

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. fax	Angela Kelley to Irene Bueno re: Attendees for the meeting [partial] (1 page)	04/15/1999	b(6)
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Irene Bueno
OA/Box Number: 19894

FOLDER TITLE:

[National Immigration Forum]

2017-1120-S

ds463

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

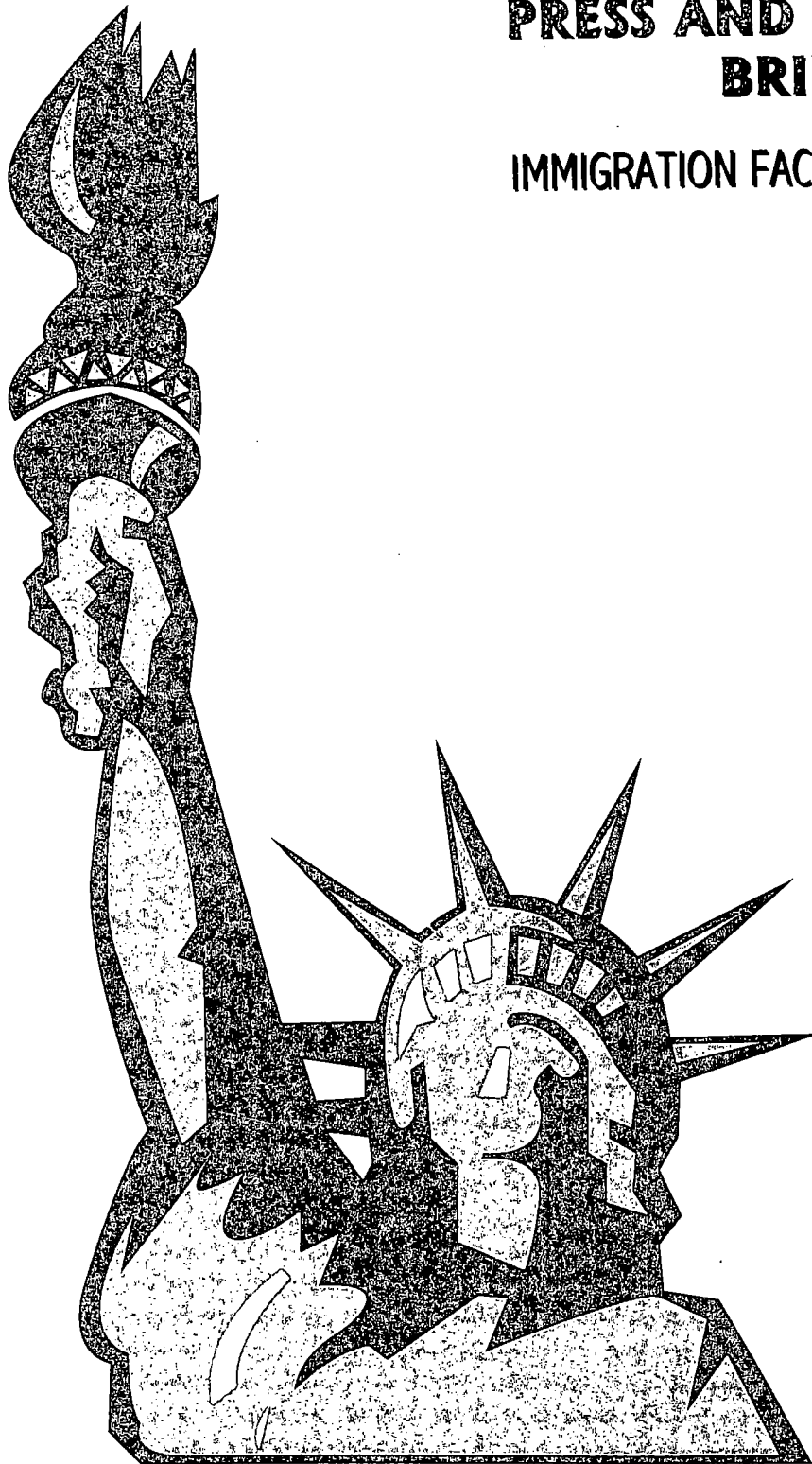
Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

National Immigration Forum

PRESS AND CAPITOL HILL BRIEFING

IMMIGRATION FACTS AND ISSUES, 1999



National Immigration Forum

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**PHOTOCOPY
PRESERVATION**

Facts on Immigrants and the Economy

Immigrants wear many hats in American society. They are family members, students, workers, business owners, investors, clergymen, and members of the armed services—to name just a few of their roles. In all their combined roles, immigrants make indispensable contributions to our economy. Through their tax payments, America's immigrants help finance the costs of schools, health care, roads, welfare payments, Social Security, and the nation's defense. Of course, immigrants are also users and beneficiaries of these government programs.

Immigrants are a Plus for our Economy

Immigrants and their children bring long-term economic benefits to the United States as a whole. Immigrants add about **\$10 billion** each year to the U.S. economy. This estimate does not include the impact of immigrant-owned businesses or the impact of highly skilled immigrants on overall productivity.

Immigrants Pay Their Way

By conservative estimates, immigrant households paid an estimated **\$133 billion** in direct taxes to federal, state, and local governments in 1997. The typical immigrant and his or her children pay an estimated \$80,000 more in taxes than they will receive in local, state, and federal benefits over their lifetimes.

Naturalized Immigrants Pay More than Their Share

Immigrants who become U.S. citizens typically pay more in taxes than do native-born Americans. Adult, foreign-born, naturalized citizens actually have higher adjusted gross incomes (averaging \$40,502) than families with U.S.-born citizens only (\$35,249). Federal taxes paid by families with a naturalized citizen average \$6,580 per year compared with \$5,070 for U.S.-born-only families.

Immigrant-Founded Businesses Are an Important Revenue Source

Immigrant businesses are a source of substantial economic and fiscal gain for U.S. citizens. Ten high-tech firms founded by immigrants, highlighted in the box on the right, generated \$28 billion in revenues in 1996. These and other businesses started by immigrants add at least another **\$29 billion** to the total amount of taxes paid by immigrants.

Major High Tech Companies Started by Immigrants*

Company/Consortium	Employees in US	Annual Revenues
Intel	29,000	\$11.5 billion
Sun Microsystems	11,000	\$6.0 billion
Computer Associates	9,000	\$2.6 billion
Sollectron	4,545	\$1.5 billion
Lam Research	3,600	\$811 million
LSI Logic	2,600	\$902 million
AST Computer	2,248	\$2.4 billion
Wang Laboratories	2,000	\$1.0 billion
Amtel	2,000	\$600 million
Cypress Semiconductor	1,500	\$600 million
Total	67,493	\$27,913 billion

*Note: At least one of the company founders was foreign born
Source: Stuart Anderson. *Employment-Based Immigration and High Technology*. (Washington, DC: Empower America, 1996).

As They Assimilate, Immigrants Become Net Economic Contributors

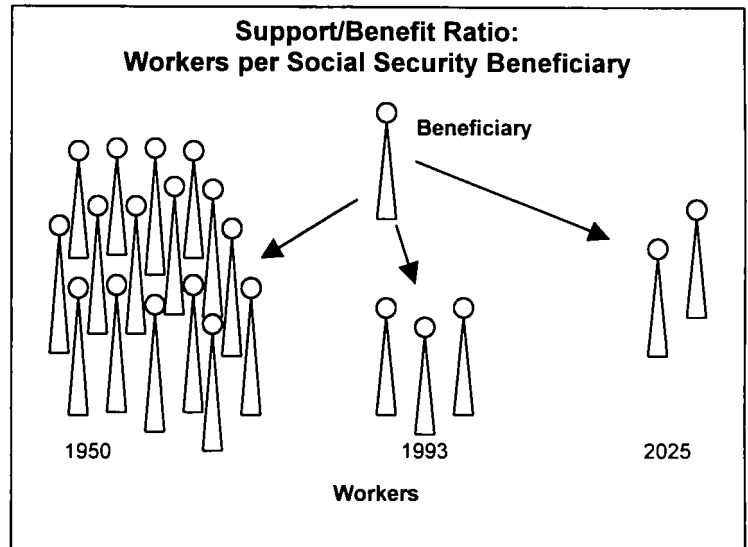
Immigrants' earnings rise over time as they climb the economic ladder of success in America. In their first years in the United States, immigrants typically are net drains on the public coffers, but over time—usually after 10 to 15 years in the United States—they turn into net contributors.

An Education and Training Windfall

Most immigrants arrive in the United States in the prime of their working years. More than 70 percent of immigrants are over the age of 18 when they arrive in the United States. That means there are roughly 17.5 million immigrants in the United States today whose education and upbringing were paid for by the citizens of the sending country, not American taxpayers. The windfall to the United States of obtaining this human capital at no expense to American taxpayers is roughly **\$1.43 trillion**.

Immigrants Are Net Contributors to the Social Security and Medicare Programs

The total net benefit (taxes paid over benefits received) to the Social Security system in today's dollars from continuing current levels of immigration is nearly \$500 billion for the 1998-2022 period and nearly **\$2.0 trillion** through 2072. Our population is aging, and each worker will be supporting a growing population of retirees. Immigrant workers will be an essential component to solving the long-term problem of financing Social Security.



Federal vs. State and Local Tax Imbalance

Like natives, immigrants use more state and local services than they pay for in state and local taxes. The average immigrant imposes a net lifetime fiscal cost on state and local governments of \$25,000. Their overall net tax contribution, when considering all levels of government is explained by the fact that most of the taxes immigrants pay—income and social security tax—go to the federal government, while many of the services used—schools, hospitals, and roads—are provided by local governments. Despite this imbalance, there is no evidence that states or cities with large immigrant populations perform worse economically than those with small immigrant populations. In fact, just the opposite is generally true.

New Rules to Affect Fiscal Calculations

Working-age immigrants who have been in the United States for more than 10 years are *less* likely to receive welfare than the native-born. With their special needs, refugees and elderly immigrants are *more* likely to receive welfare than the native-born. However, given that recent welfare rules enacted by Congress in 1996 make newly arriving immigrants ineligible for most welfare benefits, the net fiscal benefit of future immigrants will be *higher* than it is today.

Beyond Fiscal Calculations

Overall, immigrants are a fiscal bargain for American taxpayers. Of course, the value of immigrants is not primarily measured by the dollar calculation of their fiscal impact. Immigrants contribute to America in many ways other than the size of their tax payments and the amount they pump into our economy. Their enrichment of our culture and the overall vitality they bring to American society are immeasurable in fiscal terms. They are a vital benefit to all Americans.

Source: Stephen Moore. *A Fiscal Portrait of the Newest Americans*. (Washington, DC: National Immigration Forum and Cato Institute, 1998).

Immigration - 4/16/29

Framework Michael

WR WK

DEPA

IRIRA

Backlash

Naturalization

Election

1997 - changes, new laws

Political - Reps questioning L Smith - Abortion, Hitler, DeWine

Tom Coughlin, King

APEX -

INS

Interpretation of laws - Smith - not ready too restrict

to position, legislation proposal, implementation

2000 -

Demographics

5 m new citizens in 10th, 11th, 12th, etc

Pol

4/20

1/5 children have foreign born child

99% - 100% - US & LPR

Opportunity to change the pt. of reference for L Smith & add new terms

(2)

Fairness for Families

- Central Am

- Due Process

- INS Regs /

- Nahuja

- # heard here

- Fleeing Prosecution

- Enforcement

(1) Central Americans

Angie - ~~deaths~~

OK

- Presumption

- Legislation

Big. Gating - 60 corp

Thinking concern - about Admin Leg.

(2) CSS/LULAC - Late Andy

Selma - LULAC

Pending

Administrative response - can advocate all the cases.

Sup Ct - travel

FT

5377 shipped ct jurisdiction - ^{INS} only applies to group 1 not QDE

No mechanism for group 2

Need to process group 1

3501C

QDE (group 2) - should be included - 80K

- Group 1 - went down to INS building - front desk - some contact
application, interviewed but did not submit

- QDE ^{with results} - went to CBO to apply

Concern of CSCC - priest center w/ ~~the~~ den members - family members.
Political problem?

- They will have only 20 yrs.

