from Carly. At 8 1/2, Carly has become an advocate for change in our immigration laws. Here is a brief excerpt from her appearance at a September 2 press conference in Washington.

I really don't understand why America would deport my mom. This is just not fair.

This is supposed to be the land of the free, but maybe not for everybody.

If my mom has to go away, then I have to choose between leaving my grandma, or being without my mom.

My mom was already punished a long time ago and if they punish her again, then they would be punishing me too.

My mom and I are working to change these laws. We write lots of letters and have peaceful protests. Maybe we can help other children from this pain. Please help my family stay the way it is now. I want us to be a happy family again.

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the immigrants themselves, it is worse for their children, who just don't understand why their mothers and fathers are being taken from them, to be banished from the United States. The voices of some of these children were heard at a recent press conference in Washington, moderated by Rep. Constance Morella (R-MD). These children spoke of their lives unraveling as their mother or father face the threat of deportation. Excerpts from the statements of two of those children can be found in the accompanying story.

Their nightmares are being repeated every day all over the country. They will be multiplied, until the laws are changed.

(Continued from page 1)

Excerpts from a statement by Jaime Jaramillo on the effort to deport his father and its effects on his family.

Jaime Jaramillo is 17. His father got into trouble with the law 10 years ago for the first and only time. He was sentenced to five years of probation, but now faces permanent exile. As he says in his own words at a September 2nd press conference in Washington, the experience has been a nightmare for Jaime and his family.

There has been a big cloud over my family for the past three years because of a very unfair immigration law.

Ten years ago, my dad, Charlie, made a huge mistake. As a favor to a friend, he went and picked up a small amount of cocaine, and he got arrested for it. My dad knows it was a big mistake and he has paid his dues.

Our family thought that this problem was behind us until three years ago. My dad went into INS to take his citizenship exam and they told him that they were going to deport him because of his record.

My family was shocked. We couldn't understand how this could be happening in our free country.

We have been fighting the deportation in the courts and asked for a pardon from the Governor of Pennsylvania.

My whole family has been devastated. What the government doesn't understand is that the stress is not just on my dad, it is also on his U.S. citizen wife, kids, and other family. My dad has lost his business and it has been hard to make ends meet because of the legal bills.

In addition, I have lost almost all of my friends because of this. Their parents didn't want them associating with me because of my dad's problems. I have been depressed, and going to school is hard.

But I don't care. I would give up anything for my dad. My sister and I have even stood on a street corner in my town to collect signatures and to hold up signs saying, "Don't Deport My Dad." Even though it's embarrassing, I would do anything.

If you take away my dad, my family couldn't make it financially. But more important, I know that I would fall apart. My dad puts me in my place, and makes sure I behave. How can I have a future without my dad?

I love my dad so much. He is my role model. Please don't take him away from me and my family. Thank you very much.

FIX '96:

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2 pages

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

September 30, 1999

ON THIRD ANNIVERSARY, SUPPORTER OF TOUGH PROVISIONS IN IMMIGRATION LAW SEES NEED TO RESTORE BALANCE

Attached:

Miami Herald, *Restore Justice to Immigration Law*

Today marks the third anniversary of the enactment of a series of laws that have had devastating consequences for America's newcomers. In 1996, Congress passed three laws that together represent the harshest crackdown on the rights and opportunities of America's newcomers in 70 years.

Each of these laws passed without a full understanding of their consequences. In the subsequent three years, families have been broken apart; recently-arrived immigrants falling on hard times have been ineligible for federal safety-net benefits; and immigrants and their families are barred from seeking redress in the courts in most immigration matters.

Congress has already ameliorated some of the most egregious provisions of the three laws. But as the continued consequences of these laws become more widely publicized, there is a growing and bi-partisan awareness in Congress that more must be done to restore balance to our immigration laws. In the coming days, Rep. Bill McCollum (R), working with his Florida colleague Rep. Lincoln Diaz-Balart (R), will introduce a bill to ameliorate some of the provisions of the 1996 immigration law. This development is significant, because Rep. McCollum was among the strongest supporters in Congress of the tough provisions in the law. Mr. McCollum has seen some of the tragic and unfair consequences of the 1996 laws, and has reasonably concluded that they should be changed.

The attached *Miami Herald* editorial comments on the effects of the 1996 laws, and notes the current Congressional efforts to ameliorate those laws.

Right the Wrongs - Restore the Balance
National Immigration Forum



EDITORIALS

Published Thursday, September 30, 1999, in the Miami Herald

RESTORE JUSTICE

TO IMMIGRATION LAW

Today marks a somber day in this nation built by immigrants: Three years ago the first provisions of the Illegal Immigration Reform and Immigrant Responsibility Act took effect. Now plainly littered in its wake are broken families; devastated U.S. citizens, and people unjustly deported and jailed indefinitely -- a new class of political prisoners in the land of the free.

This is the legacy of the law's unconscionable provisions and of its enforcement by the U.S. Immigration and Naturalization Service, which often seems determined to make a bad law worse.

Consider the case of Hawa Said, described by columnist Anthony Lewis in The Herald last week. Now 21, Hawa Said was a toddler when brought to Alaska from Yemen by her father. Since she was convicted last year of a cocaine offense, the INS has sought to deport her without a court hearing -- this despite the fact that she was sentenced to only 30 days in jail and technically has been a U.S. citizen since 1996.

The law's virtual elimination of judicial review has been legally challenged nationwide, though it could take years for the Supreme Court to settle the issue. But that and the INS's extreme interpretation of the law aren't the only problems.

Retroactive provisions have caused longtime residents to be deported for long-ago crimes. Great hardship also has been caused by the expiration of provision 245(i), which previously allowed immigrants who married U.S. citizens to pay fines and legalize their status while remaining in this country. Now the spouses must leave the country to apply for status -- and once out they are banned from returning for three to 10 years as punishment for having lived here illegally.

Fortunately, several members of Congress in both the Republican and Democratic parties have realized that this and other 1996 laws went too far, hurt too much. A slew of legislation to repeal some of the worst provisions is being prepared.

Rep. Bill McCollum, R-Orlando, for example, was a strong supporter of the criminal-deportation provisions of the 1996 law at the time. Yet this week he and Rep. Lincoln Diaz-Balart, R-Miami, will introduce a bill that aims to help longtime residents who would be deported for having committed relatively minor crimes before the law passed. No longer should youthful shoplifting, pot-smoking or joyriding equate to rape and murder as deportable offenses.

Sens. Bob Graham, D-Miami, and Edward Kennedy, D-Mass., also are working on legislation that could offer a broad antidote to what ails current immigration law. Other bills by Sen. Patrick Moynihan, D-N.Y., and Rep. Sander Levin, D-Mich, propose to restore federal benefits such as food stamps and disability aid to legal immigrants who arrived after Aug. 22, 1999 -- when welfare-reform unfairly cut them off. In all, the brew is promising.

Make no mistake: This law hurts more than the foreign born. Its victims include families with U.S. citizen children; communities that lose businesses and businesses that lose employees. Most of all, it hurts the spirit of a nation that prides itself on its immigrant heritage and just laws.



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PRESS CONFERENCE

FOR IMMEDIATE RELEASE

August 31, 1999

Contact: Judy Mark, National Immigration Forum
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AS CHILDREN OF IMMIGRANTS HEAD BACK TO SCHOOL, MANY ARE THE INVISIBLE VICTIMS OF HARSH 1996 IMMIGRATION LAWS

WHAT?

As young people across America prepare to return to school, thousands of children remain the invisible victims of three immigration laws passed in 1996. Their dreams may be dashed and their families may be torn apart. At a Capitol Hill press conference, some of these children will tell their stories. Republican Congresswoman Connie Morella will also speak and express support for legislation that will bring back a balanced approach to immigration.

WHEN?

**Thursday, September 2, 1999
10:00 am**

WHERE?

Rayburn House Office Building, Room 2226

WHO?

Congresswoman Connie Morella (R-MD)
Cecilia Muñoz, Vice President, National Council of La Raza
Young people affected by the immigration laws will tell their stories.

WHY?

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: immigrants are being jailed and deported for minor transgressions committed years ago; immigrants are being denied desperately needed health care services; despite unfair treatment by the federal government, long-time legal residents, including Central American immigrants and turned-away legalization applicants, may be deported; refugees are being sent back to their persecutors; among other serious problems.

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Right the Wrongs - Restore the Balance



FIX '96:

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2 pages

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

August 20, 1999

CHANGE IN INS POLICY BRINGS ONLY TEMPORARY RELIEF TO FEW IMMIGRANTS SUBJECT TO HARSH 1996 LAW

In 1996, Congress felt it had to "do something" to toughen our laws designed to deter illegal immigration. That year, Congress went too far in passing laws that, along with an increase in border controls, targeted long-time permanent residents and harmed American families in the process. A series of recent court decisions and policy changes instituted by the Immigration and Naturalization Service (INS) have marginally improved the lives of some victims of these laws. Ultimately, however, the laws will have to be amended in order to restore a semblance of fairness in the way we treat America's newcomers.

Recently, the INS had changed its policy regarding the detention of immigrants who committed certain crimes in the past. The change in policy provides only a temporary release from detention pending their deportation hearing. The underlying law that punishes rehabilitated legal residents who have paid their debt to society still must be changed.

Background. At issue is the treatment of immigrants who have been convicted of a wide range of crimes—including many that are not particularly serious—at any time in the past. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 required the INS to detain and remove anyone convicted of an "aggravated felony." That law defined "aggravated felony" very broadly to include even minor

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Case Example: Why the 1996 Law Must be Changed So Those Who Have Learned From Their Past Mistakes Are Not Punished A Second Time

The 1996 laws, and the limited release policy announced by the INS, can be illustrated by the case of Howard. Howard has been a Lawful Permanent Resident since 1973. He was 14 at the time. Howard was convicted in three separate minor crimes, the last in 1983. He was never sentenced by a judge to time in jail. In the past 15 years, Howard has gone on to become an outstanding member of his South Florida community. He owned and operated two successful restaurants. In addition to serving paying customers, Howard cooked for the homeless on a regular basis. He also sponsored basketball and baseball teams for kids from low-income families,

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crimes for which someone received a *sentence* of a year or more – even if a judge decided the person did not deserve to actually serve time in jail.

Mandatory Detention. The 1996 laws mandated that the INS hold in detention all such immigrants until the completion of their removal proceedings, and their eventual deportation from the U.S. Allowing for the need to construct more detention facilities, Congress delayed the mandatory detention provisions from going into effect until October 9, 1998. Since then, when immigrants who may have never served time in prison come into contact with the INS (by applying for citizenship, for example) they are locked up for crimes that they thought they had paid for years – or even decades – ago.

Temporary and limited relief for a few. In thirteen federal court districts around the country, judges have said that the INS has wrongly interpreted the law by applying the mandatory detention provision to immigrants who committed crimes in the past (pending their deportation hearings). As a result, the INS is now reviewing the cases of a narrow class of immigrants for possible release. The INS reviews apply only to immigrants who were released from the criminal justice system prior to October 9, 1998 (the date the INS was required by law to detain immigrants who committed crimes), and who have not been given a final order of deportation. Less than 1,000 immigrants are eligible for this review and, of that number, only those who are considered not to be a danger to society are being released. However, even for those immigrants, deportation proceedings will continue; their release is only a temporary reprieve until their deportation hearing. Many will find that deportation cannot be waived because of their minor crime of many years ago, and they will be banished from the U.S.

(Continued from page 1)

and worked with the police department in ridding his community of drug dealers. Howard has accumulated numerous merit awards for outstanding community support and service. He is now 40 years old, and is supporting four U.S. citizen children.

Because his crimes come under the 1996 immigration law's definition of "aggravated felony," Howard is subject to removal from the U.S. In 1998 – fifteen years after his last conviction – the INS entered Howard's restaurant and arrested him. Howard was imprisoned, pending his deportation. The new INS policy may help him, but only temporarily. He was last released by the criminal justice system (after paying a fine) in 1983 – prior to October 9, 1998. Howard therefore qualifies to have his case reviewed, for his possible release from INS detention until his deportation hearing. However, unless the law is changed, he is still deportable. Once the INS completes the deportation proceedings and issues a "final order" of deportation, he will eventually be deported back to Jamaica, where he came from 26 years ago.

Ultimately, the law must be fixed, so that persons like Howard, who have learned from past mistakes, can be given the opportunity to stay, while those who have committed more serious crimes, and who have not made an attempt to rehabilitate themselves can be removed.

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

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



FIX '96:

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4 pages

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

August 5, 1999

LEADERS CALL ON CONGRESS AND ADMINISTRATION TO FIX HARSH 1996 LAWS AFFECTING IMMIGRANTS

At a press conference on July 28th, organizations representing a broad range of interests banded together and demanded that Congress fix laws passed in 1996 that have compromised America's tradition as a nation of immigrants and a nation of just laws.

Bishop Thomas Wenski, Auxiliary Bishop of Miami, spoke on behalf of the National Conference of Catholic Bishops. The Catholic Church is concerned about this issue, Bishop Wenski said, in part "because of the numerous requests the Church receives from immigrant families each week to help loved ones who have languished in detention for several months and even years after having served a criminal sentence, or who are being deported because of a minor crime." In the view of the Catholic Bishops, "these persons... should not be subjected to a one-size-fits-all approach."

Robert Grey, Chair of the House of Delegates of the American Bar Association, appeared at the press conference to deliver that organization's concerns. "The changes to the immigration law made by Congress in 1996 demonstrate how bad law frequently results in bad consequences, intended or unintended," Grey said. "Something urgently needs to be done to restore balance and fair processes to our nation's immigration laws."

Victims of 1996 Laws Tell Their Stories at Press Conference

Rick Siridavong is one of thousands of immigrants for whom the retroactive and inflexible application of the immigration-related laws passed in 1996 has led to the current calls for Congress to fix the law. Mr. Siridavong, when he was 18, was with a group of friends who stole a car radio. He was arrested and was given a two-year suspended sentence. For good behavior, his probation was terminated six months early. He never served a day in jail.

In 1998, he applied for citizenship. That turned out to be a mistake. INS agents went to his house and took him away in handcuffs. He spent five months locked up with more serious criminals. He has been released on bond pending the final outcome of his deportation proceedings. Since

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Right the Wrongs - Restore the Balance
National Immigration Forum

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Jess Hordes, of the **Anti-Defamation League**, also spoke. Noting that the 60th anniversary of the SS St. Louis was recently commemorated, Mr. Hordes said that, "We have come here today committed to entering the 21st century as a nation that will never again deliver victims of persecution back into the hands of their oppressors."