(3)

(3)

Due Process
HARA

Probing

- Expanded grounds of deportation - + made it retroactive
- Relief of deportation - by many judges eliminated - mandatorily deported
- Eliminated judicial review - Is INS interpreting the law correctly. Refer to Smith. Cts have said ~~that~~ INS majority
- Detention stand - mandatory detention ~~is what is correct~~ ~~is at a court~~ no border under mandatory detention. Cts - inconsistent.
- Some are giving up - b/c don't want to be detained - torture.
- no lawyers, no family members, psychologized courts -
- Children are being orphaned. 500 org organized - US citizen visiting members.

First + ~~probing~~ legislation
Morgan

Op. Ed - Meisner - ~~the~~

Oppty to review their positions -
Judicial Review - ~~it~~

(4)

INS Restructuring - July - ~~probing~~

Cooper maintains + INS

Shut the process - adjudication - cut many.

Ridgeon - fight omnibus

INS proposal - DCA - not enough reform

Abraham wants a bill signed by Aug.

Authoritative

Lower Smith work w/ Roger

Approxy

Cross - will use it

(4)

(5)

Administration

Change before restructuring

- Backlog - old report adjusted
- Scheduling - 10

could improve process & researcher credibility

Proposal to change plan - need to fight off Rogers plan ^{good practice} ~~it~~ it will do
 devolution
 need to be more aggressive to promote Rogers plan

Politics - ~~not~~ Rogers plan - will devolve INS & true but political core. ATF later
 effort will be ~~not~~ unresponsive to benefits, ~~not~~ not be able to get
 service.
 monitor officer doing casework - end up to do more casework.

Concern: rapid report support. Principles
 need ~~not~~ w/ OIA & DOJ to push or else Rogers will win.

(6)

Naturalization

Inspector General will release a report on plans
 Lamar Smith ^{my opinion for to ~~not~~ reintroduce bill}
 Abbot
 Clyde Bodd
 Process for 2 yrs
 Need more adjudicators & resources
 Don't think \$ 5M not doing a report
 But will ^{6124 m} ~~not~~ want help.
 Low production

Don't want

money adjudicator for adjustment to naturalize

Pushing
of INS reform

(7)

Financing reforms - guarantee \$ for services
~~support~~

Need type of support

(3)

(3)

benefits - Japan

- Restoration - up pay 1/2 or 1/3
- since 8/24/96
- Public Charge - ~~not~~ - done

not pending

(2)

Refugee + Asylum

mark

Refugee Admission

consultation document -

Refugee # ↓ 49% in 1997 -

more diverse

Admin has

75K

80K - ~~proposed~~

120K #

only other countries to take refugees - need to take 1st asylum nation

a

Refugee #s - what problem?

heavily

Historical link - ~~to~~ support

Every year ↑ #

Michael

Seek Admin - ↑ the #s - annual cost paid + FF 2000

b

Asylum - survey 1 -

(1) Expedited Removal - INS Inspectors can decide to remove ~~people~~ ^{people}
~~not~~ many asylum do not have papers, difficult to communicate.
 the others

Border Admin expedited removal
 ✓ 2 cases of Kosovar - sent back
 ✓ Other incidents - detained

Legislative Fix - limit to only emergency

(2)

Admin - don't depend to the nation - ~~at~~ border patrol

(6)

(18)

Detention - ^{Prison (living)} - pending

Asylum seekers are held in prison like conditions - unsafe, dangerous, WJ. FBI interrogated. Whistleblower has been moved. CCA. huge strike. 3 guards resigned b/c failed drug test - found marijuana. first seven years.

Established anti-bul fear of ^{significant} presence. INS District kept them in jail. INS HQ - pushed. Afghan asylum seekers.

Kennedy, Robb, Leach ^{B21} - direct & implement a plan

ABA TX - rejected DHS of asylum but got fingerprinted - marks

(11)

Enforcement - deal - too disorganized

Regulatory Requirement - pending

Confidentiality - pending

Regulating & Local Enforcement - ?

Work etc.

Disconnected between HQ - District - & doesn't employ need accountability.

Civil Rights Enforcement -

New Enforcement Policy -

asked response from Rodger ^{Southeast} Midwest, ~~South~~

no civil rights enforcement/protection

Police oversight - ask many. civil rights violation, no authority

^{power} Chilling Effect of lawsuits

Facts on Naturalization

"Naturalization" is the process by which eligible legal immigrants become U.S. citizens. Through the naturalization process, immigrants display a willingness to become full members of our society. The process is not an easy one. It requires that immigrants live in the U.S. for a certain number of years, learn our language, study our history and government, not commit serious crimes and show that they are of "good moral character" and, finally, swear allegiance to the United States.

THE NATURALIZATION PROCESS

Eligibility: An applicant for citizenship must be at least 18 years of age, and must have lived in the U.S. as a legal permanent resident for at least five years. Immigrants who have been married to a U.S. citizen for three years and immigrants who have been active in the armed forces can generally naturalize after just three years. Immigrants must be of "good moral character," usually determined by checking with the FBI for any record of criminal background. A person must also demonstrate an ability to speak, read, and write ordinary English and have a general understanding of U.S. government and history. Long-time older permanent residents are exempt from the English requirement, and certain persons with disabilities are exempt from the requirement to demonstrate knowledge of U.S. history and government.

Interview: After submitting an application and fee to the Immigration and Naturalization Service (INS), an appointment is made with the applicant to take his or her fingerprints, which are checked by the FBI. An interview is then scheduled with the applicant, during which an INS examiner reviews the application and determines if the applicant meets the requirements for U.S. citizenship. To demonstrate English and civics proficiency, the applicant may be asked to answer several history and civics questions, read a sentence or brief passage from an INS textbook, and write a sentence dictated by the examiner.

Oath and Swearing In: All applicants must take an *Oath of Renunciation and Allegiance*, giving up foreign allegiances and titles and swearing to support and defend the Constitution and laws of the U.S. The final step in the naturalization process is the swearing-in ceremony, which can take place before a judge, or in an INS administrative ceremony.

RIGHTS AND RESPONSIBILITIES OF NEW CITIZENS

When an immigrant becomes a citizen, he or she acquires new rights. These include the right to:

- Vote, hold elected office, and sit on a jury;
- Apply for and hold certain government and private jobs requiring a security clearance;
- Bring immediate relatives to the U.S. without long waits;
- Travel abroad for unrestricted periods of time;
- Access restricted federal programs.

A RECORD BACKLOG FOR CITIZENSHIP

In recent years, a record number of immigrants have applied for U.S. citizenship. The growing demand has strained an Immigration Service mired in inefficiency and antiquated processes. The INS has struggled to modernize its systems so that it may efficiently process the applications of would-be citizens while at the same time ensuring that persons not eligible for citizenship are denied that benefit. With interest in citizenship likely to remain high for the foreseeable future, additional resources must be allocated to increase the efficiency of the naturalization process. Unless these resources are forthcoming, the backlog will increasingly present a barrier for those wishing to become American citizens. It is the responsibility of our government—Congress working with the administration—to ensure that newcomers choosing to become citizens may do so without undue delay.

The Immigration Service Must be Made More Responsive in its Service, and More Accountable in its Enforcement

The Issue

The Immigration and Naturalization Service (INS) is responsible for both enforcing U.S. immigration laws and providing benefits to immigrants. These dual missions have been made more daunting by the size of the agency and its growth in recent years. The INS budget has grown more than fivefold and its staff has doubled over the last decade. In recent years, the INS has come under much criticism for not successfully accomplishing its tasks. It is not providing timely and consistent service to those filing applications or petitions or for those seeking to naturalize. The INS also is failing to enforce immigration laws through nationally set priorities, applied consistently and professionally. While most agree that the INS must be restructured, questions arise about the kind of restructuring that would enable the agency to successfully fulfill its functions.

Background

The debate on the agency's shortcomings was intensified in the last Congress after the Commission on Immigration Reform—appointed by Congress and the President in 1990 to advise legislators on immigration issues—recommended that it be dismantled. The Commission concluded in its fourth and final report issued in September 1997 that the INS suffers from "mission overload" due to high immigration rates and increased responsibilities. The Commission proposed breaking up the agency, and dispersing the immigration system's main operations—border and interior enforcement, adjudication of visas and immigration benefits, enforcement of immigration-related labor standards and appeals of administrative decisions—among the State, Justice, and Labor departments. The Clinton Administration rejected the Commission's recommendation and the INS has disputed the panel's overall conclusion that the agency is hampered by conflicting priorities.

Current Status

In the 105th Congress, Representative Harold Rogers (R-KY) introduced H.R. 4264, a bill to establish the Bureau of Enforcement and Border Affairs within the Department of Justice. The bill would create a separate Bureau, responsible for the Border Patrol, detention and deportation, investigations and intelligence, and inspections. The Director would report directly to the Attorney General. The bill was silent on the service functions of the INS. H.R. 4264 was drafted without the benefit of hearings by the committees that have jurisdiction over the INS. It had been drafted without an assessment of the consequences for the millions of foreigners and would-be Americans who must do business with the INS each year. Representative Rogers unsuccessfully attempted to attach his bill to the end-of-the-session omnibus appropriation bill. His plan was opposed in the Senate, especially by Senators Kay Bailey Hutchison (R-TX) and Pete Domenici (R-NM). While supporting efforts to reform the INS to promote greater effectiveness and efficiency within the agency, these Senators opposed its consideration on a spending bill, believing that consideration should be delayed until Congress reconvenes and "INS reorganization can be given the full attention it deserves." The Clinton Administration has developed its own proposal, separating the service and enforcement functions of the INS while keeping both within the agency.

What Lies Ahead

The reorganization of the INS will be on the agenda of the 106th Congress. Any plan to reorganize the Immigration Service must receive thoughtful attention from Congress, with the input of experts and INS stakeholders. Any reorganization plan must provide for a clear separation of the service and enforcement functions. Our government must provide efficient and timely service to immigrants and visitors to the U.S. who rely on the INS. At the same time, it must provide for effective enforcement of our immigration laws in a manner that respects the civil rights of foreigners and Americans alike. The implementation of a plan—the process of reorganizing the agency—must be carefully carried out, so as not to result in disruption of services to immigrants and visitors, or the enforcement of our immigration laws.

Entry and Exit Control System Would Harm Our Economy While Failing to Control Illegal Immigration

The Issue

A provision ("Section 110") of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) requires the Immigration and Naturalization Service (INS), no later than March 30, 2001, to introduce an automated entry and exit control system at land borders and sea ports that will "collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States." All non-U.S. citizens—including U.S. permanent residents and short-term visitors—will have to "check in" with the INS when they enter the U.S. and "check out" with the INS when leaving. The system, if implemented, would have unintended consequences for the economy and for U.S. citizens, while failing to enhance enforcement of our immigration laws.

Background

The entry/exit control system was introduced in the 1996 law, ostensibly to gather statistics on the number of aliens who overstay their visas. In practice, implementation of such a system would cause unconscionably long delays at land borders; would require extraordinarily expensive new technology and infrastructure; and would not significantly impact illegal immigration, drug enforcement, or protection against terrorism.

Negative consequences for the economy – When the law was written, no consideration was given to the impact that implementation of this system would have on trade, tourism or border communities. The problem is that the INS has neither the technology nor the capacity to achieve this goal without causing extreme delays and back-ups at ports of entry—particularly at land border crossings. These delays will have a serious impact on international trade and tourism.

U.S. Citizens Will be Caught in the Net – Although the law requires only non-U.S. citizens to check in and out with the INS, U.S. citizens would also need to be identified at the border, in order to ensure the integrity and reliability the system.

An Inefficient and Ineffective Enforcement Tool – Curbing the problem of illegal immigration is an important goal, but the development of the entry/exit database would merely *record* entries and exits of all non-U.S. citizens. It's unclear that this system would aid in the next step, actually tracking down and removing persons who were found by the system not to have departed, which would require an inordinate amount of resources not yet appropriated by Congress. The entry/exit system itself could have price tag of more than \$2 billion for infrastructure costs alone

Recent Actions

In 1998, Congress delayed the required implementation date for this entry and exit database at land borders and seaports by 30 months, to March 30, 2001. It amended the provision to require that the system should not "significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border points of entry." However, Congress did not require any sort of feasibility study or cost and impact assessment before implementation, and did not appropriate any additional funds for development of such a system.

What Lies Ahead

Congress should pass legislation to repeal Section 110 of the 1996 immigration law, eliminating the mandate to establish the entry and exit database until a comprehensive study of the costs and impact of such a system can be completed and considered.

Perceived Farmworker Supply Problems Can Best Be Solved By Better Wages, Working Conditions

The Issue

Some agricultural producers in the United States complain of a shortage of workers to harvest fruits, vegetables, and tobacco. These producers have been pressuring Congress to increase the supply of farm labor by creating a new agricultural "guestworker" program. The foreign workers would hold temporary visas under which they would have no right to switch jobs or remain in the country once their job ends. The proposed legislation would lack the current guestworker law's modest protections for wages, working conditions, and housing. Virtually every study of the agricultural workforce has concluded that there has not been a shortage, but rather an oversupply of agricultural labor in the U.S. These studies suggest that difficulties in recruitment and retention of farmworkers could be overcome by modernizing agricultural labor practices and improving wages and working conditions.

Background

Surplus of Agricultural Labor – A U.S. General Accounting Report to Congress issued in December 1997 is the most recent in a line of studies concluding that there was no current or imminent shortage of labor for seasonal agricultural employers. There are approximately 1.6 million migrant and seasonal farmworkers working in labor-intensive agriculture (fruits, vegetables, tobacco, and greenhouses). The GAO report found double-digit unemployment rates in many of America's major agricultural-production counties, where migrant farmworkers reside.

Wages and Working Conditions of Migrant Agricultural Workers – Consistent with these findings, farmworkers' wages have declined in real terms over the past twenty years. Farmworkers' poverty rates have increased to well over half the workforce. Farm jobs are rated among the three most dangerous occupations in the United States (with mining and construction). Yet, health insurance is rarely provided. There is also a critical lack of decent, affordable housing for migrant workers. Moreover, recent studies confirm that there are widespread violations of minimum wage and other required labor standards.

Citizenship Status – Most farmworkers are immigrants, either citizens or Lawful Permanent Resident. Many secured "green cards" under the Immigration Reform and Control Act of 1986 (IRCA). IRCA contained a "special agricultural worker" program that provided lawful status to 1.1 million undocumented workers who could prove prior agricultural employment in the United States. In recent years, the proportion of workers who are undocumented immigrants has increased; studies suggest that about 37 to 42 percent of farmworkers lack authorized immigration status.

Agricultural Guestworkers Under Current Law – Agricultural employers who anticipate a labor shortage already have a program under which they may hire temporary foreign workers. The "H-2A" guestworker program allows agricultural employers in the United States to hire foreign workers to perform farm work on a temporary basis when insufficient numbers of United States workers are available. The H-2A program has been growing in the last several years, and now fills about 25,000 jobs. Many of the participating employers grow apples or tobacco on the East Coast, but other employers include sheep ranches in the West and greenhouses in New York and Oregon. The GAO study found that the Department of Labor approves 99 percent of employers' applications for such guestworkers. As "non-immigrants," H-2A workers do not acquire any rights to live or work in the United States beyond their temporary employment with a particular employer; they must return to their home country at the termination of their temporary employment in America.

Worker Protections are Inadequately Enforced – The H-2A program contains, on paper, certain protections against employers' undercutting of wages and working conditions of U.S. workers. Employers must first recruit U.S. farmworkers for the jobs. Employers must ask the U.S. Department of

Labor to certify that (1) there are not sufficient U.S. workers who are able, willing, qualified, and available to perform work at the place and time needed, and (2) the wages and working conditions of workers in the United States similarly employed will not be "adversely affected" by the importation of H-2A workers. Workers must be paid a minimum wage (calculated in one of three ways). Employers must provide free housing (with some exceptions). Unfortunately, the Department of Labor has not strictly enforced these and other protections built in to the H-2A program. As a result, not only are the imported foreign workers not adequately protected, but the wages and working conditions of farmworkers already in the U.S. are also undermined.

Recent Actions

During the 104th and 105th Congresses, agricultural producers lobbied for a new temporary foreign agricultural worker program. In March 1996 the House voted 242-180 against a proposed new guestworker program of 250,000 workers. In July 1998 the Senate inserted into an appropriations bill a new guestworker program that had no limit on the number of workers who could be brought to the U.S. The House did not vote on the amendment. The Clinton Administration opposed the amendment and it was omitted from the October 1998 budget agreement. The legislation would have removed the current H-2A program's modest protection against displacement of U.S. workers, depression in wages and working conditions, and mistreatment of foreign workers. A broad coalition of labor, Hispanic, immigrants' rights, civil rights and other groups opposed the new guestworker program because of the current oversupply of agricultural labor and because the proposal would have set back for many years the effort to reduce chronic farmworker poverty.

In October 1998, in response to complaints by agricultural employers that the current H-2A program is cumbersome and bureaucratic, the Department of Labor issued proposed regulations to streamline the program and make it more responsive for the employers who need extra workers in a timely manner. Unfortunately, the proposed regulations do not, at the same time, strengthen the guestworker program against those employers who abuse the system.

What Lies Ahead

During the 106th Congress, some agricultural producers have announced that once again they will ask Congress to approve a new "guestworker" program to replace the H-2A temporary foreign agricultural worker program. If their proposals are similar to those in the past, a major thrust will be to weaken already inadequately-enforced worker protections. A new agricultural worker program will likely weaken minimum wage standards, eliminate requirements to provide housing, and otherwise drive farmworkers further into poverty. This does not make sense, especially considering the fact that, in the decade ending 1995, the total value of our fruit, vegetable, and horticultural sector increased by 51 percent, and the value of our exports between 1989 and 1997 *doubled* in value to \$9 billion. Studies have indicated that wage increases for seasonal farmworkers would cause only minor produce price increases, keeping American consumers content and the nation internationally competitive.

Descriptions of farmworkers' conditions continue to use the title of Edward R. Murrow's 1960 documentary film, "Harvest of Shame." Congress could reduce the mistreatment of America's farmworkers by ending the discrimination against agricultural workers in minimum wage and other labor laws, giving government agencies enough money to enforce the labor laws, and providing incentives for employers to improve wages and working conditions.

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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

National Immigration Forum

Fax Cover Page

Date: April 15, 1999
To: Irene Bueno, Domestic Policy Council, the White House
Fr: Angela Kelley, National Immigration Forum
Re: Attendees for the meeting on Friday, April 16 at noon.

NAME	ORGANIZATION	SS#	DOB
Angela Kelley	National Immigration Forum		
Francis P. Sharry, Jr.	National Immigration Forum		
Hermine Lisa Shuger	National Immigration Forum		
Joel Najar	National Council of La Raza (NCLR)		
Marcela Urrutia	National Council of La Raza (NCLR)		
Judy Golub	American Immigration Lawyers Association (AILA)		
✓ J. Kevin Appleby	United States Catholic Conference (USCC)		
Abigail Price	United States Catholic Conference (USCC)		
Michael Hill	United States Catholic Conference (USCC)		
Dale Swartz	Rick Swartz & Associates		
✓ Christina Chavez-Cook	Mexican American Legal Defense & Education Fund (MALDEF)		
✓ Joane Lee	Mexican American Legal Defense & Education Fund (MALDEF)		(b)(6)
Carol Wolchok	American Bar Association (ABA)		
Selena Walsh	League of United Latin American Citizens (LULAC)		
Melanie Nezer	Immigrant and Refugee Services of America (IRSA)		
Jeff Landi	Council of Jewish Federations (CJF)		
Diana Aviv	Council of Jewish Federations (CJF)		
Jayne Park	National Asian Pacific American Legal Defense Consortium (NAPALC)		
Josh Bernstein	National Immigration Law Center (NILC)		
Dinah Wiley	National Immigration Law Center (NILC)		
Gregory T. Nojeim	American Civil Liberties Union (ACLU)		
Jerry Fowler	Lawyers Committee for Human Rights		
Mark Hetfield	Hebrew Immigrant Aid Society (HIAS)		

**IMMIGRATION MEETING
APRIL 16, 1999**

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Josh Bernstein	NILC	202-216-0261 216-0266	Joshe B Pipeline.com

[illegible]

The A,B,Cs of U.S. Immigration

What is an Immigrant? An immigrant is a foreign-born individual who has been admitted to reside permanently in the United States as a Lawful Permanent Resident (LPR).

How Do Immigrants Get Admitted to Permanently Reside Here? Typically a foreign-born individual seeking to become an LPR can attain legal status in one of two ways:

- Through **family-sponsored immigration**, a U.S. citizen can sponsor her spouse, foreign-born parent (if the sponsor is over the age of 21), minor and adult children, and brothers and sisters. A lawful permanent resident can sponsor her spouse, minor children, and adult unmarried children.
- Through **employment-based immigration**, a U.S. employer can sponsor someone for a specific position where there is a demonstrated absence of U.S. workers.

A small number of **diversity visas** are also awarded through a special lottery to individuals from specifically-designated countries.

What is a refugee? A person *outside* of the United States who seeks protection on the grounds that he or she fears persecution in his or her homeland is a **refugee**. To attain refugee status, the person must prove that he or she has a "well-founded fear of persecution" on the basis of at least one of five specifically-enumerated and internationally-recognized grounds. Those grounds include the person's ① *race*, ② *religion*, ③ *membership in a social group*, ④ *political opinion*, or ⑤ *national origin*.

A person who has *already entered* the United States, and who fears persecution if sent back to his country, may apply for **asylum** here. Once granted asylum, the person is called an "**asylee**." Like a refugee, an asylum applicant must also prove that he has a "well-founded fear of persecution" based on the same enumerated grounds.

Both refugees and asylees may apply to become LPR's after one year.

What is an Undocumented Immigrant? An undocumented immigrant is a person who is present in the United States without the permission of the U.S. government. Undocumented immigrants enter the U.S. either:

- Illegally, without being inspected by an immigration officer, or by using false documents; or
- Legally, with a temporary visa, and then remain in the U.S. beyond the expiration date of the visa. Four out of ten undocumented immigrants enter the U.S. legally.

What are Non-Immigrants? Non-immigrants are individuals who are permitted to enter the U.S. for a period of limited duration, and are given only temporary visas. Some non-immigrant (temporary) visas are given to: students, tourists, temporary workers, business executives, and diplomats.

What is a Naturalized Citizen? Lawful permanent residents are eligible to apply for U.S. citizenship through a process called **naturalization**. To qualify to naturalize, applicants must reside in the U.S. for 5 years (3 if they are married to a U.S. citizen) demonstrate a knowledge of U.S. history and government, show they have committed no serious crimes, have paid their taxes, are of "good moral character," and demonstrate that they understand, speak, and write ordinary English.

Fast Facts On Today's Newcomers

Did you know that ...

- Most immigrants-**about 76%**-come to the U.S. legally.
- Most legal immigrants-**about 7 out of 10**-come to join close family members.
- As of 1997, **nearly 10%** of the U.S. population was foreign-born. By comparison, from 1870 to 1920, the foreign-born population made up **approximately 15%** of the total population.
- In 1996, approximately **859,000** new immigrants and refugees arrived in the U.S. Of these, **771,000** entered as lawful permanent residents and another **88,000** came as refugees or others fleeing persecution.
- Many undocumented immigrants don't come to the U.S. by crossing a border illegally. In fact, **four out of 10** enter legally with student, tourist, business, or some other temporary visa and become "illegal" when they stay in the U.S. after their visa expires.
- According to the 1990 Census, **6%** of all foreign-born Americans had entered the country as refugees or people seeking asylum from various kinds of persecution. Most refugees and asylum-seekers go through the process to become legal permanent residents as soon as they are eligible.
- **One third** of the foreign-born population in the U.S. in 1997 were naturalized citizens.

Where Do Immigrants Come From?

- In 1996, the "Top Ten" countries from which the U.S. received legal immigrants were: **Mexico** (163,572), **Philippines** (55,876), **India** (44,859), **Vietnam** (42,067), **China** (41,728), the **Dominican Republic** (39,604), **Cuba** (26,466), **Ukraine** (21,079), **Russia** (19,668), **Jamaica** (19,089).