Wade Henderson, Executive Director of the **Leadership Conference on Civil Rights**, noted that, "Civil rights in this nation must be measured by one yard stick for citizens and immigrants alike." Mr. Henderson said that his 185-member coalition is "deeply concerned" that the 1996 laws "violate that principle."

Jeanne Butterfield, Executive Director of the **American Immigration Lawyers Association**, gave an overview of the problems. The 1996 laws, she said, "violate fundamental American principles. They deny people their day in court; deny people a second chance; change the rules in mid-game; tear families apart; and hit the wrong targets."

In addition to the organizations whose representatives spoke at the press conference, representatives of 14 civil rights, religious, immigrant and refugee advocacy, ethnic, and labor organizations appeared at the press conference with statements from their organizations.

(Continued from page 1)

his country of birth — Laos — will not accept deportees from the U.S., he still faces the possibility of life in INS detention — unless the law is changed.

Pam Gaul, of Tampa, Florida, spoke on behalf of her son, who couldn't be at the press conference because he has already been deported. She adopted her son John from Thailand and brought him to the U.S. when he was five. When John was 17, Pam realized that he was not a U.S. citizen, because the proper paperwork had not been filed. She immediately filed a citizenship application for him, but the application was not processed before John turned 18. By that time, he was not eligible for citizenship through adoption. A year later, John got into trouble, stealing a car and writing bad checks. He served 20 months in prison. He completed his sentence, and straightened out his life, working two jobs. The INS took him back into custody and deported him for the crime for which he had already paid. He is now in Thailand, where he has no family and where he cannot speak the language.

Laurie Kozuba spoke about her Vietnam veteran husband, a Canadian citizen who has lived in the U.S. for 41 years, since he was five. Six years ago, her husband finished serving a three-year jail term for crimes he committed. He learned his lesson, and straightened out. With the 1996 immigration law, however, there is no lesson to learn — an immigrant is punished equally whether he has been rehabilitated or not. Her husband is now in deportation proceedings.

The fight to keep her husband in the U.S. has led Ms. Kozuba to found **Citizens and Immigrants for Equal Justice (CIEJ)**, a grassroots organization of families that share the misfortune of having a loved one caught up by a law that absurdly and inflexibly requires the deportation of an immigrant no matter whether he has committed a particularly serious crime or whether he has paid for that crime. CIEJ now has a membership of 500 families in 26 states.

Right the Wrongs - Restore the Balance
National Immigration Forum

Article 85

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A Deportation power changes are pushed /Congress urged to amend three 1996 laws

STEVE LASH, Houston Chronicle Washington Bureau

07/29/1999

Houston Chronicle

3 STAR

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WASHINGTON - Saying **immigrants** deserve their day in court, civil- rights leaders Wednesday urged Congress to amend three 1996 laws that give the federal government largely unrestricted deportation authority.

The leaders' call for change touched off a dispute between the Immigration and Naturalization Service and Rep. Lamar Smith, R-San Antonio, who chairs the House immigration subcommittee. INS agreed that the laws improperly removed the discretion of federal judges in deportation cases. Smith countered that the problem with immigration is not bad laws but inadequate INS enforcement.

The three laws are the 1996 Illegal Immigration Control and Immigrant Responsibility Act, the Anti-Terrorist and Effective Death Penalty Act and the Personal Responsibility and Work Opportunity Reconciliation Act.

In passing the three laws, Congress attempted to stem illegal immigration by giving INS the ability to quickly deport **immigrants**, including those with resident status, who have criminal records.

The laws assisted the government's effort by requiring judges to consider an immigrant's criminal past in deciding whether to uphold a deportation decision.

But officials of three civil-rights groups said Congress went too far, and they assailed the 1996 laws for depriving **immigrants** of their due-process rights. In particular, the statutes inappropriately removed judges' long-standing authority to disregard a resident immigrant's criminal record in deportation proceedings, said leaders of the American Immigration Lawyers' Association, the Leadership Conference on Civil Rights and the Anti-Defamation League of B'nai B'rith.

Jeanne Butterfield, executive director of the lawyers' association, denounced Congress for stripping **immigrants** of their due-process rights in a "frenzy of anti-immigrant backlash." She added that "Congress needs to act now" to restore those rights.

Wade Henderson, executive director of the leadership conference, decried the laws for stripping judges of discretion. "It is important that civil rights be measured by a single yardstick," he said, adding that **immigrants** should be afforded the same rights in court as U.S. citizens enjoy.

Jess Hordes, government affairs director of the anti-defamation league, said the United States should have strong immigration laws to protect its citizens but that the 1996 statutes are excessive.

"Of course, the U.S. has the right and the obligation to ensure that unworthy applicants do not take advantage of the asylum system," Hordes said. "But this should never be done in haste, without adequate protections."

INS spokesman Russ Bergeron echoed the call for a restoration of judicial discretion. Judges should

be permitted to expunge the record of upstanding resident **immigrants** who committed minor offenses years ago and have already paid their debts to society, Bergeron said.

"It makes a lot more sense to have the immigration judges decide an individual's case . . . and make (the immigrant) whole again," Bergeron said. "That's simply in the best interests of all the parties."

But Smith said the laws are not the problem. Smith, an outspoken INS critic, said the agency should take a more active role in expediting the admission of qualified **immigrants** while ensuring that undesirables be denied entry to the United States.

"The INS hid for years behind the shoddy claim it had no discretion to intervenc in the deportations of true hardship cases," Smith said. "like every other prosecutor in the nation, it does have discretion. It just hasn't been willing to exercise it to benefit **immigrants** ."

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Fix '96:

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

PRESS CONFERENCE

FOR IMMEDIATE RELEASE
July 23, 1999

Contact: Lisa Shuger, National Immigration Forum
(202) 544-0004, ext. 41

LEADERS LAUNCH NATIONAL CAMPAIGN TO FIX HARSH 1996 LAWS AFFECTING IMMIGRANTS

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

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

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

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

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

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

#

Right the Wrongs - Restore the Balance
National Immigration Forum

National Immigration Forum

To: Irene Bueno
Company : DOMESTIC POLICY COUNCIL
Fax Number : 202-456-5581
Phone Number : 202-456-6558

From : mbelanger
Fax Number : 202-544-1905
Phone Number 202-544-0004

Time Sent : Tuesday, Jul 27, 1999 07:23PM
Pages : 4
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FIX '96:

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



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

July 27, 1999

NEW LAWS SENTENCE SOME IMMIGRANTS TO LIFE IMPRISONMENT REGARDLESS OF THE SERIOUSNESS OF THEIR CRIME

In 1996, the Anti-Terrorist and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act contained provisions which required the government to deport legal immigrants who had committed most crimes for which a sentence of one year or more was imposed—even if a judge suspended the sentence and the person never served time in prison. For example, a legal immigrant who stole a car as a teenager and was given a two year suspended sentence may be deported, even if he never again was convicted of a crime.

At the same time, the laws took away an immigration judge's discretion to grant a waiver to such a person—even if he has family and other ties to the U.S., has never committed another crime, and is no threat to the community.

Compounding the harshness and unfairness of these laws, many immigrants in this situation cannot be deported because their countries refuse to accept deportees from the U.S. Yet they continue to be held in detention, even though there is no realistic expectation they will be deported. As a result, these immigrants are held indefinitely—long past any sentence other Americans would serve for the same crime. About 3500 immigrants—from Cuba, Vietnam, Cambodia, Laos, and other countries—are in this situation. As there is no allowance for rehabilitation, and the law requires them to be deported, one-time offenders are punished as harshly as hardened criminals—with a life sentence.

Courts Tell INS Immigrants Cannot be Held Indefinitely

Since 1996, U.S. federal courts have been inundated with petitions seeking the release of legal immigrants who are being held indefinitely. Recently, in Seattle, a panel of five federal judges unanimously held that "it is 'excessive' to detain an alien indefinitely if deportation will never occur."

For now, this decision applies only to Western Washington state. It is being appealed. But it is likely that other courts will follow suit, until the law is changed to allow an immigration judge the discretion to determine if an immigrant who has committed a crime in the U.S. is deserving of a second chance.

The attached *Seattle Times* article explains the Seattle ruling, and the issue of immigrants held in detention indefinitely.

Right the Wrongs - Restore the Balance
National Immigration Forum



Indefinite detention by INS is illegal

Seattle ruling has wide impact

BY MIKE CARTER AND STEVE MILETICH
Seattle Times staff reporters

In a sweeping ruling with national ramifications, five Seattle federal judges have ruled that the government cannot indefinitely detain criminal aliens awaiting deportation.

The judges yesterday ordered the release of three men held by the Immigration and Naturalization Service at its SeaTac federal detention center, ordered a hearing for a fourth, and will rule later in a fifth case.

Some of the Washington detainees have been held more than two years awaiting deportation, often to countries that refuse to take them back. All have served their criminal

sentences in this country's prisons and, if they were citizens, would be free. However, a 1996 law mandating the deportation of criminal aliens has left them in limbo and the U.S. government in a bind.

Yesterday's ruling, which ultimately could force the INS to release as many as 120 other criminal aliens in Washington, sent shock waves through the local office of the INS and the U.S. Attorney's Office in Seattle.

Within hours of the order, judges had issued stays halting the release of two of the men — a burglar from Vietnam held 22 months and a thief

PLEASE SEE **INS** ON A 14

Noncitizens had finished sentences

INS

CONTINUED FROM PAGE 1

from Laos detained 26 months — while federal attorneys considered their options. The status of the third man ordered released was not clear.

U.S. Attorney Kate Pflaumer said she expected to seek an emergency stay with the 9th U.S. Circuit Court of Appeals by the end of today.

Civil libertarians and immigration attorneys hailed the ruling.

Jay Scansell, an assistant federal public defender in Seattle who represents four of the men, was thrilled with the decision. "These young men really deserve to be free," he said. "It's just been a tribute to human courage that they've been able to sit there and languish and not give up with total despair."

The judges, who heard the five cases together, chose them because they contain issues common to most of the other 120 or so detainee cases. After yesterday's ruling, many of these detainees are that much closer to freedom.

"I think this case is a vindication of the Constitution applies to everyone, including deportable aliens," Jayashri Srikanthiah, staff counsel for the Immigrants Rights Project at the American Civil Liberties Union in San Francisco, which filed a friend-of-the-court brief in the case.

"This decision is especially important because it is a unanimous ruling from all of the federal District Court judges in Seattle," she said. "We believe it will carry special weight throughout the country."

The U.S. is holding more than 100 criminal aliens. While the order binding only in U.S. District Court in Washington, it represents the first time a group of federal judges have agreed to hear the issue as a panel. That gives the order that much more legal weight when the issue is considered in appellate courts or other federal districts.

Since 1996, the country's federal courts have been inundated with petitions seeking the release of detained criminal aliens. Virtually all claim their detention violates fundamental constitutional guarantees prohibiting the deprivation of life, liberty or property without due process of law.

In their ruling, the judges said the indefinite detention of the petitioners violates those rights.

Each of the five judges signed the order, which sets up a legal basis on which the individual cases are argued. Each judge then took one of the five petitioners and wrote an opinion.

The crux of the order is that the interests of protecting the public or

Those affected by ruling

• **Son Thai Huynh**, 31, came to the U.S. from Vietnam at age 15. A convicted burglar with alleged ties to a Seattle gang, he has been in INS custody for 22 months. He was ordered released yesterday, but federal attorneys were given 24 hours to seek a delay.

• **Khamsaene Sivongxay**, 30, came to the U.S. from Laos when he was 19. Convicted of theft, criminal mischief and illegal possession of a firearm. He has been held for 26 months. He was ordered released yesterday, but federal attorneys were given until Wednesday to seek a delay.

• **Bin Phan**, 27, came to the U.S. from Vietnam at age 14. Convictions include theft and drug-related crimes. In INS custody for nearly two years. He was ordered released yesterday, but it was unclear if a delay will be granted.

• **Dennis Batyuchenko**, 25, came to the Seattle area from the former Soviet republic of Belarus. Served time for theft and buying stolen property. He has spent 19 months in INS custody. His case has been set for an evidentiary hearing.

• **Kim Ho Ma**, 21, from Cambodia. He served 38 months for his part in a fatal drive-by shooting and has alleged gang affiliations. INS has held him for 24 months. His case is pending.

making sure deportation orders are carried out diminish when compared with the possibility that a detainee could be held forever if his country refuses to take him back.

While dangerousness and flight risk may warrant detention, they do so "only if there is a realistic chance that an alien will be deported."

"It is 'excessive' to detain an alien indefinitely if deportation will never occur," the order says.

The government argued that the detainees' rights were adequately preserved through an administrative hearing process.

Detainees argued that those hearings are a sham, subject to political and public pressure. District directors too often consider only that an alien is a convicted criminal facing deportation and conclude they should be held — a review that falls far short of due process.

"Our review of the record confirms that the INS does not meaningfully impartially review the petitioners' custody status," the order

says.

Government lawyers had argued that the criminal aliens ordered deported no longer enjoy the rights of citizens. Again, the judges disagreed, noting that all of the petitioners are longtime permanent legal residents of the United States and are entitled to its protections.

What will almost certainly follow the ruling is a lengthy appeal to the 9th Circuit Court and, perhaps, to the U.S. Supreme Court. Pflaumer, the U.S. attorney, was awaiting approval yesterday from the U.S. solicitor general, who has to sign off on the appeal.

Meanwhile, two of the judges agreed to temporary stays of their orders to release the men. Judge John Coughenour, the district's presiding judge, gave Pflaumer's attorneys 24 hours to seek a stay from the 9th Circuit Court of Appeals.

Otherwise, he said, Son Thai Huynh, 31, the son of an American serviceman and a Vietnamese woman, must be freed. Huynh has been in INS custody for 22 months after serving 33 months in prison as a habitual offender following a burglary conviction. Vietnam has refused to take him back.

Judge William Dwyer granted a stay on the release of Khamsaene Sivongxay until Wednesday. Sivongxay, 30, has a criminal history of theft, criminal mischief and possession of a firearm. He was in INS custody for 26 months after Laos refused to issue travel papers.

The status of the third man ordered released, Bin Phan, 27, from Vietnam, was not known. He had been in INS custody for nearly two years after serving prison time for theft and drug-related crimes.

Two other cases are pending. Judge Barbara Rothstein ordered a hearing for Dennis Batyuchenko, 25, from Belarus. Batyuchenko has a long criminal history, including arrests for assault, kidnapping, domestic violence and obstruction of justice. He has been in INS custody for 20 months.