Where Do Refugees Come From?

- In 1998, the "Top Ten" places from which refugees fled and were resettled in the U.S. were: **Bosnia and Hercegovina, the Former Soviet Union, Vietnam, Somalia, Iran, Cuba, Liberia, Iraq, Sudan, and Burma.**

Sources:

Schmidley, D. and Alvarado, H.A., "The Foreign-Born Population in the United States: March 1997 (Update)" *Current Population Reports*. (Washington, DC: U.S. Bureau of the Census, April 1998).

U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service*, 1996. (Washington, DC: U.S. Government Printing Office, 1997).

U.S. Immigration and Naturalization Service, *Estimates of the Unauthorized Immigrant Population Residing in the United States: October 1996*, (Washington, DC: January 1997).

U.S. Committee for Refugees, *Refugee Reports*, (Washington, DC: December, 1998).

Facts on Immigrants and Public Benefits[†]

How is an Immigrant's Eligibility for Public Benefits Determined? Immigrants considered "*qualified*" are eligible for some, but not all, federal public benefits. An immigrant's eligibility

for public benefits will depend on her immigration status, whether she entered the U.S. before the 1996 welfare reform law was enacted, and whether she was already receiving assistance when the welfare law went into effect. Access to certain benefits will also vary based on which state the immigrant lives in.

"Qualified" aliens include Lawful Permanent Residents (LPRs); refugees and asylees; persons paroled into the country for at least one year; persons granted withholding of deportation; Cuban-Haitian entrants; Amerasians; and certain battered women and children. Any aliens not included in one of these categories are considered "**not qualified**."

What Federal Public Benefits Can "Qualified" Immigrants Receive?

"Qualified" Immigrants entering the U.S. *on or after* 8/22/96

- Barred from Supplemental Security Income (SSI) and **Food Stamps**. (Exceptions are explained elsewhere in this fact sheet.)
- Subject to a **5-year bar** on non-emergency **Medicaid**, the state Child Health Insurance Program (CHIP), and Temporary Assistance for Needy Families (**TANF** — formerly AFDC).
- After 5-year bar, subject to **deeming** for the above-listed programs. Exemptions from deeming for up to one year exist for some battered spouses and children, and those at risk of going hungry or becoming homeless.
- After the 5-year bar, states still retain the option to determine immigrant eligibility for **TANF**, **Medicaid**, and **social services block grants (Title XX)**.

"Qualified" Immigrants in the U.S. *before* 8/22/96 (date of enactment of welfare law)

- Eligible for **SSI**:
 - if they were receiving the benefit on 8/22/96; or
 - if they are or become disabled.
- Eligible for **Food Stamps**:
 - if they were 65 years of age or older as of 8/22/96;
 - if they are under 18 years of age;
 - if they are disabled;
 - if they are a tribal member or family member of a Hmong or Highland Laotian tribe; OR
 - if they are a member of specific Indian tribes living along the U.S. border.

(Exceptions are explained elsewhere in this fact sheet.)

- States have the option to determine immigrant eligibility for **TANF**, **Medicaid**, and **social services block grants (Title XX)**.

What Services May Refugees Receive? Refugees fleeing potentially life-threatening persecution in their home country typically do not have the luxury of bringing personal possessions or preparing themselves for life in a new culture. Recognizing this fact, the federal government **exempts** newly arrived refugees, asylees, immigrants granted withholding of deportation, Cuban-Haitian entrants, and Amerasians from all of its eligibility provisions which restrict access to SSI, Medicaid, and Food Stamps, but only for their first seven years after being granted such status.

What Other "Qualified" Immigrants are Exempted from Public Benefits Restrictions? Veterans and active duty military personnel, their spouses, and unmarried children under 21, and immigrants who have worked 40 "qualifying quarters" (at least 10 years), are exempted from the Food Stamp and SSI bars, and are not subject to the five-year prospective bar on most federal means-tested benefits.

What Hurdles Must "Qualified" Immigrants Overcome to Receive Benefits? A large number of legal immigrant bars and restrictions to public benefits resulted from the 1996 welfare law (see table, previous page). Eligibility for certain programs now varies depending on when the immigrant entered the U.S. For federal means-tested public benefits, *newly arriving* immigrants (those admitted to the U.S. on or after 8/22/96) are: 1) barred for their first five years in the U.S.; and 2) subject thereafter to a process called "**deeming**" where the income and resources of the U.S. citizen or LPR sponsoring the immigrant are added to the immigrant's own income to determine whether the immigrant is poor enough to qualify for the benefit under the program's financial guidelines. Deeming continues until the new immigrant either becomes a citizen or works 40 "qualifying quarters" (at least 10 years). The work of a spouse (or of a parent in the case of a child under 18) also counts towards the 40 quarters. After becoming naturalized citizens, or working for 40 quarters, legal immigrants are generally eligible for federal and state programs provided they meet the general program criteria.

Are Aliens Classified As "Not Qualified" Entitled to Any Government Services? Yes, but very few. While "not qualified" aliens are ineligible for nearly all federal benefits, they are still eligible for certain very basic kinds of assistance, including: *emergency* Medicaid; immunizations; testing and treatment for the symptoms of communicable diseases; short-term non-cash disaster relief; school lunches and breakfasts; and certain other programs essential to public health and safety specified by the Attorney General.

Shouldn't Family Sponsors Be Responsible for the Immigrant's Care? They are. U.S. citizens or LPRs wishing to sponsor an immigrant relative for admission to the U.S. now must sign a legally enforceable **affidavit of support** which requires their income level to be high enough to ensure that the immigrant will not become a public charge. These documents make the sponsor liable for the immigrant's use of means-tested benefits until citizenship, or until the arriving immigrant works 40 "qualifying quarters" (at least 10 years) without using means-tested services.

Who Provides Services to Immigrants?

According to the National Academy of Sciences, the average immigrant contributes \$1,800 more in taxes than he or she receives in benefits. However, the federal government reaps the lion's share of immigrant tax dollars (approximately two-thirds). States and localities provide the bulk of services immigrants use—most notably education, health, and public assistance. As a result, states and localities often find themselves "shortchanged"—forced to provide services without sufficient revenue. The 1996 welfare reform law, which barred or restricted *legal immigrants'* access to most federal public benefits, exacerbated this dilemma by withholding even more federal funds for immigrants. In the wake of those dramatic changes, states and counties with high immigrant populations may end up "holding the bag" when it comes to providing for the care of these legal residents if they should fall on hard times.

Americans on Immigrant Benefits

According to a recent poll, 77% of Americans believe legal immigrants "should be eligible for the same kinds of public assistance that are available to the native-born."

Source: W.K. Kellogg Foundation poll by Bonney & Company, "The National Poll on Welfare Reform and Healthcare Reform," January 1999.

† Much of the information contained in this document is based on materials produced by the National Immigration Law Center.

Facts on Refugees and Asylees

What's the Difference Between a Refugee and an Asylee? Refugees and asylees are people seeking protection in the U.S. on the grounds that they fear persecution in their homeland. A refugee applies for protection while *outside* the United States. An "asylee" differs from a refugee because the person *first* comes to the United States and, once here, applies for protection. Refugees generally apply in refugee camps or at designated processing sites outside their home countries. In some instances, refugees may apply for protection within their home countries, such as in the Former Soviet Union, Cuba, and Vietnam. If accepted as a refugee, the person is sent to the U.S. and receives assistance through the "refugee resettlement program."

How Many Refugees Does the U.S. Accept? The United States accepts a limited number of refugees each year. This number is determined by the President in consultation with Congress. In fiscal year 1999, for example, 78,000 refugees will be permitted to come to the U.S. The total number of "refugee slots" is divided among different regions of the world. In 1999, the regions and the numbers of slots will be:

- Africa—12,000
- East Asia—9,000
- Europe and the Former Soviet Union—48,000
- Latin America and the Caribbean—3,000
- Near East/South Asia—4,000
- Unallocated reserve—2,000 (these may be allocated to refugees fleeing unforeseen trouble which may arise during the course of the year)

How Does Someone Gain Refugee Status Here? To qualify for refugee resettlement in the U.S., a person must come from a country designated by the Department of State. The person must meet the definition of a "refugee" by proving that she has a "well-founded fear of persecution." The refugee applicant must prove this fear is based on the possibility of persecution because of her *race, religion, membership in a social group, political opinion, or national origin*. In addition, a refugee must fit into one of a set of "priority" categories:

- **FIRST PRIORITY:** Persons of any nationality referred by the United Nations High Commissioner for Refugees (UNHCR) or identified by the U.S. Embassy as being in immediate danger of loss of life, or cases of "compelling security concern" in countries to which they first fled, such as persons who may be in refugee camps that are under armed attack. Also in this priority are cases referred by UNHCR including women at risk, victims of violence or torture, persons in urgent need of medical treatment, and individuals for whom there is no realistic prospect of ever being integrated into the country to which they first fled or of returning to their home country.
- **SECOND PRIORITY:** Within certain nationalities, members of specific groups of special concern to the U.S. For example in Fiscal Year 1998, from Iran, the State Department identified members of Iranian religious minorities as groups of special concern to the U.S.
- **THIRD PRIORITY:** For specific nationalities—spouses, parents, and unmarried sons and daughters of U.S. permanent resident aliens, refugees, asylees, conditional residents or "parolees." Unmarried sons and daughters of U.S. citizens and parents of U.S. citizens who are under 21 years of age. In Fiscal Year 1999, for nationals of 18 African countries, additional criteria apply.
- **FOURTH PRIORITY:** Married sons and daughters, siblings, grandparents, or grandchildren of U.S. citizens and U.S. permanent resident aliens, refugees, asylees, conditional residents or parolees. In Fiscal Year 1998, only Bosnians were brought to the U.S. in this priority.

There is a fifth priority, which has not been used in recent years. For each region or country, the State Department decides which priorities will be considered; not all priorities are considered for all countries.

What Benefits Do Refugees Receive? The circumstances under which refugees leave their country are different from other immigrants. Usually, they do not have the luxury of bringing personal possessions or preparing themselves for life in a new culture. Recognizing this fact, the federal government provides transitional resettlement assistance to newly arrived refugees.

- Private voluntary agencies contract with the Department of State to provide certain essential services for newly arriving refugees. These agencies generally have affiliates located throughout the country or concentrated in particular regions of the U.S. For the first 90 days, the voluntary agency arranges for a refugee's food, housing, employment, medical care, counseling, and other services to help the refugee make the transition to economic self-sufficiency.
- Certain refugees are entitled to a special program of Refugee Cash and Medical Assistance, provided by the U.S. Department of Health and Human Services and administered by the state in which the refugee resides. Currently, refugees are eligible for this program for up to eight months after arrival in the U.S.
- After refugees have been in the U.S. for one year, they are eligible to become permanent residents. There is no limit to the number of refugees who may become permanent residents each year.

How Does Someone Become an Asylee? Like a refugee, an asylum applicant must also prove that he has a "well-founded fear of persecution" based on his *race, religion, membership in a social group, political opinion, or national origin*. Once granted asylum, the person is called an "asylee."

Individuals **inside the U.S.** may apply for asylum in one of two ways. The application may be submitted "**affirmatively**" when it is done directly to one of the eight asylum offices in the U.S. An interview with a specially-trained asylum officer follows to review the case. A "**defensive**" application is submitted as a way to prevent deportation **when an asylum seeker is in removal proceedings**. In defensive cases, an Immigration Judge decides the application. In either instance, the application must be submitted within one year of entry to the U.S., or the person will be found automatically ineligible. Exceptions are allowed for extraordinary circumstances. While there is no limit on the number of people who may *apply* for asylum, of those applicants who apply based on a claim of persecution for coercive family planning reasons, only 1,000 per year may be *granted*. In Fiscal Year 1998, more than 10,000 asylum applications were approved. After a year, an asylee may apply for permanent resident status. Only 10,000 asylees each year are allowed to become permanent residents.