There remains some question whether his country will take him back, and it is possible he could be accepted by another country.

Judge Robert Lasnik has not issued his ruling on the case of Kim Ho Ma, 21, of Cambodia, who served 38 months in prison for his role in a fatal drive-by shooting. He has been in INS detention for two years.

Mike Carter's phone message number is 206-464-3706. His e-mail address is: mcarter@seattletimes.com

Steve Milelich's phone message number is 206-464-3302. His e-mail address is: smilelich@seattletimes.com

THE WHITE HOUSE
WASHINGTON

To: Irene Bueno
From: Caroline Frederickson

I found these in my files relevant to our conversation yesterday.

Slender Mercies

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.

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 hand over her face and says, "Oh, gosh, I know it was forever."

Would-Be Citizens Trip On I.N.S. Policy Hurdle

For Disabled, a Matter of Interpretation

By SUSAN SACHS

Mikhail Kholchanskiy turned 80 this month, an age that few men like him, soldiers and laborers of the former Soviet Union, ever reach. Relatives sent cards and presents, but they could not give him the one gift he craved: becoming a citizen of the United States, the country that accepted him as a refugee when he fled Ukraine in 1992.

He has tried but, weak and often befuddled since suffering a stroke and then a heart attack after his arrival in Brooklyn, Mr. Kholchanskiy says he learns a bit of English during the day only to forget it in the evening.

"I would like to show how proud I am to be in this country," he said in Russian. "I would like to stand up in front of my grandchildren and show them that I am a citizen like them."

But when Mr. Kholchanskiy interviewed with the Immigration and Naturalization Service during his application for citizenship, his daughter, Lyubov Mikityanskaya, said, an I.N.S. officer told her that her father "didn't deserve anything in this country."

Like thousands of other immigrants whose physical and mental disabilities are supposed to exempt them from passing the English proficiency and civics parts of the citizenship exam, Mr. Kholchanskiy was refused a waiver from the I.N.S.

A 1994 law requires the I.N.S. to accommodate immigrants disabled by conditions like Alzheimer's disease, mental retardation and neurological damage from strokes, and whose doctors attest that they can not retain information sufficiently to pass the language and civics tests.

Almost from its inception, however, the disability waiver has been a source of tension and dispute between immigrants and the I.N.S. It is a benefit, I.N.S. officials in Washington acknowledge, that the agency is still deciding how to best administer and that field employees sometimes misinterpret in their zeal to detect fraud.

In New York, stories like Mr. Kholchanskiy's are common. In a case recounted by lawyers for the New York Immigration Coalition, an I.N.S. officer scolded a 78-year-old Spanish-speaking applicant, saying: "In this country we speak English. There are always some of you who try to get the easy way out." Another I.N.S. officer recently rejected a Russian woman's request for a waiver, telling her to "find a real doctor, not a Russian," according to a lawyer who was present.

Nationwide, the agency's treat-

ment of disabled applicants has prompted several lawsuits. The latest, a class-action suit brought by immigrants in southern Florida last fall, accused the I.N.S. of arbitrarily rejecting waiver applications and rejecting out of hand any that mention age-related illnesses like senile dementia and depression.

A Federal judge in Miami has denied an I.N.S. motion to dismiss the case and has issued a preliminary injunction in favor of two of the plaintiffs who faced a second, and final, rejection of their citizenship applications. A hearing is to be held later this month.

In New York City, immigration lawyers are preparing a formal and unusual collective protest letter about what they call "multiple persistent problems" in the way the regional I.N.S. office treats disabled applicants for citizenship, and in I.N.S. guidelines that, for the first time, appear to demand that immigrants submit copies of detailed medical records and related diagnostic tests.

Several lawyers for nonprofit groups in New York said they were also assembling cases in which disabled immigrants had been arbitrarily denied their rights to a waiver, in hopes of filing a class-action suit like

Charges that a waiver is being unfairly denied.

the one in Florida.

Besides verbal abuse, the immigrants' complaints in the New York area include allegations that I.N.S. officers reject disability waiver requests out of hand with no explanation, mislead immigrants on how to proceed with applications, refuse to accommodate people with speech impediments or other physical frailties and, above all, routinely second-guess doctors' diagnoses in direct violation of their own internal guidelines.

I.N.S. officials in Washington said that they were aware of the complaints and that they began to train field employees several months ago about the rights of the disabled and to help them determine when doctors had adequately made the medical connection necessary to obtain a waiver.

"It's a very useful and very good

provision that allows us to show some humanity and discretion in adjudicating these cases," said William R. Yates, acting head of naturalization. "It is difficult, however, because our officers do not get medical training."

Mr. Yates said the I.N.S. had no statistics, either nationally or for the New York region, on how many disability waivers had been requested, rejected and granted in the last four years.

But the New York Immigration Coalition, an umbrella organization for about 200 advocacy groups in the city, said its own informal survey indicated that out of 300 to 400 applications submitted in September, only 1 to 2 percent were approved. The figures include only those disability waiver requests from immigrants represented by lawyers. Many immigrants try on their own.

In one case, a 37-year-old Hispanic woman, whose doctor attested that she was mentally retarded and could not write even in her native Spanish, went to the I.N.S. with her waiver request and was not allowed to bring a family member with her to the interview, said Lauren Dreilinger, a lawyer with the New York Association for New Americans, an advocacy group.

After a few minutes, the field employee emerged and told her family that he had rejected the waiver and had administered the English proficiency test. The woman, he said, failed. At a second naturalization interview a few months later, Ms. Dreilinger said, the field employee again shrugged off the waiver request and told her, "You don't look mentally retarded."

When Mr. Kholchanskiy went for his first interview with the I.N.S., the

field employee asked him questions in English, his daughter said. He did not understand them, and the officer announced that he had failed the citizenship test. His daughter said that the second time Mr. Kholchanskiy was called for an interview, in December, an I.N.S. supervisor said his waiver application was insufficient, but refused to say why.

I.N.S. officials in New York said they did not have information about the specific incidents, but said that if applicants were treated rudely, it would be a violation of agency policy.

Until Dec. 30, when field employees received guidelines, there was not even a form for rejecting a disability waiver or informing immigrants what was lacking on their application. In New York, immigration lawyers said, the I.N.S. simply told immigrants they had failed the English test. If an applicant fails the test three times, naturalization is denied.

To become a citizen, an applicant must have lived in the United States for five years, be at least 18 years old and of good moral character, pass a civics test and English test, and take an oath of allegiance.

The disability waiver was part of an overhaul of immigration laws in 1994. Two years later, sweeping changes in the Federal welfare laws eliminated social benefits for noncitizens, triggering a vast increase in citizenship applications in general.

But it took the I.N.S. until the spring of 1997 to issue administrative regulations for the disability waivers. By then, one class-action lawsuit accusing the agency of arbitrarily rejecting applications had been filed by immigrants in Northern California — a Federal judge eventually dismissed it when the I.N.S. regula-

tions were published — and complaints from disabled immigrants seeking to become naturalized were mounting.

Stephen A. Rosenbaum, the plaintiffs' lawyer in the California suit and now a staff lawyer at Protection and Advocacy, a nonprofit advocacy group for the disabled in Berkeley, Calif., has filed three civil rights complaints in the last year with the Justice Department against the I.N.S.

Agency officials say the main problem in administering the disability waiver program, at least as it is now conceived, is that field employees are asked to make judgments about medical or developmental issues that are rarely clear-cut.

Most of the field employees also have a law enforcement background and are naturally cautious when reviewing immigrants' applications, said Gerri Ratliff, the head of the division that is revising guidelines for the employees.

Irina Matiychenko, a lawyer with the New York Legal Assistance Group, said she represented a client who had had a stroke, could not walk and could not speak. The woman submitted her doctors' diagnosis and copies of an MRI and CAT scans.

A public health service officer who was working as a consultant to the I.N.S. rejected all of it. The officer said he would conduct his own neurological test, Mrs. Matiychenko recalled, and he asked the applicant to squeeze his hands. When she did, he declared her fit.

"What's happening now is that an absolute stranger, who knows nothing about the patient, is making a medical determination," Mrs. Matiychenko said.

Associated Press

Friday, February 12, 1999

Court lets thousands fight deportation

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By BOB EGELKO Associated Press Writer

SAN FRANCISCO (AP) -- Thousands of longtime resident illegal immigrants facing deportation under a new law can stay in the United States while they try to win legal residency, a federal appeals court ruled.

The ruling Thursday probably affects several thousand immigrants in the United States for more than seven years who claim they are eligible for suspension of deportation orders, said Marc Van Der Hout, a National Lawyers Guild attorney representing the immigrants. ←

In a 2-1 decision, the 9th U.S. Circuit Court of Appeals upheld a judge's injunction blocking deportations during a lawsuit over a new federal law severely limiting eligibility for future legal residency.

The ruling applies only to the 9th circuit, which covers nine Western states. Similar deportations have taken place elsewhere.

A telephone call to the Immigration and Naturalization Service was not returned Thursday.

Since the case started in 1997, Congress has changed the law to exempt immigrants from Nicaragua, El Salvador, Guatemala, Cuba and some eastern European countries from the limits at issue in the case.

An illegal immigrant who has lived in the United States continuously for seven years can get a deportation order suspended by showing good moral character and the prospect of extreme hardship if deported. Suspension of deportation makes an immigrant eligible for legal residency.

A 1996 federal law placed a 4,000 annual limit on the number of immigrants eligible for suspension of deportation and transfer to legal residency status.

The limit covers the period from one October to the next. After 3,900 deportation orders were suspended between October 1996 and February 1997, the chief federal immigration judge and the chairman of the Board of Immigration Appeals ordered immigration courts not to approve any more suspensions until at least April 1997.

The new law also made immigrants ineligible for suspension if they had been given notice of deportation before attaining seven

years of U.S. residency.

After the 9th Circuit ruled that the new standard applied only to post-April 1997 deportation orders, thousands of immigrants rushed to have their suspension cases heard before April, only to be thwarted by the immigration officials' orders.

AP-CS-02-12-99 0515EST

Court lets immigrants stay to fight deportation

SAN FRANCISCO (AP) — A federal appeals court ruled yesterday that thousands of illegal immigrants who are longtime U.S. residents can remain in the country while fighting deportation orders.

In a 2-1 decision, the 9th U.S. Circuit Court of Appeals upheld a judge's injunction blocking deportations pending a lawsuit over a new law that severely limits an alien's eligibility for future legal residency.

Yesterday's ruling applies only to the 9th Circuit, which covers nine Western states. Similar deportations have taken place elsewhere.

The appellate court ruling most likely will affect several thousand immigrants who have been in the United States for more than seven years and who contend that they are eligible for suspension of deportation orders, according to Marc Van Der Hout, a National Lawyers Guild attorney representing the immigrants.

Since the case started in 1997, Congress has changed the law to exempt immigrants from Nicaragua, El Salvador, Guatemala, Cuba and some eastern European countries from the limits at issue in the case.

An illegal immigrant who has lived in the United States continuously for seven years can get a deportation order suspended by showing good moral character and the prospect of extreme hardship if deported. Suspension of deportation makes an immigrant eligible for legal residency.

A 1996 federal law put an annual limit of 4,000 on the number of immigrants eligible for suspension of deportation and transfer to legal residency status.

Immigration Law Invoked in Pastor's Drug Arrest Is Protested

By VIVIAN S. TOY

The Rev. Frank Almonte, a well-known Hispanic television evangelist from Corona, Queens, said he thought he was only helping his 12-year-old son when he packed three jars of "appetite enhancer" pills into his suitcase on a recent trip home from his native Dominican Republic.

But instead of helping his skinny son put on a few pounds, the pills, which are available from pharmacists in the Dominican Republic, landed Mr. Almonte in a Federal prison in Pennsylvania for 10 days. He was arrested at Kennedy International Airport and charged with bringing a controlled substance — steroids — into the country. Mr. Almonte, a legal immigrant who has lived in Queens for 22 years and whose three children are all American citizens, faces up to seven years in prison if convicted of criminal drug charges and could be deported.

Yesterday, more than 1,000 of Mr. Almonte's parishioners and admirers from across the city rallied outside the Queens County Courthouse to denounce the Pentecostal minister's treatment at the hands of local and Federal authorities. They called his plight a symbol of the precarious status of hundreds of thousands of Hispanic immigrants in the area, and denounced tough new immigration laws, enacted to fight terrorism, that they said were too broad and had punished innocent immigrants.

At a hearing before Justice Lee Cross of the State Supreme Court in Queens, Mr. Almonte's lawyers asked that the criminal drug charges



Nancy Siesel/The New York Times

The Rev. Frank Almonte, left, with his son, Joel, and his lawyer, Mel Sachs. Mr. Almonte said a doctor prescribed pills to help Joel gain weight.

against him be dropped and said that the pills had been prescribed by a pediatrician in the Dominican Republic for Mr. Almonte's son Joel. A second hearing has been set for next month. No date has been set yet on Mr. Almonte's deportation case.

Mr. Almonte, who has been waiting for an immigration interview to become a citizen since 1997, his lawyer said, was returning from an evangelizing mission to Santo Domingo when he was arrested at Kennedy Airport on Jan. 29. He was released by local officials on \$1 bail because he had been charged with a

relatively low-level drug violation, but he was taken into Federal custody under the 1996 immigration law that allows for the detention and deportation of any legal immigrant who has been charged with or convicted of a drug crime.

Mr. Almonte is pastor of the Adonal Christian Center, a church of more than 1,000 parishioners in Corona, but he is familiar to many Hispanic people because he also preaches on local Hispanic radio and cable television shows.

"He is a very well-known reverend among all churches and he is defi-

nately innocent of what he's accused of," said Maria Canales, an 18-year-old immigrant from Honduras who heard about Mr. Almonte's case on Radio Vision Cristiana, a Spanish-language Christian radio station.

Edward Juarez, president of International Immigrants Foundation, an organization that helps immigrants become citizens, called Mr. Almonte's treatment "a symbol of discrimination and anti-immigrant feeling."

He called for the repeal of the 1996 immigration law, which stiffened penalties against immigrants accused of drug offenses but made no differentiation between illicit drugs like heroin and cocaine and drugs like Anabolex, a steroid that is manufactured and sold in the Dominican Republic, but is deemed illegal here.

Many Dominican parents routinely give Anabolex to their children to get them to eat more, Mr. Juarez said. Mr. Almonte's son is 5 feet 5 inches tall and weighs 110 pounds, Mr. Juarez said.