Individuals seeking to apply for asylum **upon arriving at a U.S. airport or other port of entry** are subject to a recently-created summary exclusion system. If an asylum seeker arrives with false or no documents, he must establish a fear of persecution at an on-the-spot interview before an immigration officer, or face immediate deportation. An immigration judge may review a negative decision within seven days. Of the persons identified for expedited removal, only about 5% get beyond the on-the-spot interview and see an asylum officer. Of those, 80% convince asylum officers that they have a credible fear of persecution and are given the chance to make their case to an Immigration Judge.

Sources:

U.S. Committee for Refugees, *Refugee Reports*, Vol. XIX, No. 9, September, 1998.

U.S. Department of State, Bureau of Population, Refugees and Migration and the Departments of Justice and Health and Human Services, *U.S. Refugee Admissions Program for Fiscal Year 1998*. <http://www.state.gov/www/global/prm/rpt_9804_refugee_adm.html>. April 1998.

Immigration and Naturalization Service, Office of Policy and Planning, *Monthly Statistical Report, September FY 1998 Year End Report*. October, 30, 1998.

U.S. Committee for Refugees, *World Refugee Survey 1998*. (Washington, DC.: 1998).

Immigrants in the News

The following list contains the names of first generation immigrants who left their homelands to reside in the United States. The contributions of these and other immigrants have enriched our culture, advanced our sciences, and inspired us throughout the years.

Madeleine Albright, U.S. Secretary of State (Czechoslovakia) • **Isabel Allende**, author (Peru — Chilean descent) • **Mario Andretti**, race car driver (Italy) • **Ann Margret**, actress/singer, *Grumpy Old Men* (Sweden) • **Hans Bethe**, Nobel Prize-winning physicist (Germany) • **Liz Claiborne**, fashion designer (Belgium) • **Edwidge Danticat**, author *Breath, Eyes, Memory* (Haiti) • **Oscar de la Renta**, fashion designer (Dominican Republic) • **Jaime Escalante**, educator, *Stand and Deliver*, (Bolivia) • **Gloria Estefan**, singer/songwriter (Cuba) • **Patrick Ewing**, basketball player, New York Knicks (Jamaica) • **Max Frankel**, Executive Editor, *New York Times* (Germany) • **John Kenneth Galbraith**, economist/presidential advisor (Canada) • **Andy Garcia**, actor, *Hero* (Cuba) • **Wayne Gretzky**, hockey player, New York Rangers (Canada) • **Andrew Grove**, founder, Intel Corporation (Hungary) • **Le Ly Hayslip**, author, *When Heaven and Earth Change Places* (Vietnam) • **Livan Hernandez**, baseball player, Florida Marlins (Cuba) • **Dr. David Ho**, scientist/AIDS researcher (Taiwan) • **Peter Jennings**, network television anchor (Canada) • **Bela Karolyi**, Olympic gymnastic coach (Romania) • **Henry Kissinger**, former Secretary of State (Germany) • **Ted Koppel**, network television anchor, *Nightline* (England) • **Lenny Krazelburg**, swimmer/American record-holder in 200m backstroke (Russia) • **Elizabeth Kubler-Ross**, physician/author, *On Death and Dying* (Switzerland) • **Angela Lansbury**, actress *Murder She Wrote* (England) • **Bette Bao Lord**, author, *Legacies* (China) • **Yo Yo Ma**, concert cellist (France — Chinese descent) • **Robert MacNeil**, former network television anchor *MacNeil-Lehrer News Hour* (Canada) • **Peter Max**, artist (Germany) • **Frank McCourt**, author *Angela's Ashes* (Ireland) • **Zubin Mehta**, conductor (India) • **Gian Carlo Menotti**, composer (Italy) • **Midori**, classical violinist (Japan) • **Nathan Milstein**, concert violinist (Russia) • **Ricardo Montalban**, actor, "Fantasy Island" (Mexico) • **Josie Natori**, fashion designer (Phillipines) • **Martina Navratilova**, tennis player (Czechoslovakia) • **Louise Nevelson**, sculptor (Russia) • **Mike Nichols**, Academy Award-winning director, *The Graduate* (Germany) • **Hakeem Olajuwon**, basketball player, Houston Rockets (Nigeria) • **Claus Oldenberg**,

artist (Sweden) • **Yoko Ono**, vocalist/songwriter (Japan) • **Seiji Ozawa**, conductor (China – Japanese descent) • **Frank Oz**, puppeteer/film director, *Little Shop of Horrors* (England) • **Rafael Palmiero**, baseball player, Baltimore Orioles (Cuba) • **I.M. Pei**, architect (China) • **Cesar Pelli**, architect/educator, (Argentina) • **Itzhak Perlman**, violinist (Israel) • **Sidney Poitier**, Academy Award-winning actor, *Lilies of the Field* (Bahamas) • **Andre Previn**, pianist/conductor/composer (Germany) • **Anthony Quinn**, Academy Award-winning actor, *Lust for Life* (Mexico) • **Jhoon Goo Rhee**, judo expert (Korea) • **Rena Rowan**, fashion designer, (Russia) • **Morley Safer**, network television co-host, *60 Minutes* (Canada) • **Carlos Santana**, rock/jazz guitarist (mexico) • **Arnold Schwarzenegger**, actor/body builder, *Terminator* (Austria) • **John Secada**, singer (Cuba) • **John Shalikashvili**, former Chairman, Joint Chiefs of Staff (Poland) • **William Shatner**, actor *Star Trek* (Canada) • **Gene Simmons**, rock musician, *Kiss* (Israel) • **Yakov Smirnoff**, comedian (Russia) • **Sammy Sosa**, baseball player, Chicago Cubs (Dominican Republic) • **Saul Steinberg**, artist (Romania) • **Isaac Stern**, concert violinist (Russia) • **Bjarne Stroustrup**, inventor, C++ computer language, (Denmark) • **Shoji Tabuchi**, country/western entertainer (Japan) • **David Sun**, co-founder, Kingston Technology, (Taiwan) • **Elizabeth Taylor**, Academy Award-winning actress, *Who's Afraid of Virginia Woolf?* (Britain) • **Chang-Lin Tien**, Chancellor, U.C. Berkeley (China) • **Tobias Taurel**, President and CEO, Eli Lilly and Co. (Morocco – Spanish descent) • **Alex Trebek**, game show host, *Jeopardy* (Canada) • **John Tu**, co-founder, Kingston Technologies, (China) • **Eddie Van Halen**, rock guitarist/musician (Netherlands) • **Derek Walcott**, Nobel Prize-winning poet (St. Lucia) • **Charles B. Wang**, CEO, Computer Associates, International (China) • **Wayne Wang**, film director, *The Joy Luck Club* (China) • **Dr. Ruth Westheimer**, psychologist/television personality (Germany) • **Elie Wiesel**, author/Nobel Prize winner for Peace/Holocaust survivor (Romania) • **Billy Wilder**, Academy Award-winning director, *The Apartment* (Austria) • **Neil Young**, musician/songwriter (Canada) • **Pinchas Zukerman**, concert violinist (Israel).

Mandatory and Indefinite Detention Laws Give Punishment Out of Proportion to Crime

Issue

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) amended the Immigration and Nationality Act by mandating that the Immigration and Naturalization Service (INS) detain nearly all immigrants who have committed a crime. The list of crimes which subject an immigrant to mandatory detention is extensive, and includes nonviolent crimes, crimes which occurred in the distant past, and crimes for which no sentence was served. Consequently, Lawful Permanent Residents (LPRs) who have been in the United States for many years and who have U.S. citizen family members are often locked away for months or even years in INS facilities and local jails with no possibility for release.

Background

Prior Detention Law – Prior to the mandatory custody provision, the INS could exercise its discretion and decide to release a particular detainee. In deportation cases, an Immigration Judge could hear evidence about a detainee's U.S. family members, length of residency in the U.S., and rehabilitation and decide whether or not he or she deserved to be released. The INS or the Immigration Judge could release an individual who posed no danger to the safety of others and was likely to appear for future hearings. Thus, an immigrant who was an LPR with strong ties to the United States, including U.S. citizen family members, a stable job, and a home, could be released from detention while his case was decided. IIRAIRA took away this discretion.

Immigrants Now Subject to Mandatory Detention – IIRAIRA mandates that the INS detain nearly all immigrants who have committed a crime. Crimes for which an immigrant is subject to mandatory detention include some misdemeanors, cases of theft and petty drug possession offenses. Mandatory detention applies to long-time LPRs with strong ties to the United States. It also applies regardless of how long ago the crime occurred—or whether it was committed before or after IIRAIRA. Some immigrants subject to mandatory detention were never sentenced to or served a day in jail for their crime. Consequently, lawful permanent residents who have been in the United States for many years and who have US citizen family members are often detained and deported or are locked away for months or even years in detention centers and local jails with no possibility for release.

Many immigrants subject to mandatory detention have U.S. citizen spouses and children who are dependent on them. Many entered the United States as LPRs or refugees when they were children. Many committed nonviolent offenses years ago, have paid their debt to society, and have been law-abiding for years or even decades. Many have jobs and own businesses. Many have no ties to their countries of origin, and some do not even speak the language of their native country.

Permanent Banishment – Deportation, though civil in nature, has lifetime consequences that are often much more severe than the sentence an immigrant will serve for a criminal offense. Mandatory detention means that rehabilitated, productive immigrants will be permanently banished from their homes, families, and livelihood—and they will have no time to prepare themselves or their families. In many cases, it amounts to excessive punishment for relatively minor crimes committed years in the past.

Indefinite Detention – The INS is unable to return some detainees with final orders of deportation or removal to their countries of nationality. These detainees are from Vietnam, Cuba, and other countries with which the United States has no diplomatic relations or which refuse to accept the return of their nationals. Consequently, immigrants from these countries languish in INS detention for years *after* they have completed their criminal sentence. These individuals are commonly known as “lifers,” since there is no end in sight to their detention. Many of the approximately 3,500 “lifers” are LPRs who entered the United States as refugees when they were children. Ordinarily, the punishment of life without the possibility of release is reserved for those who have committed crimes like murder. For these

individuals, however, committing a crime such as stealing a car radio may result in a punishment equivalent to what they would receive for murder.

How An Immigrant Becomes Detained – Many immigrants come into INS custody directly from jail when they have completed their criminal sentences. However, even though the law mandates detention of immigrants “when the alien is released,” the INS believes it must also detain immigrants who committed crimes in the distant past, some of whom were never required to serve a day in jail for the crime they committed. When the INS comes into contact with an immigrant subject to mandatory detention, for example during a citizenship interview or upon return to the United States from a trip abroad, the immigrant is likely to be taken into custody without possibility for release.

Constitutional Questions – Mandatory detention has been found unconstitutional by the overwhelming majority of federal courts that have considered the issue. Several courts have also found indefinite detention unconstitutional. In *U.S. vs. Zadvydas*, where an immigrant was detained for four years beyond the completion of his criminal sentence, the court stated that “the probability of permanent confinement is an excessive means of accomplishing the purposes sought to be served... This result ‘shocks the conscience.’”

Recent Actions

Because the INS indicated that it lacked sufficient detention space and resources to comply, mandatory detention was delayed for two years. After two years, IIRAIRA permitted no further extensions, and mandatory detention went into effect on October 9, 1998, even though the INS continues to have a shortage of detention space. To ease the problem of limited detention space, the INS has had to develop contingency plans. Though reported in the media as plans for the release of “criminal aliens,” in fact the INS considered the release only of immigrants who had committed crimes in the past, and who no longer pose a danger to the community. These individuals, if they were native born, would not be held in detention.

What Lies Ahead

Discretion and Fairness Should be Restored to Detention - Any change in the mandatory detention provisions would require legislative action. A change in the law to restore discretion to the INS and to immigration judges would ensure that release decisions were made on a fair and rational basis. Repealing the mandatory detention provisions would not mean that dangerous criminals would be released from detention. Only those who could demonstrate that they are not a danger to the community and will appear for future immigration court hearings will be released. The INS and immigration judges will still be able to decide that an individual should not be released from detention.

It makes no sense for INS to detain immigrants who pose no security threat to society. Many immigrants subject to mandatory detention are lawful permanent residents with United States citizen family members who have been law abiding for many years. The INS must retain the discretion to differentiate between those detainees who pose a risk to society and should be kept in detention and those who pose no risk and should be released.