The crowd waited patiently outside the courthouse as Mr. Almonte's lawyer, Mel A. Sachs, laid out his case in the courtroom. They listened to prominent speakers, including State Assemblyman Ruben Diaz Jr., sang hymns and shouted "Gloria a Dios!" and "Christo, Christo!"

They roared with excitement when Mr. Almonte stepped out of the courthouse with his lawyer. Mr. Almonte said just a few words of thanks to the people, but Mr. Sachs spoke at length about Mr. Almonte's innocence and the need to fight to change the immigration law.

Bureaucratic regulations could lead to deportation for immigrant

Statewire

ST. PAUL, Minn. (AP) -- Patrick Chung Vu is facing deportation. But some say the 26-year-old St. Paul man is a victim of a bureaucratic misunderstanding.

Vu, who has no criminal record, has spent the past 50 days in six jails in Minnesota, Wisconsin and North Dakota. He was released Monday from a Jamestown, N.D. jail.

His crime was failing to show up for an immigration hearing in California to determine whether he would be granted political asylum -- a proceeding he thought had been rescheduled.

Chung Vu is seeking asylum because he was brought to the United States as a teen-ager by his Hmong refugee parents. They sought asylum, but Chung Vu's status changed when he turned 21 and he was no longer considered a dependent of asylum-seeking parents.

Chung Vu's case -- lawyers, advocates and others agree -- is typical of the problems faced by thousands of immigrants navigating the nation's immigration system, a complex bureaucracy often confusing even to those who run it.

Too often, they say, immigration officials become bound by their own red tape, unwilling to admit the system's shortcomings and forcing immigrants such as Chung Vu to risk deportation and spend weeks in jail over clerical errors and slipshod advice.

→ "Once they've made a mistake, trying to get it undone is next to impossible," said Steven Thal, a Minneapolis attorney and chairman for the Minnesota/Dakota chapter of the American Immigration Lawyers Association.

The INS contends that Chung Vu brought on his problems himself last May, when he failed to appear at a court hearing in California he knew had been scheduled.

A deportation order was issued in absentia, and because Chung Vu didn't challenge the order within 180 days, the INS argued he should be deported to France, where he was born.

But Chung Vu was never told about the order, according to court documents.

It wasn't until his third visit to an INS office in Bloomington that Chung Vu was notified of the order. By then, his 180-day window

to challenge the ruling had closed.

Chung Vu stated in court documents that he was told a simple change-of-address form would result in his hearing being rescheduled for Minnesota, where he had moved in April and was married in June.

But the immigration officer who told Chung Vu that a change of address would be enough to get Chung Vu's asylum hearing moved to Minnesota was mistaken.

"If I don't know, how could he know?" said Sam Allen, the INS officer in Anaheim, Calif., who had handled Chung Vu's case.

Even Allen's boss, Russell Looney, said he thought a change-of-address notice "would have moved the case over to Minnesota" -- an erroneous assumption, according to immigration court spokesman Rick Kenney.

"A change of address does not give you a change of venue," Kenney said. "But I can't account for what they would tell him at an INS asylum office."

Immigration court officials were unable to account for whether they notified Chung Vu that an order of deportation had been issued at the May 11 hearing. In her decision to reopen the case, Immigration Judge Margaret Reichenberg concluded "there is no record of the order ever being sent to him."

In addition, Chung Vu's lawyer, Richard Breitman, said both the immigration court and the INS knew where to find Chung Vu. In fact, Chung Vu twice contacted them seeking information about the status of his California case.

"People should be outraged," Breitman said. "What does it mean to look at a kid whose wife is here, whose family is here, who relied on the advice he was given, to his detriment?"

As a result of Reichenberg's ruling, a hearing is scheduled for Feb. 18, when Chung Vu will seek permanent residency based on his summer marriage.

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The Morning Call

Tuesday, February 9, 1999

Woman continues deportation fight

Salisbury Twp. resident going to Washington, D.C. to try to revise immigration law.

02/09/99

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

With a federal deportation order looming like a dark cloud over her life, Gabriella Dee of Salisbury Township will go to Washington, D.C., in April to protest immigration laws that soon could tear her family apart.

On April 14, Dee and her husband, Steve, will join more than a hundred other immigrants and their family members at the Capitol, where they will tell their stories to representatives and plead for revisions to immigration laws that critics call Draconian.

"I think when you show people your face and tell them your story, it has a bigger impact than just reading about things," said Gabriella Dee, 34, a Canadian citizen who has lived in the United States for nine years, is married to a U.S. citizen and has two stepchildren.

A federal immigration judge ordered Dee to be deported last February for helping an Israeli boyfriend sneak across the U.S.-Canada border in 1985, when she was a 20-year-old college student.

At the time, Dee was fined only \$25 for her crime, which was then considered a relatively minor offense. And she has been in no other trouble.

But the Immigration Act of 1990 made alien smuggling a deportable offense. And in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act changed Dee's crime from a misdemeanor to an aggravated felony. The laws are retroactive.

The U.S. Constitution prohibits retroactive laws, but courts have ruled it does not apply in certain civil proceedings, including immigration cases.

Dee appealed her deportation order to the Immigration Board of Appeals in Falls Church, Va., and can remain in the country until the board makes a decision.

The appeals process can take more than two years. Susan Eastwood, spokeswoman for the Executive Office of Immigration Review, said last month that Dee's case is circulating among board members, but there is no way of knowing when a decision will be reached.

"It is moving," Eastwood said. "When it's going to be decided on is anybody's guess."

"It's always been in the back of my mind that eventually we're going to hear from the appeals board," Dee said. "But we're getting close to the one-year mark. The cloud is getting darker for me, and I don't know that we have a lot of time anymore."

"This could very well be the last step we have."

With that in mind, the Dees hope their visit to Washington will result in Congress revising immigration laws before Gabriella's appeal is decided. If she loses, Dee will be forced to return to Canada and likely never will be allowed in the United States again.

The lobbying effort is being organized by Citizens and Immigrants for Equal Justice, a Texas-based coalition of families that have been devastated by federal immigration policy.

Founder and President Laurie Kozuba said that since the group's inception in January 1998, membership has grown to 250 families.

Kozuba said most of the immigrants involved in the group are caught in situations similar to Dee's -- people who have paid for their crimes through the U.S. justice system, are legally in the country, but who now face deportation for past offenses.

"The day of advocacy is a day to come to Washington as a group, knock on our congressmen's doors and let them know how we feel," said Kozuba, whose Canadian husband faces deportation over drug possession charges to which he pleaded guilty and served a prison sentence.

Kozuba said Citizens and Immigrants for Equal Justice also has worked with the American Immigration Lawyers Association in Washington to set up appointments with the congressional subcommittees on

immigration.

"I'm not going to go quietly into the night," Kozuba said. "If we allow Congress to enact laws that take away [immigrants'] inalienable rights, how long is it going to be before they pass laws that take away our rights?"

Kozuba said she is convinced that many congressmen who voted for the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act didn't comprehend the legislation's impact.

"They not only targeted heinous illegal aliens, but reformed legal residents who have long since proved they are contributing members of society," Kozuba said.

"I don't think they want to be faced with these families, because then they would have to face the fact that they are destroying families."

→ Judith Golub, director of advocacy for the American Immigration Lawyers Association, said her organization and Citizens and Immigrants for Equal Justice share a common goal of changing harsh immigration laws that she said violate the heritage and tradition of American justice.

Golub said she hopes the Citizens and Immigrants for Equal Justice advocacy day in April raises public awareness about the inherent unfairness of immigration policy.

"It's our belief that the more people who understand and hear about these examples, they're going to see that this law went too far," Golub said. "We really believe that getting all these examples nationwide would be helpful in developing a foundation to change the law."

Dee's case has generated national publicity, and her attorney, Steve Morley of Philadelphia, said he believes that's a major reason the INS contacted him in September and offered a compromise.

"It's the only time they've ever called me up like that," Morley said. "I believe they were tired of seeing Gaby Dee's face in the press all across the country."

Morley said he and Kent Frederick, the INS's Philadelphia District counsel, discussed the possibility of suspending Dee's deportation, which would have allowed her to remain in the United States without absolving her of wrongdoing.

But Morley said in order to seal the deal, Dee would have had to withdraw her appeal and appear before the immigration judge who ordered her to be deported.

Morley said he wasn't willing to let Dee do that unless the INS agreed not to oppose the deal in court. The INS refused and the agreement fell apart.

"We had a blip of hope for a possible resolution," Morley said, "but it really kind of disappeared."

Morley said he remains open to negotiations.

"The immigration service, I believe, still has some options to negotiate with," he said. "And we're willing to talk to them."

Carl Rusnock, an INS spokesman, disagreed. He said Frederick explored every possible option to help resolve Dee's case but just couldn't find a solution.

Frederick "indicted he was trying to turn over every stone to find something that would work," Rusnock said. "The bottom line is, they tried to work any sort of legal angle they could, and there just weren't any legal angles available."

Dee has lived in the Lehigh Valley since 1989, when she moved from Montreal to Bethlehem on a student visa and enrolled as a graduate student at Lehigh University. INS subsequently issued her several additional visas allowing her to work in the United States.

Dee married a U.S. citizen, got a doctorate in biology at Lehigh, taught college courses, completed thousands of hours of community service and became a stepmother to her husband's two children.

It was only in 1996, when Dee applied for permanent residency, that INS discovered her 1985 conviction and initiated deportation proceedings.

Dee had to surrender her Canadian passport, her work visa and her Social Security card. She's been fingerprinted and photographed by the INS.

She hasn't worked since her last visa expired in May 1997, and she hasn't left the country since deportation proceedings began, fearing she would not be allowed back in.

Because she cannot travel to Montreal, she's missed the funerals of her grandmother and grandfather and was unable to see her mother when she was diagnosed with breast cancer.

Steve Dee said the fact that Gaby cannot work has cut the family's income 30 to 40 percent.

Steve Dee said several people have offered to pay Gaby for her work, but the couple must refuse offers of financial assistance because it would violate immigration regulations.

"We're playing it by their rules and that's something we can't afford to change," Steve Dee said. "We lose our day in court if we try to cheat the system."

To fill her time, Dee since April has been a visiting researcher at Lehigh

University, where she conducts biology research, helps graduate students with projects and occasionally lectures for professors who are away.

"I'm having fun," Dee said.

But after more than two years of fighting for Gaby's future, the Dees said they are tiring from the stress from the ordeal.

"A lot of people assume that because I'm still around, they decided I'm allowed to stay," Gaby said. "Actually, I'm still waiting."

by Fred Hiatt

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.

Casting a wide net in the name of immigration control

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By KATHY KHOURY

(February 4, 1999 12:27 a.m. EST <http://www.nandotimes.com>) - On a summer day as hot as a soldering iron, Catalina Reyes was driving through her hometown of Chandler, Ariz., when she was stopped by police. The authorities asked Reyes for her immigration papers. As a native-born Arizonan, she didn't have any. By her account, the police then pulled her from the car and handcuffed her - not letting her go until she happened to curse at them in English.

Reyes's account of that day in July 1997 lies at the heart of a sensitive immigration dispute that may presage a new, social divide in suburban America. Reyes was detained twice as part of an immigration sweep conducted by local police and the U.S. Border Patrol. They were hoping to stem what they consider a "tidal wave" of illegal immigration flowing into the rapidly growing Phoenix suburb.

The five-day dragnet netted 432 undocumented immigrants. But in the process, dozens of Hispanic residents, both U.S. citizens and legal immigrants, say they were stopped, questioned, and detained as well - just because they "looked Mexican."

The result is a collision here amid the saguaro and creosote over two fundamental forces: the need to protect people's civil rights, and the need to control the nation's borders. Indeed, since the sweep was conducted 18 months ago, it has spawned numerous protest marches, four investigations, and two lawsuits - one involving Reyes.

While the issue of how far the police should go in curbing illegal immigration is always a sensitive one, the dispute in Chandler has defined it in particularly sharp lines.

The city represents a clash of cultures between what has been a largely Hispanic, agricultural town and a newer, more affluent high-tech center - the self-proclaimed capital of "Silicon Desert."

In an exaggerated way, it symbolizes tensions that are surfacing in many boom towns across the American West. Rapid growth - from expanding suburbs and increasing immigration, both legal and illegal - is creating an uneasy alliance of varied economies and perceptions.

With about 160,000 residents, Chandler is the second-fastest growing city in the United States among those with populations over 100,000. Most of the 18 percent of the city's

population who are Hispanic continue to live in the city's center, which was originally modeled after a Mexican village.

But recent growth has been fueled by high-tech firms like Intel and Motorola. In recent years, the cotton fields and citrus groves surrounding the city have given way to wide, palm-lined streets and modern stucco-and-tile homes to accommodate the new influx of better-educated, more affluent, predominantly Anglo households.

But the changing demographics have not slowed the tide of immigration. Ron Sanders, chief patrol agent for the Border Patrol's Tucson sector, calls Chandler "the first or second most notorious staging site for aliens in the world" with well-established smuggling routes and drop houses where illegal immigrants are housed.

As many as 70,000 legal and illegal immigrants pass through Chandler on their way to other parts of the country, Sanders says. Many stay just long enough to earn enough money for the next leg of their trip. Others never leave.

Officials cite many reasons for Chandler's continued popularity with illegal immigrants. One reason is the city's location - about 120 miles north of the Mexican border with easy access to Interstate 10 and Sky Harbor International airport.

Another is the economy. Where illegal immigrants once found plentiful work in the fields, now they find a similar demand in construction. Still others come to the city because of ties to Mexican-American families who immigrated previously.

The idea for the Roundup sprang from Operation Restoration, an effort to revitalize the city's impoverished downtown.

Operation Restoration was the result of a neighborhood task force that was mostly concerned with improving property maintenance in the downtown area by cracking down on city code violations.

The task force held a number of community meetings to discuss its recommendations. According to a city spokesman, complaints about illegal immigrants were raised at these meetings.

Hispanic activists are skeptical about police claims about these and other undocumented complaints including everything from homicide to public indecency. Nevertheless, the complaints became the basis for the department asking for help from the Border Patrol.

Because the Border Patrol lacked the manpower to do the kind of wide-ranging sweep the city had in mind, the Chandler Police Department suggested the two organizations join forces. The Border Patrol agreed.

The result was a series of joint operations culminating in the five-day July sweep that has become known as the Chandler Roundup.

The city still has not been able to put the event behind it, and each new reminder rankles. Coming is a March 16 trial to decide a \$35 million federal lawsuit filed against the city on behalf of 15 plaintiffs, including Reyes.

"This should never have happened," she says, adding that Chandler Police stopped her twice during the Roundup, the second time in front of her young son, Carlos. "Now, every time my son sees a cop, he tells me to go hide."

City officials recently refused an offer to settle that would have required the city to issue a public apology and provide funding for community and educational programs to benefit the Hispanic community.

Stephen Montoya, the Phoenix attorney who brought the suit, says the people who were detained and questioned included undocumented workers and legal immigrants as well as naturalized and native-born citizens.

"Some speak only Spanish; others speak only English," he says. "The only characteristic they shared was that they looked Hispanic."

That's illegal, says Montoya, who alleges that the plaintiffs' constitutional guarantees against unreasonable searches and seizures were violated. His case was bolstered last month after the Ninth U.S. Circuit Court of Appeals in San Francisco ruled in a similar case that the Border Patrol can not stop drivers based on ethnicity.

Chandler Police Chief Bobby Joe Harris has angered Hispanics by repeatedly denying that his officers did anything wrong.

But a survey conducted by the state attorney general last year concluded that the operation violated the constitutional rights of American citizens and created an atmosphere of fear and uncertainty.

That was followed in November by the long-awaited report of an independent investigator hired by the city. That report found a lack of malice on the part of the police and Border Patrol, but concluded that excesses probably did occur as a result of poor training and supervision. After the report was released, the city manager reprimanded Harris for his role in the oversight of the operation.

City officials point out that they have taken a number of steps to ensure the mistakes of the past will not be repeated.

The city has resurrected a Human Relations Commission, dormant since the 1960s; appointed a Hispanic liaison officer in the police department; and launched a program of cultural sensitivity for police officers.

But many say these moves amount to nothing more than hollow gestures. Among them is City Councilman Martin Sepulveda, who has been openly critical of the Roundup and the city's response to the outrage.

"I'm not so sure it has to do with truth and justice as much as it has to do with getting our butts covered as far as we can cover them," he says.

On both sides, all involved agree that it will take time for the wounds to heal.

"I think as a department we learned a great deal," says Lt. Ray Villa, who was appointed to serve as the Chandler Police Department's Hispanic liaison officer. "We're going kind of slow, but that's OK. As long as we're taking those steps, I believe that eventually everything will mend itself and we'll begin to move in the right direction."

Judge orders INS to set bail

Man challenges law
denying it to some

By Leonel Sanchez
STAFF WRITER

A federal judge in San Diego has ordered the Immigration and Naturalization Service to set bond for a local man who is challenging a law that denies bail to immigrants with criminal records who are facing deportation.

The ruling may pave the way for new bail hearings for scores of immigrants now in detention across the nation.

U.S. District Judge Jeffrey Miller did not address the constitutionality issue of the case but ruled that the INS had failed to apply a 1996 law correctly when it arrested Julio Alves Curras of San Diego last December.

Miller said the law did not apply to Alves because the INS took him into custody six years after he was released from state custody in 1992. He said the intent of the law was to deport criminal immigrants as soon as they had completed their sentences.

"Congress did not intend for the mandatory detention provision to apply to individuals such as (Alves)," said Miller, referring to a section of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

The INS has until Feb. 12 to set a bail hearing. The agency plans to ask Miller to reconsider his ruling, a spokeswoman for the INS said.

Assistant U.S. Attorney Sam Bettwy, who is representing the INS in the lawsuit, said the agency could also appeal the decision to the Ninth Circuit Court of Appeals.

"That decision will be made in Washington," he said, referring to the U.S. Attorney General's Office.

Alves' supporters hailed Miller's ruling as a victory for immigrants, who, they contend, are being detained without bail and ordered deported for relatively minor crimes they committed and served time for years ago.

"Aliens cannot just be thrown in jail without having a chance to prove they are not a threat to the community or a flight risk," said attorney Jonathan Montag, whose firm is representing Alves. ←

Alves was arrested after he went to the INS office in National City to discuss his application for legal U.S. residency.

He was arrested and ordered to be deported because of his 1991 petty-theft and burglary convictions, which he had had expunged

Deport

Immigrants say they are detained without bail

Continued from B-1

from his record after completing his sentence.

His supporters said the Mexico native had stayed out of trouble since then and was in the process of settling down in San Diego with his U.S. citizen wife of two years when he was arrested and ordered to be held without bail by an immigration judge.

The immigration judge said he was following a 1996 law that expanded the definition of a deportable crime and denied bail to immigrants who had committed such crimes.

Alves could have appealed the ruling to an immigration appeals board. Instead, he filed a lawsuit in federal court challenging the constitutionality of the law.

He alleged that his rights to due process were violated. A local group has formed around the issue and protested the 1996 law on Monday in front of the federal courthouse in downtown San Diego.

Hands—and Hopes—Across the Sea

Tough U.S. Immigration Policy Keeps Asian Families Apart



BY CAROL GUZY—THE WASHINGTON POST

Sook Kong takes time out from the family's video game business for a kiss from 3-year-old son Daniel.

By PETER PAE and MARY JORDAN
Washington Post Foreign Service

In an Annandale shopping center seven years ago, Chris Kong did what millions of hard-working Asian immigrants have done before him: He opened his own business—Starland Club, a video game store where customers can swap or buy Nintendo and other games. It has been so successful that Kong has since opened another store in Centreville and is scouting for a third Virginia site.

Back in the little fishing town of Suncheon, South Korea, Kong's brother-in-law is not faring so well. Shin Sam Ho is looking for a job as an architect at a time when nine of the city's 13 architectural firms have gone bankrupt and the nation is struggling to lift itself out of a deep economic recession.

And he got more bad news when he applied for a tourist visa to visit his relatives in Northern Virginia. He said officials at the U.S. Embassy in Seoul rejected him as a bad risk; they concluded that, because he was unemployed, he might be tempted to overstay his visa and work illegally at Starland Club.

"I was very upset because I just wanted to see my sister," said Shin. "They asked me two or three questions, just said, 'No,' and called the next person."

Fairly or unfairly in a land built by and for immigrants, U.S. immigration policy results in the rending of millions of families, with some members

See KOREANS, A18, Col. 1



BY CAROL GUZY—THE WASHINGTON POST

Chris Kong, an immigrant who has fulfilled the American Dream, repairs equipment at his Fairfax video game store.

U.S. Visa Policies Divide Asian Families

Gates to U.S. Closed for Many

Many of the 26 million people in the United States who were born in another country have relatives who want to join them, but getting an immigrant visa is becoming harder and keeps families apart. Even visitors' visas are sometimes hard to come by because U.S. consular officials often suspect these visitors will stay illegally in the United States.

27 percent of all Americans born abroad have come from Asia, according to 1996 data. Here is a breakdown:

Philippines	18%
China	12
India	12
Vietnam	11
S. Korea	8
Other	39

SOURCE: INS, Census Bureau

Some examples of the waiting time for potential immigrants from three countries, according to two of the preferences assigned by the Immigration and Naturalization Service:

1st preference: Unmarried children of U.S. citizens.

4th: Brothers and sisters of U.S. citizens.

Philippines

1st: 13 years
4th: 23

Mexico

1st: 6 years
4th: 21

South Korea

1st: 5 years
4th: 18

THE WASHINGTON POST

in America and some in their homelands. As the Asian economic crisis grinds on, those divisions have become an obsession for many families split between places like Washington and Sunchon.

Shin and his Virginia relatives say their situation shows that the doors to America are closing tighter all the time. "It's easier to get into North Korea than into America," said Shin, noting that South Koreans can now visit the Communist half of the Korean peninsula on day trips via a cruise ship—albeit under armed guard. "The U.S. is putting up a wall between families. It's ironic, because the U.S. is a country that calls itself free, the most welcoming in the world."

One in 10 Americans was born in another country, and many of those 26 million people have mothers, fathers, brothers, sisters, cousins and friends who want to join them. The demand is growing in such countries as South Korea, Indonesia and Thailand, where economic turmoil has thrown millions out of work and crushed the fortunes of many families newly arrived in the middle class.

For the same reason, immigration officials and attorneys say, it has become increasingly difficult for such people to win approval to come to the United States, even temporarily, since joblessness began to soar in East Asia in late 1997. "They're not denying the applications; they're always asking for more papers, documents they never asked for before," said Jong-Joon Chun, a Korean American attorney in Fairfax County. "They're constantly delaying the application until you give up. It's inhumane."

About 8,000 South Koreans a year are granted immigrant visas allowing them to reside permanently in the United States. But it could take Shin a decade or even two to get one of these, because spouses and children of U.S. citizens have preference over siblings and because so many other applicants are on the list ahead of him.

So the overwhelming number of South Koreans who come to the United States apply as non-immigrants—tourists, students, temporary workers. Last year, the number of applications for these temporary visas plummeted from 589,000 to 355,00 as the country sank into recession and people could not afford the travel costs.

At the same time, the percentage of these visa applicants rejected by U.S. authorities increased because of official concerns that people fleeing hard times would stay on illegally in the United States. In South Korea, that meant a reduction in the approval rate for such applications from about 95 percent to 90 percent. While Americans might see that as a high figure, in South Korea it has left 35,500 people dejected, including Shin.

The story of one American family in Northern Virginia and a relative stuck on the coast of South Korea is becoming an everyday American tale, as common today as immigrants' stories of acceptance and rejection on

Ellis Island earlier this century.

Chris Kong, 36, came to the United States legally in 1987 with a green card, under the sponsorship of his parents, who had emigrated a few years earlier. It was the classic immigrant story: He left his fiancée behind and set out to build a better life, hoping to return for her later. "I didn't know much about America, but they said life was better there and that I would have better opportunities," he said.

He took a job installing vinyl siding—the only job he could find that did not require that he speak English. He had no idea what vinyl siding was, and he showed up the first day in black dress pants, which were quickly ruined on a long day of climbing 30-foot ladders to nail siding to houses.

After eight months of 16-hour workdays, Kong had saved \$5,000 and returned to South Korea, where he married his fiancée, Sook Shin, Shin Sam Ho's sister, before returning to Virginia. It took her two years of interviews with the Immigration and Naturalization Service before she could join her husband—an extraordinarily difficult and lonely time for her.

"I cried when I first saw [the kind of work] he did," she said. "He is skinny, and he was carrying these long vinyl sidings up the ladder all by himself. I couldn't stop crying." But when Kong started his own vinyl-siding business, she joined in the work.

By 1991, Kong had saved enough money to try out an idea—a sort of swap shop for video games, something he believed no one else had tried. So with a little cash and a lot of entrepreneurial spirit, he sublet the back room of a travel agency and began his video game club.

A year later, Kong opened Starland Club in the Backlick Shopping Center in Annandale, and his business career was launched. The Kongs became U.S. citizens in 1995, and they set their sights on helping other relatives.

Their first priority was her brother Shin, who is married and has a new baby and has been unable to find a job since he graduated from college a year ago with an architecture degree. Ideally, Sook Kong said, she and her husband would bring him to America for a fresh start because there is not much work in Sunchon, where their parents had been rice farmers.

But trying to get her brother in on an immigrant visa could easily take 10 years, she said. So for now, she is simply trying to get him a tourist visa so he can have some respite from the harsh economic conditions at home. On tourist visas, visitors can stay in the United States for up to six months. "We would like to be together," Sook Kong said, "But since we can't do that, we would like him to visit and regain some hope."

Half a world away in Sunchon, a small fishing port in Southwestern South Korea, Shin picked at his lunch and spoke of his disappointment. "It's a very uncomfortable feeling to be rejected," he said. "Of course I think it is unfair; Americans can visit anywhere they want."

When Shin applied for his tourist visa 14 months ago, he had no job, no property and virtually nothing else to tie him to South Korea. He was thus unable to persuade officials at the U.S. Embassy that he simply wanted to visit his sister. Shin said the experience was humiliating and costly—he paid \$150 to a "visa consultant" who helped him prepare the paperwork. In Seoul, as in many Asian capitals, there is a lucrative industry of "U.S. visa fixers," who claim to be able speed the visa process through "connections" at the embassy—for a price.

Since Shin applied for his visa, things have only gotten worse. He's taken part-time work driving a truck, but even laboring jobs are hard to find in South Korea's tight economy. His wife gave birth to their first child, a daughter, in late December, and they have been living off savings and money sent by his sister in Annandale and other relatives. His wife is a clinical pathologist but is not working because of the new baby.

Shin said his sister was going to pay his way to the United States as a college graduation present. "If I had rich parents or had money I could go," said Shin, a broad-shouldered former marine. "It's very unfair."

Shin does not speak English and knows that living in the United States would be difficult. He acknowledges he would like to attend an American school to further his architecture studies but insists that all he is trying to do now is visit his sister and her family.

At the U.S. Embassy in Seoul, visa officials say they sympathize with Shin and others like him. But, they say, U.S. law requires them to assume that all people applying for tourist and other temporary visas are actually attempting to emigrate and that it is the applicants' burden to prove otherwise.

Even with this kind of screening, tens of thousands of foreign tourists from all over the world overstay their visas in the United States every year, often melting into an underworld of illegal workers. In the Washington area alone, where 350,000 legal immigrants have arrived since the early 1980s, the federal government estimates that there are at least another 130,000 illegal immigrants.

"If we were God, we could see into people's hearts and minds and see exactly what their intentions are, but we are not," said David Rollman, acting consul general at the U.S. Embassy in Seoul. Instead, Rollman said, interviewers must weigh evidence they can actually see: Can the applicant show employment records, bank accounts, a rental lease, a deed to property—anything to suggest he'll come back.

Shin is free to apply for a visa again in the future, but he said he is still smarting from the last experience. In Annandale, his sister worries and hopes he will keep trying to get into the United States because, she said, "there is no option for him in Korea."

*Pae reported from Washington,
Jordan from Sunchon.*

SPECIAL BILL FOR A 'CRIMINAL ALIEN'?

Work for fair immigration law, not a case-by-case fix

U.S. REP. Bill McCollum certainly has been busy. As a Republican house manager, he has been prosecuting the President for high crimes and misdemeanors. But as representative from Orlando, he been advocating for a felon with real convictions: a "criminal alien" who has been deported thanks to an unfair law that McCollum himself supported. Now he says that some provisions of the law are unjust. The felon is Robert Anthony Broley and, as first reported by The St. Petersburg Times, he got the ultimate one-way ticket out of the country last month after completing a four-year sentence on 13 charges of theft, burglary, forgery and trafficking in stolen goods. His criminal record dates back to 1984, the apparent



SUSANA
BARCELONA

EDITORIAL
BOARD

fruit of a drug habit.