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February 24, 1999

The Honorable Lamar S. Smith
Chairman
Subcommittee on Immigration and Claims
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The American Bar Association has a long-standing and strong interest in immigration detention and the related issues to be examined in the hearing before your Subcommittee on Thursday, February 25.

The Association's interest in immigration detention, and our involvement in securing the rights of detained aliens, date back to 1980, when we organized a national pro bono effort to represent Haitian entrants. Since that time, the Association has conducted or participated in numerous delegations to INS-operated and contract detention facilities, including those in Texas, Louisiana, Florida, California, New York, and Arizona. We have found that many individuals are needlessly confined, at considerable expense to the government, pending immigration court proceedings and that detention conditions greatly impede their ability to obtain legal information, secure counsel, and prepare their cases.

In 1989, the Association conducted an investigation of detention in the Harlingen-Brownsville, Texas, area, following which the Association developed an all-volunteer representation effort in Harlingen which is co-sponsored by the State Bar of Texas and the American Immigration Lawyers Association. That project, ProBAR, recruits attorneys nationwide to travel to Texas at their own expense to represent detained individuals in immigration proceedings. The ABA also awards grants to bar-sponsored pro bono legal service programs serving detained migrants and asylum seekers in other locations across the country.

The Association has adopted policy addressing a range of detention concerns. We believe that asylum applicants should be detained only in extraordinary circumstances and in the least restrictive environment necessary to ensure their appearance at court proceedings. In addition, the INS should institute alternative means of ensuring

appearance at court proceedings, such as supervised conditional pretrial release. Bond, when imposed, should be based upon an individual's economic means, community ties, and the likelihood of absconding. Counsel should be permitted to enter limited appearances for bond and custody proceedings.

In addition, the Association has been actively facilitating effective access of aliens in proceedings to legal representation, improving physical and telephonic access between detainees and legal representatives, making sure accurate lists of legal service providers are maintained and disseminated, and ensuring that legal service organizations are allowed to provide general "Know Your Rights" legal presentations and to distribute informational and legal materials to detained persons.

Over the last decade, reports about detention have been issued by many organizations besides the ABA, including the Lawyers Committee for Human Rights, Human Rights Watch, and the Women's Commission on Refugee Women and Children. These reports consistently document incidents of mistreatment by detention officers, inappropriate placements of unaccompanied minors, absence of legal information and a multitude of problems relating to access to representatives, including the isolated location of facilities, limited consultation hours, and restricted use of telephones. Lawsuits against the INS have similarly demonstrated that unrepresented detainees are often misinformed about the legal process and pressured into abandoning their claims. Orantes-Hernandez v. Thornburgh, 919 F.2d 549 (9th Cir. 1990).

Access to legal representation is vital to individuals facing deportation.¹ A lawyer, or qualified legal representative, makes an assessment of legal options and eligibility for relief, prepares the formal applications, identifies witnesses and gathers supporting documentary evidence, and helps the applicant focus on what is relevant to meet his or her burden of proof. While valuable for all people in immigration proceedings, the assistance of counsel is indispensable for asylum

¹ If the banishment of an alien from a country into which he has been invited . . . where he may have formed the most tender of connections, where he may have vested his entire property and acquired property . . . and where he may have nearly completed his probationary title to citizenship . . . , if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the norms can be applied.

Mr. (James) Madison's Report, General Assembly of Virginia (January 7, 1800) (reprinted in *The Virginia Commission on Constitutional Government, The Kentucky-Virginia Resolutions and Mr. Madison's Report of 1799*, 36 (1960)).

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applicants in detention who have no access to sources of evidence or witnesses, and often have linguistic, cultural and psychological disabilities that make it extremely difficult to clearly articulate their experiences or make them hesitant to discuss their views with government officials.

Legal assistance also facilitates the smooth functioning of the system. The immigration laws are more complex than ever and the case law is rapidly evolving. At the same time, new, accelerated procedures, such as expedited exclusion, present almost insurmountable barriers to achieving asylum or other forms of relief for unrepresented individuals who lack a knowledge of our English language and legal system.

Asylum seekers and others in removal proceedings are not entitled to appointed counsel under the Sixth Amendment as are criminal defendants. On the contrary, they have only a "privilege" of representation by counsel "at no expense to the Government." 8 U.S.C. 1242(b)(4)(A). Applicants who are indigent must find attorneys or private programs to represent them for free or at reduced cost, or they must represent themselves. As a result, the responsibility has fallen on the private bar and nonprofit organizations to offer free legal assistance to much of the detained population.

In spite of efforts by the bar and other organizations to provide pro bono assistance, detained individuals by virtue of their incarceration are rarely able to secure representation. While low-cost or pro bono representation is available in major metropolitan communities throughout the United States, INS detention facilities are commonly located in isolated areas where such assistance is not available or grossly inadequate given the size of the detained population. As a result, individuals who are not deportable or who may qualify for relief face imminent removal because they are unaware of their rights or cannot effectively exercise them, while others may prolong detention by ignorantly applying for relief for which they are not eligible.

It is in the interests of both the INS and U.S. taxpayers, as well as the bar, that scarce public resources are not spent detaining persons who do not pose a threat to the community and who are not flight risks. Accordingly, we offer the following recommendations:

1. Pre-hearing detention should be limited.

The ABA has a long-standing position that the INS should detain aliens only in extraordinary circumstances, such as to protect national security or address serious threats to public safety, and in the least restrictive environment necessary. Freedom from physical detention lies at the core of the liberty interest protected by the Due Process Clause. Foucha v. Louisiana, 112 S. Ct. 1780 (1992). Accordingly, the government may deprive an individual of that interest only if it can demonstrate that such deprivation actually serves a significant and legitimate objective.

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Further, individual custody determinations by immigration judges are the minimum the government can provide to ensure that due process rights are protected.

In general, persons with pending removal hearings should be released from custody absent specific reasons to maintain them in detention. See, e.g., Matter of Patel, 15 I&N Dec. 666 (BIA 1976). Any individual who (1) has family ties in the community, (2) is not a danger to the community, (3) is likely to participate in the resolution of his or her immigration claims, and (4) has posted reasonable bond should qualify.

2. Prehearing release programs should be developed.

The INS should explore alternative means of ensuring appearance at court proceedings, such as supervised conditional prehearing release programs employed in the federal and state criminal justice systems. The high cash bonds currently required of detainees prevent most people from ever being released from detention, which in turn reduces their chance of securing legal representation. A supervised release program would benefit these individuals and the process, while freeing scarce detention space for only those individuals who require it.

To its credit, the INS implemented a pilot program in May 1990 with the Lawyers Committee for Human Rights to parole up to 200 asylum seekers who were detained pending their exclusion hearings in Los Angeles, Miami, New York, and San Francisco. Another supervised program, the Appearance Assistance Project, was subsequently conducted in New York by the Vera Institute. The national implementation of a prehearing release program for persons awaiting proceedings is long overdue. We offer our assistance in developing fair release standards and procedures.

3. "Mandatory detention" should be terminated and the "Temporary Period Custody Rule" ("TPCR") should be reinstated with modifications.

The 1996 immigration reform law requires the Attorney General to take into custody certain categories of aliens. Under the transition period custody rule, IIRIRA § 303, the Attorney General was permitted to release an alien "lawfully admitted to the United States" who satisfied that he or she "will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." When those provisions expired in October 1998, lawful permanent residents, refugees, and other lawfully admitted aliens became subject to the Act's "mandatory detention" provisions, further burdening the INS detention system and the nonprofit legal community.

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There appears to be some confusion regarding who is being detained under the mandatory detention provisions. Although some press stories suggest that these are all dangerous criminal or illegal aliens, among those detained are long-time permanent residents who have never been incarcerated before or whose brief sentences for non-violent offenses were completed years ago. In many cases, these individuals were not deportable prior to the 1996 amendments or would have been eligible for relief if proceedings had been instituted before the law changed. The ABA receives calls daily from friends and family members of such individuals.

Last week, for example, we received a call from a man in Georgia regarding a member of his church congregation. According to the caller, the individual concerned has been a permanent resident since the 1980's and was arrested by the INS at his naturalization interview in December 1998 after passing his naturalization exam. He fully acknowledged to the INS that in 1990 he was convicted of simple possession of marijuana and received a \$25.00 fine, a one-year suspended sentence, and three years probation. The INS is holding him without bond in a jail in Gadsden, Alabama, pending his removal hearing next month.

Such mandatory detention without consideration of release or providing a fair hearing regarding the conditions of custody appears to be unconstitutional. In 1988, Congress passed a similar provision in the Anti-Drug Abuse Act, amending INA § 242(a)(2), to preclude the release of aliens convicted of an aggravated felony. Numerous cases were successfully brought in the courts challenging the constitutionality of the amended INA § 242(a)(2) on substantive and procedural due process grounds. Leader v. Blackman, 744 F. Supp. 500 (S.D.N.Y. 1990); Joe v. Thornburgh, Case No. 90-12313-2 (D. Mass. Oct. 26, 1990); Paxton v. INS, 745 F. Supp. 1261 (E.D. Mich. 1990); Fernandez-Santander v. Thornburgh, 751 F. Supp. 1007 (D. Me. 1990), *vacated and remanded without opinion*, 930 F.2d 906 (1st Cir. 1991); Kellman v. District Director, U.S. INS, 750 F. Supp. 625 (S.D.N.Y. 1990); Probert v. INS, 750 F. Supp. 252 (E.D. Mich. 1990), *aff'd on other grounds*, 954 F.2d 1253 (6th Cir. 1991); Agunobi v. Thornburgh, 745 F. Supp. 533 (N.D. Ill. 1990).

The courts have consistently found that the failure to provide a custody hearing in cases where a deportation proceeding is pending is an excessive restriction on the alien's liberty and, as such, violates substantive due process under the Fifth Amendment. Fernandez-Santander, 751 F. Supp. at 1011; Kellman, 750 F. Supp. at 628; Joe, Case No. 90-12313-2 (D. Mass. Oct. 26, 1990); Leader, 744 F. Supp. at 508; Paxton, 745 F. Supp. 1261.

The courts also found that the "[f]ailure to provide a hearing prior to detention constitutes a violation of procedural due process." Probert, 750 F. Supp. at 256. See also Paxton, 745 F. Supp. at 1206; Fernandez-Santander, 751 F. Supp. at 1101. Furthermore, in Leader, 744 F. Supp. at 508, the court found that "[a] bail hearing would not pose significant fiscal or

administrative burdens on the government and would greatly minimize the risk of erroneous deprivation of a liberty interest." (citing the balancing test established in Mathews v. Eldridge, 424 U.S. 319, 335 (1976)). See also Paxton, 745 F. Supp. at 1266; Kellman, 750 F. Supp. at 628.

A series of related cases successfully challenged the mandatory detention of lawful permanent residents in exclusion proceedings on procedural and substantive due process grounds. See St. John v. McElroy, 917 F. Supp. 243 (S.D.N.Y. 1996); Alba v. McElroy, No. 96 Civ. 8748 (DLC), 1996 WL 695811 (S.D.N.Y.); Thomas v. McElroy, NO. 96-CV-5065 (JSM), 1996 WL 487953 (S.D.N.Y.); Cruz-Taveras v. McElroy, No. 96-CV-5068 (MBM), 1996 WL 455012 (S.D.N.Y.); Ekekhon v. Aljets, 979 F. Supp. 640 (N.D. Ill. 1997). But see Richardson v. Reno, 162 F.3d 1338 (11th Cir. 1998).

In re-enacting mandatory detention in 1996, the Congress disregarded this line of authority. A new body of case law, however, is rapidly developing which holds that detention without bond pending a determination of deportability violates, on its face, the constitutional right to due process. See Martinez, et al. v. Greene, 28 F. Supp.2d 1275 (D.CO. 1998); Cabreja-Rojas v. Reno, 999 F.Supp. 493 (S.D.N.Y. 1998); Zadvydas v. Caplinger, 986 F. Supp. 1011 (E.D. LA. 1997); Morisath v. Smith, 988 F. Supp. 1333 (W.D. WA. 1997).

Given this experience with mandatory detention, we recommend that the TPCR be reinstituted promptly and permanently and that individuals be provided custody hearings before immigration judges to ensure that due process rights are protected.

4. New INS Detention Standards should be implemented at all local and state operated facilities that the INS utilizes to house its detainees.

The INS recently approved and issued Detention Standards relating to detainees' access to counsel and legal information. These "standards" (issued January 29, 1998) cover detainees' access to telephones, visitation policy, presentations of group legal rights and access to law libraries, as well as a variety of other aspects of detention. This is the first time the INS has instituted standards that apply to all INS-run and operated facilities and will hopefully eliminate the variations that have existed from detention center to center regarding attorney access to detained clients.

In particular, the ABA is pleased that attorneys now have access to meet with clients at least eight hours a day, seven days a week; that group legal rights presentations are now being permitted in all INS facilities; that all facilities will have telephones which provide for debit calls

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as well as programmed pro bono numbers; and that each facility will have a law library with extensive immigration law materials. We also commend the INS Commissioner for appointing a facilitator to address detention problems that are not resolved at the local level. In many locations, dramatic improvements have been achieved as a result of the standards, and we applaud this. In other facilities (*i.e.*, Krome), recent visits reveal that most of the standards have not been implemented and many access problems continue.

We are disappointed, however, that the standards were not promulgated into regulation and that the common practice of transferring detainees from one remote facility to another without notifying counsel has not been addressed. Most importantly, we are troubled that the standards apply only to seventeen INS Service Processing Centers and INS-operated contract detention facilities. Over sixty percent of immigration detainees are housed by the INS in non-INS facilities where the access standards do not apply, generally county and local jails with which the INS contracts for bed space. In view of the increasing reliance on such non-INS facilities, it is essential that the INS require implementation of the access standards in these non-INS facilities and refrain from utilizing facilities that do not meet these standards.

It should be noted that the INS currently plans to detain arriving Central Americans in such local jails and has requested \$80 million for this purpose. It is not appropriate to hold any administrative detainee in a criminal facility, and even less appropriate to use such facilities to detain people escaping the economic and emotional devastation of Hurricane Mitch. We urge a reconsideration of this proposal and a serious evaluation of alternative means of ensuring appearance at immigration proceedings that would also minimize the agency's fiscal burdens.

5. Minors should be detained in the least restrictive environment.

For many years, the INS' policy of routinely incarcerating unaccompanied minors was inconsistent with the nationally recognized juvenile justice standards, including the IJA-ABA Juvenile Justice Standards. Although the INS continues to improve the placements of juveniles, detained juveniles in removal proceedings - unlike juveniles in other types of proceedings - are not provided appointed counsel and are severely impeded in securing counsel to defend against expulsion. Therefore, we have recommended to the Department of Justice that incarcerated juveniles automatically receive custody redetermination hearings before immigration judges even if not specifically requested, be placed in the "most family-like setting," and have guardians ad litem appointed for them.

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6. Immigration Court appearance rules should be amended to recognize representation limited to bond and custody matters.

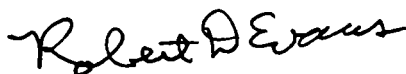
Many individuals detained at taxpayer expense could post reduced bonds if they had counsel to assist them in the bond redetermination process. Unfortunately, lawyers in communities with large INS facilities are deterred from appearing in bond cases because of concerns that they will be bound to continue representation thereafter, whether or not their client is released and whether or not he or she can afford counsel for the merits hearing.

An alien in proceedings should not have to forego representation at the custody stage solely because available counsel is unable to commit to representation through the merits hearing. Conversely, if the alien is assisted at the custody hearing and is released pursuant to a lowered bond, he or she would be in a better position to secure counsel for the remaining court proceedings. As we have previously recommended, to facilitate representation in the custody redetermination process, EOIR should amend its rules to recognize appearances limited to bond and custody matters.

The history, conditions, and consequences of immigration detention, from Ellis and Angel Islands to the present day, are well-documented. The ABA has numerous concerns about the growing reliance on immigration detention. Because it both deprives individuals of their liberty and significantly impacts on their ability to secure and maintain a working relationship with counsel, it should be invoked in only extraordinary situations and be subject to review hearings, and other (potentially less costly) means of ensuring an alien's appearance should be instituted. Administrative detainees with no criminal records ought not be detained in criminal facilities, and bona fide asylum seekers should not be detained at all. Allegations of physical mistreatment of detainees should be investigated.

We offer these suggestions in the spirit of creating a more just and efficient manner of treating detained persons and welcome the opportunity to discuss them with you more extensively. We request that you include this letter in the record of your hearings.

Sincerely,



Robert D. Evans

cc: Members, Subcommittee on Immigration and Claims



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April 14, 1999

The Honorable Doris Meissner
Commissioner
U.S. Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Dear Doris:

As the INS addresses restructuring, it will face significant questions and concerns from Congress, tasked with the mission of INS reform, and communities nationwide who daily face issues arising from naturalization and adjustment backlogs and who often have to advise constituents and clients in the absence of regulations. The INS has the challenge of convincing Congress that it has the desire and the integrity to complete meaningful reform. As the Service undertakes to change drastically the way in which it conducts business, it has lost much credibility as it has failed to address its current workload. Overhauling the system, which in the implementation phase will add to the workload and further strain agency resources, will create additional credibility problems.

We believe that the Service needs to address certain problems even before it begins restructuring. First, implementing several streamlining procedures will lessen the administrative and adjudication burdens on the Service at a time when it cannot afford additional work. Second, and perhaps more important, addressing these key issues will restore some needed credibility in a system that both the external stakeholders and the Congressional overseers believe is on the verge of collapse.

I have attached a background paper that addresses some of the most serious programmatic issues currently facing the Service and that suggests ways to resolve these problems that will benefit the Service. The agency's focus on naturalization has made these areas particularly vulnerable to increased delays and problems associated with delay. In particular, the growing backlog on adjustments will soon rival the current backlog of naturalization applications. Our recommendations (both in the adjustment and non-adjustment contexts) are intended to focus the work of the Service on adjudicating the underlying benefits and on streamlining the ancillary work around major applications such as adjustments.

We believe that if the Service can successfully address these issues, it will demonstrate its intent to carry out reform in an intelligent and effective manner.

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The Service will also demonstrate its ability to address some of the more significant problems in the current system that drain resources, make unnecessary work for field offices, and enhance the enforcement culture in the adjudications process.

AILA remains committed to assisting the Service as it works to effectively carry out its mission and serve its customers. We believe that our proposals would be important steps toward those goals. We welcome additional discussion on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeanne', with a stylized flourish at the end.

Jeanne A. Butterfield
Executive Director

15LN9034

Pre-restructuring Reforms that Should Be Taken NOW to Ease Immediate Adjudications Burdens

IMMEDIATE CONCERNS: ADJUSTMENT ISSUES

The Issue: With a current backlog of over 800,000 applications currently pending at the Service Centers, and an adverse impact on processing because of competing needs of naturalization processing, adjustment applications and related applications, delays will continue to create significant problems for the agency. These problems will be further exacerbated by the pressures of those who will “max out” in, or “age out” of, valid nonimmigrant status.

Certain reforms can and should be taken immediately to lessen the pressure on both the INS and the recipients of its services, such as:

Change the current interpretation that the date of filing an adjustment application does not “toll” the time of determining the eligibility for the benefit sought. In INS terms, a benefit delayed is a benefit denied. Many employment-based immigrants, in particular, lose the ability of their older children to adjust with them once the child turns 21, even if the application is filed before the child approaches that birthday. Once the main applicant is granted a green card, she can again petition for the adult child, but years have been lost and the process must be started all over again (with more restrictions placed on the child). Much of the INS’s expedite work on adjustments comes from such cases. If the current regs were amended (or even interpreted) to look at eligibility at the time of filing rather than the time of actual adjustment, it would go a long way to relieving this pressure.

Eliminate or amend requirements for ancillary documents. Persons who apply for adjustment must make additional documentary applications, usually for permission to travel while the application is pending (advance parole) and permission to work as an adjustment applicant (EAD). Eliminating advance parole requirements for Hs, Es, Ls or Os who have filed adjustment applications, even where the nonimmigrant status has expired, would help relieve the burden of processing those requests, which are virtually always granted. Eliminating EAD requirements for persons filing adjustment applications would also contribute to faster and more efficient processing. An alternative which we urge in this context is to have the receipt for the EAD application act for a limited period of time (180 days) as the employment authorization. Since EADs are required to be produced in 90 days and the service centers have difficulty reaching that time frame consistently, allowing the receipt to act as interim authorization would provide a secure document for a limited time in a limited set of cases that would in turn take pressure from the adjudications and the card production.

Allow simultaneous filings of I-140s and 485s, for all EB applications—or at least those within one year of maxing out on currently held status. Simultaneous filings of both applications, which were for years referred to as “one-step” applications, would alleviate pressure on those employment-based categories that have backlogs for certain nationals (Indians and Chinese). Through no fault of their own, these would-be immigrants are forced to leave the United States because of delays in the adjudications of their cases that take them beyond their immigrant status. INS, in turn, is besieged with requests to expedite these cases and simply cannot put resources to that effort. Allowing simultaneous filings would at least permit these individuals to remain in the United States and would defer pressure on these adjudications, allowing resources to be placed to more urgent adjudications.

Authorize parole status for immediate relatives of USCs and spouses of LPRs to adjust status. Life plans happen despite immigration laws or INS adjudications delays. As a result, many spouses of USCs and LPRs remain separated from their loved ones, in full compliance with the law, while their applications work their way through the process. Yet they cannot enter until the paperwork has been completed. Allowing them to enter the country on humanitarian parole would enhance the Service's goal of family reunification and promote faster and more efficient processing.

Issue 245(i) policy guidance clarifying guidelines for petition substitution, and regulations on admissibility issues, to lessen burden on still-pending petitions. INS has yet to issue policy guidance or regulations on issues surrounding section 245(i), which would, if issued, clarify some percent of those petitions now sitting in service centers and district offices. Moreover, despite a statutory mandate, INS has not issued regulations on major changes to admissibility, and waivers of grounds of inadmissibility, made by IIRAIRA. Issuing these regulations would enable adjudicators to process cases that are currently backlogged because they request waivers or contain issues of admissibility.

Reprogram some appropriated funds to non-naturalization caseloads. INS admits that receipts this year, if projections are accurate, will leave the agency with a \$138.5 million budget shortfall. This shortfall already is having a significant adverse effect on the adjudication of non-naturalization petitions and applications, with no end in sight. INS should request the use of some of its appropriated funds to supplement its adjudications efforts.

GENERAL CONCERNS

In addition, there are steps the Service needs to take immediately on other petitions and applications to restore its credibility in the reorganization debate. The most critical of these include:

Minimum level of documentation. The Service should provide a receipt for every application or petition that is filed, which is not done at the present time. These receipts should be provided promptly and note the current processing times for the application or petition submitted.

National processing goals. The Service is now implementing national standards for certain applications and petitions at the Service Centers. They must be held accountable to these standards in a tangible manner. In addition, more of these same types of standards must be implemented at both the Service Centers and District Offices, with the same accountability for meeting the goals.

Greater flexibility in documentation. The INS must utilize some resources in allowing for more efficient responses in the adjudication of petitions and applications, such as allowing for faxed responses and changes to pending work.

Work more closely with the State Department to equalize burdens. INS should grant parole for immediate relatives of US citizens and spouses and minor children of permanent residents to enter the country and adjust status from within rather than processing abroad, so as to lessen the load on the consulates (and hasten family reunification). In exchange, the agency can lighten its workload by working with the Department of State to allow greater freedom in using NIV beneficiary/petitioner notices, with authentication, as notice of petition approval/visa eligibility. (Many consulates now require original notification from INS, which adds extra work on INS offices as well as significant delay to the process.)

Recognize current limitations. Amend provisions to allow for 18 month or 2 year EAD where the underlying petition (asylum application, adjustment application) will take that long to process.

Recognize the need for some appropriated funds. Finally, Congress needs to give INS the authority to move some funds to reduce non-naturalization backlogs (at least provide Service Centers and District Offices with more resources to address effectively worst case scenarios, such as aging-out or maxing-out cases). INS previously has not been given the ability to do this.