But it takes far-fewer offenses than Broley's to be deported these days. So-called criminal-alien provisions, rolled into a harsh 1996 immigration law that McCollum supported at the time, punish anyone not a U.S. citizen. Even longtime permanent residents get no consideration. They are deported for any conviction carrying as little as a 1-year sentence — even if suspended — or any crime of moral turpitude, even if it was, say, for forging a \$10 check. And oh, any past crime also counts. Judicial review? Forget it. One crime, and you're out.

McCollum is asking for an exception for Broley — and only him. Broley is the son of the Republican Party treasurer in McCollum's home county. McCollum says that he filed a private relief bill to bring Broley home only on the merits of the case. That well could be. I just wonder how much McCollum takes to heart the accounts of the suffering of complete strangers.

Nevertheless, McCollum has a point. Broley came to the United States at age 2, has beaten drug addiction, and, as

The exception is only for the son of the Republican Party treasurer in U.S. Rep Bill McCollum's home county.

McCollum says, deserves consideration for turning his life around. Broley's parents say that he has suffered enough and that his deportation will hurt Matthew, his U.S.-citizen son. Well and good.

But in no way is Broley's case exceptional. If he deserves another chance, so do countless thousands of other legal immigrants. McCollum admitted that the criminal-alien provisions go too far and should be changed. But for now private bills are the only avenues for relief. He says that he'll probably file more. Great. Here are some worthy candidates:

■ Lulseged Dhine, 36, now at Krome detention center, has been jailed by the U.S. Immigration and Naturalization Service for nine years. A Jew, Dhine

likely would come to harm if he were deported to his native Ethiopia, where his parents and brother were murdered under a communist regime. Traumatized already at age 13, he legally came to the United States in 1978. In the 1980s, drug use led to seven misdemeanor convictions, which the INS now insists require his deportation.

Yet Dhine has kicked drugs, saved two officers' lives, helped break up a prison drug ring and earned numerous commendations for helping others. Now, really, shouldn't he be freed to live a productive life in the United States?

■ John Gaul, now 25, was born in Thailand and adopted at age 4 by an American couple. Four years ago he was convicted on charges of check fraud and car theft. Now Gaul sits in a North Florida jail waiting to be deported any day. Would he have any recollection of life in Thailand? Is he anything but American? His mother, Pam Gaul of Tampa, says that private relief is "unequal justice, blind-siding all the others who fall in the same category." Her son made a mistake. But should he and his family be

punished for life?

■ Ralph Richardson, 33, also is stuck at Krome. He has been fighting deportation to Haiti — where he hasn't lived since he was 2 — because of a 9-year-old drug conviction. Richardson, who served his time, has a business in Atlanta, and his U.S.-citizen kids as wife are struggling in his absence. He, too, has turned his life around. Maybe he just doesn't know anyone in his local Republican Party.

■ And on and on and on...

Plainly, Robert Anthony Broley is the only human face to this disaster. As he doesn't even have to go to Ethiopia. No one should be deported for long-ago crimes, for petty offenses or without judge considering mitigating factors. McCollum says that congressional leadership isn't eager to take up immigration reform because it's too "messy."

Guess we'll just have to flood Congress with injustice, case-by-case, until all the fools who enacted odious immigration law go back to the drawing board.

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Law's Demise Puts Immigrant Wives at Risk

BY SHAWN FOSTER
THE SALT LAKE TRIBUNE

Olga was visiting relatives in Utah when she met her future husband at a convenience store where her sister worked. He was always nice, buying her flowers and candy and telling her he loved her.

As she was about to return home to Russia, "he begged me to stay," said Olga, which is not her real name. "He said, 'Don't go. I love you. I want to marry you.'"

Olga married her boyfriend and moved into her mother-in-law's basement.

That was three years ago -- three years of her husband's jealous rages, his knife-wielding threats and violent brawls that left Olga scraped and bruised. When she told her husband she wanted a divorce, he said that she would be deported to Russia even though most of her family lived in Utah.

Then she found out about a law, the Violence Against Women Act, or VAWA, which includes a provision that improves undocumented immigrant women's chances of escaping their abusers.

Under the law, undocumented immigrants married to U.S. citizens or legal residents can petition for permanent residency without the sponsorship of their spouses. Within a few months, her paperwork was being processed by the Immigration and Naturalization Service.

Before Congress passed the law in 1994, abused immigrants were virtual hostages to spouses who were citizens or legal residents. Legal immigrants to the United States can sponsor family members -- parents, children, spouses and others -- by filing petitions with the INS.

If an abused immigrant woman were to say she was leaving, typically her husband would threaten to withdraw the immigration paperwork, report her to the INS so that she could be deported. The children would stay with the husband in the United States.

After the 1994 law, if immigrants could prove they were in a valid marriage, that they were being abused, that they were "persons of good moral character" and that deportation would cause extreme hardship to themselves or their children, they could apply on their own for a green card. They were free to leave their abusers without the threat of being deported or losing their children.

"In a period of intense anti-immigrant sentiment, this legislation is a bright spot," said Salt Lake City immigration attorney Teresa Hensley. "This law has freed many women from their abusive husbands."

Yet, some provisions of VAWA have expired, and once again

many immigrant women who are being abused by their spouses are in jeopardy.

The changes, in effect since January 1998, require some battered women to return to their home countries to apply for a green card at a U.S. consulate -- even when returning could be difficult or dangerous for them.

When VAWA was originally passed, there was a provision that allowed abused immigrants who came into the country illegally to pay a \$1,000 fine and obtain a green card without leaving the United States.

"When women come from countries where they are considered property, they have no chance of ever gaining freedom from their abusers," said Leslye Orloff of Ayuda, an immigrant women's advocacy group based in Washington, D.C. "Their restraining orders from the courts are not valid outside the United States and the women are basically without any legal protection in their native countries."

Marcela Montemurro, an advocate for immigrants at the YWCA Battered Women's Shelter in Salt Lake City, has worked with victims of domestic violence who come from countries where it is illegal for women to leave their husbands.

"Many women in the world don't have the choice of divorce," Montemurro said. "If they leave their husbands, once they are home they can be put in jail."

And in many cultures, Montemurro added, there is a belief that spouse abuse is a domestic problem that should be dealt with in private, behind closed doors.

"And even if there were not a social stigma," Montemurro said, "in many countries there just is not a system to deal with domestic violence. You call the police and they say, 'It's none of our business.'"

Last year, a provision of Congress' appropriations bill that would have extended the right of battered immigrants to apply for green cards without leaving the United States was removed by a House conference committee.

This month, Congress is expected to debate a measure that would restore some of the expired terms of the Violence Against Women Act, including the one that allows abused women to stay in the United States while they apply for a green card. Utah Sen. Orrin Hatch, one of the bipartisan sponsors of the original bill, is a supporter of the reauthorization legislation.

The system for abused immigrants, Montemurro says, already is difficult enough, even with a law that is sympathetic.

Advocates say that collecting evidence -- taking pictures of victims' injuries, gathering written statements from neighbors who witnessed the abuse and filing police reports -- to support claims under VAWA is a painstaking process that can take more than a year. And immigrant women, Montemurro contends, face more barriers than those born in this country.

"A lot of immigrant women are in a place where the language is different, the culture is different and the system is different," Montemurro said. "The only person they know is their abuser."

Montemurro does not know what the breaking point is for victims of domestic violence. But of the 20 women that Montemurro worked with last year, all of them "gave up the hope that their husbands were going to change."

"I know anyone is capable of achieving the assertiveness necessary to leave an abuser," Montemurro said. "But society has so many

unwritten rules about roles for men and women, that it is difficult even for someone who grew up with the idea of women's independence."

If the legislation does not pass, said Ayuda's Orloff, it will send a message to abusers that immigrant women are fair game.

"I've personally seen several cases of serial sponsors of immigrant wives," Orloff said. "We got one woman away from [an abuser] and a couple of years later he was abusing another immigrant wife, and we were going after him again. Abusers will continue to abuse until there is a consequence."

Orloff cites research that shows a strong criminal justice response stops the abuse. Most abusers, she said, have not had run-ins with the law and they do not want to be branded as criminals.

When they are taken to court, Orloff said, it forces men to sit up and take notice that abuse is a crime.

But without the safety net of a law that allows women to stay in the United States while they wait for their green cards, women's advocates say, the abuse will continue.

"As it stands now, women are forced to remain in an abusive situation, kids continue to witness domestic violence, and it is more difficult for prosecutors across the country to prosecute men who abuse their immigrant wives."

For Olga, who was in the United States on an expired tourist visa after she left her husband, the law worked. But it was an arduous journey.

For months, she stayed in cramped apartments with friends and family in an attempt to hide from her husband, who refused to obey a court-mandated protective order. Olga cleaned houses for \$2.50 an hour because she could not get a better job without proof that she was in the country legally.

Finally, in November, Olga got her life back. The INS granted her a temporary work permit while her application for a green card is being processed.

"I am so happy," she said, "that you cannot believe it."

Tribune researcher Rebecca Hodges contributed to this report.

Crime and redemption

US. Rep. Bill McCollum has the right intent, but his approach is far too narrow. He has introduced a well-meaning bill to correct a miscarriage of justice. The bill would cancel the deportation of a longtime U.S. resident who got into trouble with the law and now, Mr. McCollum and others say, has turned his life around. The problem here is that this private bill provides mercy for only one man, Robert Anthony Broley, a Canadian, and not for the thousands of others with equally worthy histories of crime and redemption.

Take Rep. McCollum, R-Orlando, at his word that his efforts aren't because Broley's father was treasurer of the Orange County Republican Executive Committee. Indeed, there is no record of McCollum campaign contributions from the Broley family. Rep. McCollum told The Herald that he sympathizes with the plight of Broley, 33, who at age 2 moved here with his parents and whose deportation hurts his American-citizen son.

Broley's troubles began early. He has a string of convictions for drunk driving, theft and even for forging \$4,175 in Republican Party checks. At one point he fled to Canada, but his father talked him into coming back to face the music. After four years in prison on 13 felony charges, Broley was deported to his native Canada last month. The family never imagined that Broley would be deported and says that he has suffered enough.

Moved by the case, McCollum filed the private bill, virtually the only way to waive deportation for a "criminal alien." That's because the harsh and unreasonably sweeping 1996 immigration law and its implementation by the Immigration and Naturalization Service

FOR ALL IMMIGRANTS
Instead of a special bill
that helps one worthy
felon, fix the law for all.

have eliminated discretion on deportation cases, review by federal judges and all sense of justice.

Ironically, Rep. McCollum supported that 1996 anti-immi-

grant bill and even suggested language to send more "criminal aliens" packing. But, as he stressed to The Herald, he opposed the harsher language adopted and agrees that the 1996 law went too far.

Fact is, the 1996 law is simply a travesty that must be fixed. Court challenges are under way. But meanwhile the law is forcing into exile countless immigrants who, like Broley, made mistakes long ago, turned their lives around and now are forcibly separated from American kids and spouses. Justice for one isn't the solution. Create legislation for all, Rep. McCollum — and do it now.

No mercy

Karla Sanabria defines immigration injustice. As a teenager she fled strife and came here, like 100,000-plus Nicaraguans granted legal status by a 1997 law. Unlike them, she was deported earlier and is now separated from Luis Miguel, her 8-year-old American son, her husband and parents.

Immigration officials questioned her marriage, and prematurely put her on a plane to Managua. Now they've shamefully refused her a last chance to come home because she left too soon.

A marriage shouldn't have to be good to be legal, just as the law shouldn't be heartless to be just.

The defense rests

Casting a wide net over immigrants

By Michael Huspek

We are a nation of laws. And as the great political theorist Hannah Arendt often argued, our laws are like fences. They stabilize human affairs, hedging us into spaces where we can act with confidence, and in freedom.

Laws also carry immense rhetorical power. They identify members of a nation and bestow upon them rights and protections that come to be expected as a matter of course. They identify outsiders as well — either those who live beyond our physical boundaries or those, such as murderers or rapists, who live in our midst but have wrongfully violated our collectively embraced standards of right and wrong.

Because this nation's Founding Fathers knew full well the law's defining importance, they took great pains to ensure that laws could not be enacted or changed willy-nilly at the whimsy of legislators. Thus the rationale for separate powers to ensure that legislation be reviewed by an independent judiciary for any constitutional abuse, intended or otherwise.

We are currently reeling from enactment of two bodies of law, both pencilled in with swift legislative stroke in 1996, which have excessively heightened the fences that separate us, and have done so in ways that violate some of our most cherished and long-held constitutional principles.

The laws in question are the Anti-terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA). While both laws give further impetus to control of our southern border — more taxpayer money for triple fences, border surveillance equipment, and added law enforcement personnel — it is the thrust against legal permanent residents living in the United States that here is of gravest concern.

There are currently some 10 million legal permanent residents working, raising families and worshipping in our midst. A small minority has been found guilty in the past of committing a crime for which it has paid the consequence with fines, prison sentences, community service. Prior to 1996, if the crime was deemed an "aggravated felony" — one that earned a prison sentence of 5 years or more — the immigrant resident offender was then scheduled for deportation.

Both AEDPA and IIRIRA have changed the rules in quite extraordinary ways, however. First, the law now classifies any crime that earns a sentence of one year or more as an "aggravated felony" and makes this, and this alone, grounds for immediate deportation.

Second, the law is retroactive — intentionally blinkered with respect to when the crime was committed. As such, a youthful drug indiscretion by a 16-year-

old in 1993 is now, six years after she has served her legally designated punishment, classified retroactively as an "aggravated felony" that renders the offender subject to deportation. It matters not that the crime was a mere misdemeanor in 1993. The new laws mandate deportation.

Third, prior to AEDPA and IIRIRA, legal permanent residents scheduled for deportation could post bond and file a relief waiver which enabled the petitioner to appeal to a judge's discretion after review of family ties within the community, work record, length of residence in the United States and extent to which successful strides toward rehabilitation had been undertaken.

In fact, prior to 1996, approximately half of those who sought relief from deportation were granted it. Judges, it seems, are perfectly capable of distinguishing between a violent assault and a desperate mother's attempt to shoplift a communion dress for her daughter. Now, however, legal permanent residents are not only denied the right to file a relief waiver, but are also being forced into custody — the violent assailant and petty thief together — with no availability of bond.

The effects of this new legislation are far-reaching. Families are being irreparably torn apart. Little League dads are being whisked away, and their children are being deported to countries that they have never known. We can only begin to surmise the currents of fear and intimidation felt by immigrants who must now live in gnawing anticipation of a rap on the door by an INS agent, or a call by a neighbor or

boss who has learned of one's long-ago, paid-for indiscretion.

How enforcement of these laws will be felt at the institutional level remains to be seen. But with accelerated arrests and no possibility of bond, the prospect of tent cities swelled with incarcerated immigrants appears real. Even INS Commissioner Doris Meissner on a recent National Public Radio interview stated that Congress had "probably gone a bit too far" and that her agency needs more flexibility if legal residents of this country are to be treated like human beings.

"A bit too far" is an understatement, of course. Collapse of shoplifters and violent criminals alike into the category of "aggravated felon" is overly harsh, by any standard, as is changing the rules of residency well after the fact. That they deprive immigrants of life, liberty and property without due process, moreover, is surely constitutionally suspect.

What verges on the astounding is that Congress passed this legislation with virtually no discussion of its constitutional ramifications. Perhaps it is wishful thinking to think that Congress, nudged by a concerned public, might reconsider its actions. All the more imperative, therefore, that our court system acts to pre-empt this move that so unacceptably scapegoats our immigrant population.

Laws, like good fences, are meant to ensure peaceful relations among free humans. When erected so high as to deny some of us basic protections, however, they violate all of our expectations of justice and liberty, and so must be abolished.

Fort Worth Editorial Columnist



Molly Ivins

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The INS: No blackjacks used, but . . .

AUSTIN -- When Congress held hearings last year on the premise that the Internal Revenue Service is our most abusive and out-of-control federal agency and urgently needs to be reined in, the true connoisseurs of government abuse quietly smiled in amusement. As everyone who is interested in such matters knows, the IRS is a set of gentlemen and pussycats compared to the real champion of abuse, the INS.

The reason you hear so little about the egregious abuses of the Immigration and Naturalization Service, the reason that no one holds hearings in Washington and the right-wing militia types don't raise Cain about it is obvious: The INS doesn't abuse U.S. citizens.

Even civil libertarians, who can normally be counted on to yowl loudly over such stunts as putting people who have committed no crime whatever in jail for months on end, carry no brief for the luckless foreigners who run afoul of the INS in the land of the free. Only the smaller and less powerful human rights groups seem to be under the curious impression that the U.S. government should be required to treat people from Asia, Africa and Latin America with a modicum of decency, with just a hint of justice.

Notice that I specify immigrants from Asia, Africa and Latin America. Of course we wouldn't want to accuse the INS of being racist on top of all its other sins, but you notice that immigrants from Europe or Australia do not seem to end up languishing in the hoosegow for years while the INS looks for their paperwork.

In fairness to the INS, it has certainly been given carte blanche to abuse away. On top of the perennial nativist sentiment in the United States, any economic downturn can be counted on to up the anti-immigrant feeling. ("They're taking our jobs!" is the cry, as U.S. corporations keep dismantling factories and moving them abroad. Many of the same corporations also hire illegal immigrants here.) And of course you can always find politicians happy to play to the crowds, stirring up anti-immigrant feelings for political advantage; that's an old dog that still hunts.

In 1996, in a triumph of anti-immigrant sentiment, Congress passed a new immigration law that even the INS admits goes too far.

The agency got almost a billion dollars for the detention and deportation of immigrants, making it the largest federal law enforcement agency. It has 15,000 officers authorized to carry weapons and make arrests -- more than the FBI, the Drug Enforcement Administration or Customs.

Before the law was changed, those who were deported were those who had been convicted of a major felony. Now the INS arrests people during job raids, at routine traffic stops, at airports when they return from abroad, and even at immigration offices, where immigrants go to seek services offered to them and sometimes end up under arrest. Immigrants going in to apply for citizenship have been rousted and deported within a few hours, without due process or a chance to consult a lawyer, even though the immigrants may have lived here for years, have families, etc.

The law also expanded the definition of an deportable crime -- it now includes bad checks -- and directed the INS to deport immigrants who are legal U.S. residents.

In a particularly vicious Catch-22, Cuban immigrants who have committed crimes -- even crimes so minor that they merit only probation -- are consigned to detention after they have completed their sentences -- but they can't be deported because the United States has no diplomatic relations with Cuba. That's a life sentence without parole. But we, of course, will not regularize our relations with Cuba because Fidel Castro is guilty of human rights abuses.

And now we have a case here in Texas that pretty much takes the cake. Thanks to 'The Dallas Morning News,' the plight of Ablavi Haden of Togo has come to public attention.

Haden, a widowed mother of five who has two master's degrees, entered the country legally and was employed as a staff accountant by a Dallas business where her boss thought the world of her. Nevertheless, Haden has spent the last nine months in the Dallas County Jail because the INS concluded that she had changed addresses without notifying the agency and viewed her as a fugitive.

Haden has a photocopy of the letter she sent the INS notifying it of her change of address, and the 'Morning News' found INS records referring to the address change. Haden had also received a letter from the INS re-authorizing her employment application, valid until Oct. 2, 1998.

Haden's immigration status was on hold. She had applied for political asylum, and the judge said he believed she was telling the truth about fears of returning to Togo: "Unfortunately, I don't believe you're eligible for asylum as I understand the laws of the United States." But Haden was allowed to stay while her case was under review; her lawyer says her case was in a protected mid-appeal status that prevents officials from taking immigrants into custody or removing them from the country.

In 1991, Haden's husband was killed by the notoriously repressive regime in Togo, and she believes that she has already been put on a hit list by the regime. She preferred to remain silent during nine months of incarceration rather than appeal for help for fear it would make her more of a target if she is returned to Togo.

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Migrants with crime records face tough deportation law

By Leonel Sanchez

STAFF WRITER

Ray was an infant when his family fled persecution in Iran and received political asylum in the United States.

The San Diego man turned 22 recently. He spent his birthday in an immigration detention barrack in El Centro.

The Immigration and Naturalization Service wants to deport him to Iran, a country with a language he cannot speak and a government his family has reason to fear.

Ray is among a growing list of longtime legal U.S. residents with criminal records who have become deportable under a tough federal law, passed in 1996, that expanded the definition of a deportable crime, curtailed appeals and ordered serious offenders held without bond.

Ray was convicted in April 1997 of possessing drugs for sale and fraudulent use of a telephone. He served six months in a work-release program and was put on three years' probation.

The INS put a hold on him while he was serving his sentence, and on Nov. 19, an immigration judge in El Centro ruled Ray's crimes made him deportable.

But should he be deported?

"As far as I know, I'd be killed," said Ray.

Ray's family fled Iran in late 1978 during the revolution that overthrew the government of the late shah of Iran. Members of his family were high-level officers in the shah's government and have been marked for death by the Islamic state now in power.

Ray's Iranian name is being withheld for his family's protection. *The San Diego Union-Tribune* has re-

viewed documents that verify his family's status in Iran and his criminal and deportation records.

Ray admits having made mistakes but said he has reformed. He was working at a car rental agency and attending night school when the INS took him into custody in October.

The husky, bearded man said he wants to remain in the only country he has ever known.

"I grew up American," Ray said. "I've lived my whole life here. I'm a product of this society. I came here in diapers."

"Criminal aliens"

Ray's situation illustrates the increased power of the INS to deport so-called "criminal aliens" but also the reduced flexibility to release longtime U.S. residents without violent histories.

Armed with a new law and more detention space, the INS has stepped up deportations of legal and illegal immigrants with criminal records.

The INS deported 55,211 people during the fiscal year that ended Oct. 1, up from 31,051 in 1994. The San Diego region accounted for 10,814 such removals, up from 9,689 the previous year. Nationwide, legal immigrants account for 10 percent of criminal deportations, said INS spokesman Russ Bergeron.

Provisions of the Illegal Immigration and Reform Responsibility Act of 1996 that have contributed to the rise of deportations include:

■ Congress expanded the definition of a deportable crime, also known as an "aggravated felony," and made the change retroactive. Anyone who was ever sentenced to

a year or longer in prison can be deported. The previous threshold was five years.

■ Congress took away the power of judges to consider mitigating factors. It barred "aggravated" felons from applying for waivers of deportation, even those who were longtime legal immigrants.

■ On Oct. 9, the law required that almost all criminal aliens be held without bond "even if they are legal, permanent residents who are not dangerous or pose no risk of flight."

Immigration control advocates maintain the changes in the law were necessary to close large loopholes abused by criminals.

"What Congress intended to do is to get criminals out of the country so they are not languishing in our state prisons at taxpayers' expense and walking out and disappearing at the end of their sentences," said Dan Stein, executive director of the Federation for American Immigration Reform.

Immigration rights advocates contend the law is too broad, ensnaring people who were not the intended targets of the legislation and giving them little room to fight deportation.

"They took a pardon process that was working and replaced it with a Draconian law," said attorney Gina Darvas, who is representing Ray.

"Lost discretion"

Legal immigrants convicted of drug-related crimes have been deportable since the late 1980s, but judges used to be able to consider the circumstances of each case.

Now even the INS, which has assumed many of the powers previously afforded only to courts, says it

has lost discretion to release nonviolent offenders. The INS has asked Congress for more flexibility, but nothing has changed.

"There should be some discretion in individual cases where the totality of the case can be considered and not just the broadly defined criteria," said Bergeron of the INS.

Darvas said her client has not been able to argue against his deportation because of his aggravated felon status.

At the Nov. 19 deportation hearing, the judge refused to consider Ray's request for protection under a U.N. treaty that bans torture.

Ray's family and friends had hoped to testify at the hearing about the dangers he faced if he were sent back to Iran.

One Iranian man had planned to testify about the persecution he faced when he returned voluntarily to Iran. He was accused of being a U.S. spy and was tortured, Darvas said.

An expert on Iranian politics had given the attorney a statement that Ray's life would be "in the gravest of danger should he return to Iran." He said Ray probably would be imprisoned, tortured and used as bait to lure the wanted members of his family back to the country.

The judge did not hear any of it. "He said his hands were tied," said Ray's mother, Fatima.

Ray has appealed the judge's decisions, but INS officials say it could take up to two years for the appeal to be heard. If he loses, Ray would be given final orders of deportation.

The INS would have 90 days to make the travel arrangements. At this point, Ray would be able to raise his fear of possible torture in

Iran to a political asylum officer, the INS said.

The INS could also decide to send him to another country. Ray's attorney has suggested Cyprus, where he has an uncle, but plans to fight for his release here.

Since late October, Ray has worn a yellow uniform and spent most of his days inside a crowded barrack in El Centro.

It's a long way from the University City neighborhood where he grew up and the private schools he attended.

He was the youngest of three children whose parents divorced when he was 4. If they had petitioned for him to become a naturalized U.S. citizen when he was a minor, he would not be facing deportation today. Family members said they felt they had all the protection they needed as political asylees and didn't feel that step was necessary.

Ray's problems began in high school when he got into drugs. His small circle of friends pooled their money to buy drugs and share them, he said. He dropped out in his senior year and moved into an apartment on El Cajon Boulevard.

It was a drug-crazed period that ended one day in late 1996 when police came knocking on his door looking for someone else. They found him, 30 grams of methamphetamine, a few guns and a cellular phone that had been tampered with.

The guns belonged to a friend, he said. The phone he was trying to clone for kicks.

"It was a stupid thing to do," Ray said. "But at that point I was in real bad shape."

His arrest was a wake-up call

that he could be heading to a life in prison. It sounded an alarm that he could be deported, too.

Ray spent 17 days in jail and finally was sentenced to six months in a work furlough program. His family helped him find the job at a car rental agency. After work, he reported to a county facility in San Diego where he slept.

The INS put a hold on him during this time and took him into custody briefly. He was still eligible for bond in late 1997, however, and was released.

He continued working at the agency and enrolled at the Mid-City Continuing Education Center, where he planned to study for his high school diploma.

"I had a problem and I went through it. But for the past two years on probation, I was a model citizen."

Last fall his past caught up to him.

County probation officers went to his home while he was at work and found a pager and a cellular phone in his room, both violations of his probation.

His family rushed to his defense. His uncle said the pager belonged to him. His mother said the cell phone was a gift to her from Ray.

But it was too late.

Ray was arrested at work and led away in handcuffs. He was in jail for one day. But that was long enough for the INS to find him again.

This time there was no bail available. The law had changed.

His biggest fear is that he will be deported to Iran or to a country that would send him to Iran.

"I can't return," he said.

"I would rather die here. At least my family could visit me."

A Crime of Violence: Malum in Magallanes



Deported for life because of an old DUI? It's happening now all across the country, due to the incremental effects of changes to our immigration laws over the past 10 years. The recent evolution of immigration law -- which is largely civil, administrative, regulatory law -- should give all federal lawyers pause.

A criminal record has always been problematic for aliens (noncitizens): it can bar an alien from entry, and it can cause an alien to be deported. But our immigration laws have usually contained humanitarian waivers, have usually been prospective in nature, and have been subject to judicial review. Not so any longer.

In 1988, Congress added the term "aggravated felony" to the list of reasons why an alien may be barred from entry to, or deported from, the United States. At first the definition of the term was quite limited, including murder, rape and arms trafficking. Over the past 10 years, however, the definition has been amended again and again, resulting in a definition with well over 20 sub-categories of offenses now deemed to be "aggravated felonies." (8 U.S.C. § 1101(a)(43).)

One of the subcategories now is a "crime of violence" for which the sentence is at least one year. The term "crime of violence," in turn, is defined by another federal statute, 18 U.S.C. § 16, as "(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, *by its nature*, involves a *substantial* risk that physical force against the person or property of another *may* be used in the course of committing the offense." (Emphasis added.)

In 1994 the Board of Immigration Appeals (BIA) decided to take a "categorical approach" with respect to § 16(b); that is, the board will not look at the underlying facts and circumstances of what actually happened in any given case, but will only look at the "nature" of the offense to determine whether the crime has "the potential of resulting in harm," irrespective of whether a risk of harm develops or harm actually occurs. *Matter of Alcantar*, 20 I&N Dec. 801, 809 (BIA 1994).

Applying the "categorical approach" in Alcantar's case, the Board held that Alcantar's Illinois state court conviction for involuntary manslaughter (plea bargained down from a first degree murder charge), for which he was sentenced to 10 years imprisonment, triggered the "crime of violence" definition under § 16(b). Thus far, nothing surprising about the board's reasoning or holding. And from

a layperson's point of view, a logical and just result: Alcantar was charged with killing a person by striking her with his fists. In Alcantar's case, the labels "crime of violence" and "aggravated felony" don't seem jarring at all.

But then came Magallanes-Garcia, and the "crime of violence" now seems to be against the English language. The facts are sketchy (but then, under the "categorical approach," facts don't matter much); we are told that in 1995 Magallanes-Garcia was convicted in Arizona for an aggravated DUI and sentenced to four months' imprisonment, plus five years on probation. Later that same year, Magallanes-Garcia violated his probation by again driving while impaired; under Arizona law, his probation was revoked and he was sentenced to two and one-half years in prison for "felony aggravated driving."

Magallanes-Garcia had been a legal permanent resident ("green card" holder) since 1989. While incarcerated and serving his sentence, he was given a deportation hearing and was ordered deported as one who had been convicted of a "crime of violence/aggravated felony." On appeal, the BIA affirmed the deportation order and made his case a precedent (published, binding) decision, *Matter of Magallanes-Garcia*, Interim Decision 3341 (BIA 1998). (Immigration lawyers simply refer to it as "*Magallanes* .")

As a result of the *Magallanes* decision, the INS initiated "Operation Last Call," under which long-time permanent residents with old DUI convictions were targeted for deportation, mostly in Texas. These efforts are now being challenged in the Fifth Circuit Court of Appeals, but in the meantime scores of permanent residents have been summarily deported, and others languish in INS detention without bond while their cases are pending.

The board took a wrong turn in *Magallanes* for two reasons, one linguistical and one political. In terms of language, the board erred by conflating "force" with "harm." Physical "force," at least in the textbook Physics 101 sense, is defined as "mass times acceleration." Using that definition of "force," a vast number of crimes can be labeled "crimes of violence." For example, if I shoplift a can of beans from a convenience store, I exert force, muscular effort, however slight, against the property of the store owner in lifting the can of beans off the shelf and hiding it in my coat. I may have caused economic harm to the store owner, but no physical injury in the sense contemplated by the board in *Alcantar* and *Magallanes*. Under the *Alcantar* test, however, I have committed a "crime of violence," and an "aggravated felony" in those states in which certain misdemeanor theft crimes carry a penalty of up to one year in jail.

On the political front, the board surfed the 1996 congressional wave of xenophobia which brought us the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) (bills which contain serious attacks on due process, separation of powers and judicial review) and capitalized on everyone's righteous revulsion against the death and destruction caused by drunk drivers. In a key footnote, the board in *Magallanes* characterized drunk driving "not merely as *malum prohibitum*, but as *malum in se*." *Magallanes*, Slip Op. at

6. Thus, drunk driving, "by its nature," is inherently evil, and must be punished most severely.

Yet many defense lawyers and even a few courageous immigration judges are pointing out to the board that under many state statutory schemes, a person may suffer a felony DUI conviction for sleeping drunk in a vehicle with the engine running, or even for turning the ignition to the "on" position while drunk, even though the engine never starts. In these and many other factual scenarios, no harm to the driver or anyone else is even possible, much less likely. Such are the linguistic and political issues now before the Fifth Circuit, and other federal courts.

But I mentioned earlier that immigration law is no longer prospective in nature and that judicial review of agency decisions has been threatened. In fact, the BIA has recently ruled that the definition of "aggravated felony" may be applied retroactively, that is, to crimes which were committed well before the term was coined in 1988. And the AEDPA and the IIRAIRA contain severe restrictions on judicial review of BIA decisions. To cap things off, the new laws have largely eliminated the humanitarian waivers sparingly used to give long-time permanent residents a "second chance" after a criminal conviction, and they also restrict or eliminate the possibility of release on bond from immigration detention during the course of administrative deportation (now called "removal") hearings.

The net result is that any legal permanent resident alien, brought to the United States by his parents as an infant in, for example, 1940, who is now a parent, worker and taxpayer himself and who commits his first and only criminal offense in 1980, may be subject in 1998 to detention without bond, an administrative hearing without judicial review, and permanent deportation without relief. As federal lawyers -- and as citizens, voters and taxpayers -- we must ask ourselves if this is how we want our immigration laws to work



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The Immigrant Lockup

Thousands of people who are not accused of any crime or who have completed prison terms for minor crimes spent this Christmas — and may spend the next — in jails around the nation. They are immigrants detained by the Immigration and Naturalization Service, which has filled its own detention centers and has now resorted to using local and county lockups.

Hundreds of immigrants who are simply seeking political asylum share cells with people accused of violent crimes, and are often subject to abuse because they are foreigners. Keeping them in jails is cruel, unnecessary and a waste of money.

The detentions have more than doubled since 1995 because Congress now provides money for the I.N.S. to rent beds in local jails. In addition, punitive new immigration laws kicked in this year that expand the categories of immigrants the I.N.S. must detain as they await possible deportation.

Most of the 16,000 people in detention on any given day are immigrants, legal as well as illegal, who have committed crimes, including very minor ones such as marijuana possession or turnstile-jumping, even if their convictions were long ago. They are held by the I.N.S. after they have finished their prison terms. Another group comprises illegal immigrants rounded up in raids on workplaces.

The third group is asylum-seekers. The new immigration laws provide that everyone who comes to America seeking asylum is detained before a first interview. Those who pass it are then often detained for months or even years as they wait for their asylum hearings. Many of them are victims of torture or other traumatic events whose problems are exacerbated by jail.

The I.N.S. has not been able to assure decent conditions even in the centers under its control. In

1995 inmates at an I.N.S. detention center in Elizabeth, N.J., rioted over beatings and the use of shackles. The I.N.S. later criticized the private company that administered the center, Esmor, for “inhumane” conditions. Conditions in local jails are often far worse, and the I.N.S. cannot supervise them. Human Rights Watch has collected numerous allegations of beatings and other mistreatment. The I.N.S. has called for a government investigation of alleged torture of immigrants by electric shock in a Florida jail. Immigrants often have no access to lawyers or even someone who speaks their language. Worst off are the 1,800 people scheduled for deportations to countries that will not take them back, such as Cuba. They are jailed indefinitely, some for years.

The main reason for I.N.S. detention is that the vast majority of people at risk of deportation skip their court dates and simply vanish, given the chance. The I.N.S. is beginning to study how to get people to keep their court appointments without locking them up. One pilot project run by the Vera Institute of Justice, a nonprofit group, keeps immigrants who seem unlikely to flee out of jail if they check in regularly and receive home visits from supervisors. Preliminary results show that compliance has soared — at one-sixth of the \$20,000 per year that detention costs.

The I.N.S. should expand its search for alternatives to detention, including the use of bail. The 5,000 children detained each year should be put in group homes or foster care, not juvenile jails. Some people will require detention, but it should be in centers for immigrants. Congress should allow the I.N.S. to build its own facilities, which must be strictly supervised. Above all, the I.N.S. and Congress must abandon their punitive mentality. It is hard not to suspect that they are trying to deter immigration by making the process as harrowing as possible.

New York Daily News
Monday, December 14, 1998

INS Deporting Queens Mom With Drug Rap & AIDS Virus

By **KEVIN McCOY**
Daily News Staff Writer

For any immigrant, deportation is a wrenching ordeal. For Noemi Nagy it could be a matter of life or death.

The Queens resident has been ordered expelled to her native Hungary on Friday, the penalty for a drug conviction.

But she already has suffered a tough penalty for her self-troubled life. She's HIV-positive.

Deportation would force Nagy, 30, to leave the specialized medical care that has saved her from developing full-blown AIDS. She also would surrender her four children, including an HIV-positive 2½-year-old son, to foster care.

Barring a last-minute legal reprieve, Nagy must report to the Immigration and Naturalization Service with a suitcase of possessions weighing no more than 44 pounds.

"When I got the notification, in a matter of a few minutes my whole life just fell apart," Nagy said. "If I get deported, I don't know how I'll survive."

Her unusual but by no means unique plight shows how tightened laws aimed at evicting criminal immigrants here illegally from U.S. soil sometimes also bar ailing legal immigrants from medical treatment rarely available elsewhere.

Nagy got the deportation order just when she thought she had managed to resurrect the troubled life she led after immigrating to the U.S. with her mother in 1977 at age 9.

She hit bottom in 1993. She'd been diagnosed with the AIDS virus. She was living in the streets. Smoking crack. And working as a prostitute. Then her mother, who had custody of

Nagy's children, suffered a health breakdown.

"My kids were lost to the [foster care] system," said Nagy, speaking more with the "dese" and "dose" of a New Yorker than the cadences of Eastern Europe. "I realized I had to do something."

Aided by social workers, she completed a detoxification program and residential drug treatment.

Then her past knocked, in the form of police officers with a warrant for a 1991 drug arrest. Nagy was convicted of attempted criminal sale of a controlled substance.

The 10 months she served in a shock incarceration program at an upstate prison didn't derail her turnaround. Even when the INS took her into custody and opened deportation proceedings, Nagy won release on bond and started an appeal she felt confident would succeed.

Once granted freedom, she worked as an AIDS-group volunteer, enrolled in Audrey Cohen College in Manhattan and got custody of her children.

But a 1996 anti-terrorism law signed by President Clinton had all but doomed her chances of staying in the U.S. The law required deportation of those convicted of any of a range of felonies, including most drug crimes.

In an August 1997 ruling, Federal Immigration Judge Gabriel Videla praised Nagy's "high degree of rehabilitation" but said his hands were tied.

Nagy lost a legal appeal, triggering the final deportation order. Daniel Bernstein, an immigration lawyer at Gay Men's Health Crisis, this week will file a federal court lawsuit and ask INS New York District Director Edward McElroy to delay deportation and leave Nagy free on bond.

Bernstein's arguments include a letter from Nagy's physician, Dr. Carlos Vaamonde. If deported to Hungary, Nagy won't have access to the drugs that have kept her disease in check, Vaamonde wrote.

Nagy said she's not seeking sympathy. "I take full responsibility for my mistakes," she said Friday while playing with her youngest son near a Christmas tree. "I had a severe problem with drugs."

New York Daily News
Thursday, December 10, 1998

A Precious Few Months to Live Immigrant woman needs 250G liver transplant

By **MARTY ROSEN**
Daily News Staff Writer

Raziah Sultana will die without a liver transplant, but her husband can't bring himself to tell her that the United States doesn't give free organs to sick new immigrants.

Yesterday, he looked into her eyes — turned yellow from the liver disease that is killing her — and told her she'll be fine.

"Pray to Allah," Ruhul Amin Bhuiyan whispered over and over again in Bengali to the sick woman, who moaned softly in response. "God can do everything," he said.

Bhuiyan said doctors at New York University Medical Center, where the transplant would be performed, won't give her a new liver unless they raise \$250,000. Hospital officials would not comment yesterday.



Albans NEWS

**Raziah Sultan is comforted
by her daughter Amana.**

Medicaid will pay for her emergency care at Bellevue Hospital, but under federal guidelines they won't pay for the transplant operation because Sultana is a new immigrant from Bangladesh.

The laws changed in 1996, after Congress enacted a five-year waiting period to prevent foreigners from coming to the U.S. for free transplant operations.

Sultana can't wait that long. She only has a few months to live, her husband says.

"I told them, 'I'll sell my house if you want me to. Whatever I have to do for my sister,' " said Sultana's brother, Mofizur

1994, and was granted political asylum three years later, then finally brought Sultana and their two young children to America in September. They thought they would finally raise their family together.

Sultana collapsed three days later.

"This is sad, because everything is falling apart," said a cousin, Adam Chowdury.

Original Publication Date: 12/10/1998

The New York Times
Thursday, December 3, 1998

New U.S. Law on Torture Abroad Is Focus of Deportation Case

By **BARBARA CROSSETTE**

UNITED NATIONS -- A Nigerian widow who says she and her 11-year-old daughter face sexual abuses if they are forced to return to her homeland has asked to stay in the United States under new legislation that makes an international convention against torture part of U.S. law.

The woman, Virginia Anikwata, who has been battling to stay in the United States for 10 years on various grounds after the death of her husband, a student, will have a hearing Friday on her new claim in Arlington, Va., according to her lawyer in Washington, Morton Sklar.

Ms. Anikwata says that if she returns to Nigeria she will become the shared property of her late husband's extended family and that her daughter, Chinedu Sharon, a U.S. citizen, will face genital cutting, known widely in Africa as female circumcision. Immigration law no longer automatically allows an immigrant to remain in the United States with a child who is a citizen.

Sklar said Ms. Anikwata's case built on a precedent set by Fauziya Kassindja, an illegal immigrant from Togo who was given asylum in the United States in 1996 based on her fear of having to undergo genital cutting if she returned.

In Ms. Anikwata's case, however, she is asking for protection for herself and the girl, and she is not using asylum procedures but legislation enacted by Congress in October. That law provides automatic protection against deportation for people who file claims under the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The United States ratified the convention in 1994.

Sklar, director of the U.S. branch of the independent World Organization Against Torture, said the process could take a year to complete in hearings under the antitorture law. In that time Ms. Anikwata will be permitted to work and cannot be deported.

"The Kassindja case established the right of a woman not to go back to a situation where she would be subjected to FGM," Sklar said, using a shorthand expression for female genital mutilation. "What's unique about this case is that for the first time it deals with whether a parent can use this protection on behalf of a child. The Immigration and Naturalization Service has not recognized that right yet."

The protection of children, especially girls, is becoming an issue in more immigration and asylum cases, and judges have considerable flexibility in considering pleas. On Nov. 5 an immigration judge in New York allowed an Indian couple to stay in the United States on the ground that their two daughters, both U.S. citizens, could not be expected to develop well under the hardships of India.

A campaign on Ms. Anikwata's behalf has been led by Equality Now, a New York human rights organization that helps women in the developing world and immigrants in the United States.

"We want courts in this country to recognize that girls from countries where the practice of female genital mutilation takes place are at risk and that their mothers are very likely not going to be able to protect them," said Jessica Neuwirth, a lawyer who is president of Equality Now.

Ms. Neuwirth said it was also outrageous that immigration officials had suggested that Ms. Anikwata should leave her daughter behind if she is fearful of her fate in Nigeria. They have no relatives in the United States.

Ms. Anikwata, 36, married Godfrey Anikwata in Nigeria in 1986 and moved with him to the University of Maryland, where he was a student. Anikwata was found to have terminal lung cancer and died in September 1987, when their only child, Chinedu Sharon, was 2 months old. With her husband's death, Ms. Anikwata lost her right to remain in the United States.

The family of the late Mr. Anikwata, Ibos like Ms. Anikwata, has been demanding that she return to Nigeria to become part of the extended clan and bear other children by male relatives, she said in an affidavit. After having lived in the United States she did not want to live under that arrangement. She also has other fears.

"If a male dies and has only one child that child becomes the property of the husband's family," Ms. Anikwata wrote in the affidavit. "I do not want her to have to face an uprooted life, to have to live with persons and a culture she does not know, to see her mother having to commit acts against her principles and, most of all, to endure female circumcision, which will surely be her fate."