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Report Card on INS Adjudications

Processing Times in Days

April 1999

District or Suboffice	Permanent Residence Filing Until Approval I-485 (1)	Naturalization Filing Until Swearing In (2)	Advance Parole Approval (3)	Work Authorization Approval (4)
Albuquerque	365-540	365-540	30-45	30-45
Atlanta	450-540	630-720	45-60	75-90
Baltimore	450	450	1	14
Boston	210	n/a	1	1
Buffalo	180-365	330-395	15	1
Charlotte	420-480	365-900	30-60	90-100
Chicago	365-540	365-720	1	21-30
Cincinnati	210-300	450	1-7	1
Denver	365-550	550-730	1-3	14-21
El Paso	485-545	485-545	60	60
Harlingen	742	610	162	91
Honolulu	150-180	300-365	4-10	1-2
Houston	820-850	600	30	90
Indianapolis	180-240	300-330	1-30	1-30
Kansas City	300-360	360-510	1-20	1-1
Louisville	540-660	720-840	60-90	60-90
Los Angeles	450-600	450-540	30-90	30-90
Milwaukee	720	810-1080	30-45	7-15
Newark	390-420	510-600	1	90-180
New Orleans	270-400	360-550	3-14	90-180
New York	450-540	450-840	50-60	75-80
Oklahoma City	420-480	420-540	60-90	60-90
Omaha	365-425	300-360	20-30	20-30
Orlando	270-300	365-485	15-30	45-55
Phoenix	720-780	900-1080	150-180	90-120
Pittsburgh	270-365	365-425	4-7	1
Portland	450	365	15	15
Sacramento	450	510	1-3	1-3
Salt Lake City	450-540	365-450	14-21	21-60
San Antonio	365-450	365-450	30-60	30-60
San Diego	718-748	503-563	48-78	60-90
San Francisco	330-365	420-450	1-10	1-30
San Juan	365-420	365	7	1
Tampa	420-450	1080-1200	10-14	45-90
Wash, DC (Arlington)	365-420	180-420	10-21	30-45

Further Instructions of 1-4:

- (1) I-485 Filing Until Approval
- (2) Naturalization Filing Until Swearing-In
- (3) Advance Parole Approval
- (4) Work Authorization Approval

[Editor's Note: Statistics are reported by AILA Chapter monitors around the country and reflect average processing times or ranges of processing times as of February 20, 1999. This report is based on observations of the monitors, and has not been approved for publication by INS.]

FOUR PRINCIPLES THAT SHOULD GUIDE REORGANIZATION OF THE IMMIGRATION AND NATURALIZATION SERVICE (INS)

1. Separate the Enforcement and Adjudication Functions:

At the local level, district offices should be dismantled, separate immigrant adjudication areas and enforcement sectors should be created, and separate chains of command and career tracks should be established. This will lead to more clarity of mission and greater accountability from top to bottom, within the two distinct components, which in turn will lead to more efficient adjudications and more accountable enforcement.

2. Put Someone in Charge and Give that Person Clout:

The Federal government needs to have one full-time, high level person in charge of the nation's immigration functions. This would improve accountability by fully integrating policy making with policy implementation, ensure direct access to high-level officials within the executive branch, and attract top-flight managerial talent. Put simply, the new agency's local functions should be split, but the new agency's national leadership should not.

3. Split the Functions, but Share Support Services:

Dividing local adjudication and enforcement operations will benefit both, but cost efficiencies and necessary coordination are best served by a set of discrete shared function. The most important of these is the need for shared information systems. For example, since most adjudication decisions have enforcement elements and vice versa, personnel should be able to access the same databases.

4. The Adjudication Function Needs to be Adequately Resourced: ✓

High fees, long backlogs, and a pattern and practice of unresponsive and rude service plague the adjudication function of the INS. In addition, Congressional appropriators support enforcement activities, while user fees underwrite all INS adjudications. Any reorganization needs to ensure that adequate congressional appropriations are made available to improve customer service, and offset the costs of those adjudications for which no fee is charged.

OTHER VIEWS

FRIDAY, APRIL 9, 1999
THE HERALD 19A

Immigration reform unfairly includes petty offenses



PHILIP S.
ANDERSON

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

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

Olufolake Olaleye knows better.

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

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

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

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

Then in 1996 IIRAIRA changed the rules retroactively.

Previously, a criminal sentence of five years

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

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

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

How could Olaleye's misdemeanor shoplifting offense — which was neither aggravated nor a felony — become both retroactively? Since when does our country pass retroactive laws?

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

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

Surely not.

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

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

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

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



IMMIGRATION
LAW ON TRIAL

AN OCCASIONAL
SERIES

The Washington Post

AN INDEPENDENT NEWSPAPER

Justice for Some

ONE OF THE SHABBIER stories of the past several years has been the government's whittling away of the rights of foreigners living legally in this country. This campaign has been led by Republicans in Congress, notably Texas Rep. Lamar Smith, but the Clinton administration has been complicit. The rhetoric has been aimed at illegal immigrants—criminal aliens, in the preferred phrase—but the victims in too many cases have been permanent residents and their American relatives, who have found themselves deprived of the most basic elements of due process and fair treatment. The administration, courageous in its defense of airline passengers and other such oppressed minorities, has risked little political capital on behalf of this particular group.

Congress opened the assault in 1996 with legislation aimed at accelerating the deportation especially of illegal immigrants who commit criminal offenses. Fair enough; people who enter this country illegally have no claim to remain, and if they break U.S. laws while here there is all the more reason to evict them. The new laws, along with more resources for and greater commitment by the Immigration and Naturalization Service, led to a doubling of the deportation rate.

But in seeking more rigorous enforcement, the legislation gratuitously took a swipe at innocent parties as well. The laws greatly expanded the range of offenses for which even legal residents can be deported, to include minor theft and drug possession. Then they made the changes retroactive, so that people who had served their sentences and returned to law-abiding lives suddenly found themselves in danger of eviction. Finally, the laws removed practically all discretion, so that neither judges nor executive branch officials could make exceptions.

Attorney General Janet Reno took this poisonous mixture and made it worse, opting for the harshest possible interpretation whenever the laws' intent was in doubt. She ruled, for example, that even waivers submitted before the laws went into effect could no longer be considered, though nothing in the legislation dictated such an interpretation.

The results have been harsh indeed. Legal permanent residents who have been supporting families for a decade or more suddenly found themselves in detention, with no possibility of bail or appeal. Children adopted from foreign countries as toddlers have been shipped back to those countries as adults, though in culture and language they are as American as can be. Even long-ago offenses that courts have legally expunged from the record have now been ruled deportable.

The Supreme Court has now waded into this mess with a bit of help, but only a bit. The court let stand two lower-court rulings that allowed immigrants at least to appeal to a judge if they believe their rights have been violated, something the administration sought to prevent. But because the Supreme Court made no comment, contradictory rulings by other circuit courts also can still be valid. A non-citizen's rights now depend in part on where in the country he or she lives.

The administration should take its cue from this partial judgment and stop trying to block resident aliens from exercising their most fundamental rights. It should stop trying to block judicial review of its decisions. And it should take the lead in urging Congress this year to restore some balance and proportion to its laws. Without interfering with the merited deportation of criminal aliens, it could return to all residents something this country once was known for—a fair hearing and a shot at even-handed justice.

Philip S. Anderson

Torture In the County Jail

In my home state of Arkansas in the '60s, inmates of Tucker Prison Farm routinely were beaten and tortured by despotic jailers. Among the tools used to control inmates was the diabolical "Tucker Telephone," an old crank telephone adapted with electrodes that were attached to prisoners' genitalia and then hooked up to a car battery. When the telephone was cranked, inmates received a short, intense and paralyzing shock. In Arkansas and throughout the country, people were outraged when the practice was revealed.

Unbelievably, almost 30 years later, Florida jailers have invented another instrument to torture prisoners with electricity. In Jackson County, Fla., sadistic jailers wired a plastic, body-sized police shield, used in riot protection, to punish immigrant prisoners. The device was placed over a naked immigrant, who was subjected to an intense electrical shock.

After complaints surfaced, the Immigration and Naturalization Service removed 34 detainees from the Jackson County Jail and vowed to conduct an internal investigation. That is an inadequate response. Abuses will occur in other locations, because the INS does not adequately regulate or monitor treatment of detainees in local jails, where thousands of detained immigrants are sent because of overcrowding in federal detention facilities. In fact, human rights organizations report numerous incidents of inhumane conditions in local facilities.

The tough 1996 Illegal Immigration Reform and Immigrant Responsibility Act has mandated that the INS detain more immigrants than ever before. With more than 16,000 people in custody, the INS has the fastest growing detainee population of any federal agency—up 30 percent since 1997. With INS-operated facilities filled, INS officials insist that their reliance on local facilities must continue and will probably increase.

In addition to instances of physical abuse, immigrant advocates raise the legal issues of denying detainees access to a lawyer. A number of the contract local jails are in remote locations, isolating detainees from lawyers, friends and family. Frequent

transfers from facility to facility without notifying lawyers, restrictive visitation policies, limited telephone access and inadequate or no access to legal research materials create significant obstacles to adequate legal representation for detainees.

Until this year, the INS had no standards for access to legal representation for detainees in its own facilities. After lengthy meetings with the INS, the Department of Justice and the White House, the American Bar Association (ABA) and advocates for immigrants convinced Washington officials that immigrants must be guaranteed basic fundamental rights concerning conditions of detention, including access to a lawyer.

In January, the Justice Department and INS issued standards ensuring that immigrants held in INS facilities would have access to a lawyer. This step should be applauded, but it does not go far enough. The same rights should be extended to immigrants being held in local and county jails, where 60 percent of all INS detainees are warehoused. The INS pays handsomely for housing prisoners. But it is not enough for the INS simply to hand over thousands of detainees to local officials and then shrug its shoulders when abuses occur. Experience has shown that abuses occur where supervision is lacking.

The federal government should accept responsibility for the treatment of the immigrants it detains—even in local facilities. The fact that the Florida immigrant detainees were not in federal jails does not mean that the federal government is not culpable. It is. The ABA is urging the Department of Justice to ensure that the new standards for INS-operated facilities are promptly extended to every state and local facility that houses immigrants.

It is hard to fathom the kind of mind that devised an instrument to torture a naked immigrant, but it could occur again without oversight. The federal government must make certain that it never happens again.

The writer is president of the American Bar Association.

Family faces deportation after 10 years in the U.S.

Belleville clan struggles to maintain serenity since father's arrest by immigration officers

By Russell Ben-Ali
STAR-LEDGER STAFF

For nearly two years, Anhar Hayek feared she would be forced to leave her Belleville home, her school and friends and return to a part of the world she barely knows.

Those fears are now nearing reality for the 17-year-old high school sophomore and her four younger brothers and sisters.

On Monday, their father, Hamouda Hayek, an illegal Palestinian immigrant fighting to remain in the United States, was arrested by immigration officers and detained pending deportation to the Israeli-occupied Gaza Strip.

The removal of his wife, Seham Hayek, 37, a Belleville school bus driver, and their children seem likely to follow.

"We just can't go back to a foreign land where there's fighting going on, where we don't know the language or the religion and just assume that my grandparents are going to take seven people into their house," Anhar said.

Hayek's arrest and pending deportation appear to be the culmination of the immigrant's struggle to keep his family together in the United States despite overwhelming odds — including tough new immigration reform laws that eventually caught up with him.

Under the 1996 Immigration Act,

Congress tightened the standards for avoiding deportation on the grounds of extreme hardship and made it difficult to have a full hearing on the merits of an asylum case, said Regis Fernandez, Hayek's Newark immigration attorney.

"Our point is that this guy does not have a country so why don't we look at all the factors and grant him a reprieve on humanitarian grounds," Fernandez said.

"We pointed out the extreme hardship deportation would cause him and his family and the ties they have established here."

Hayek owns his own business — a Blimpie's sandwich shop in Succasunna, according to his wife and attorney.

In January 1999, the Hayeks purchased a home in Belleville, where his children have done well in the schools

PLEASE SEE DEPORTATION, PAGE 41

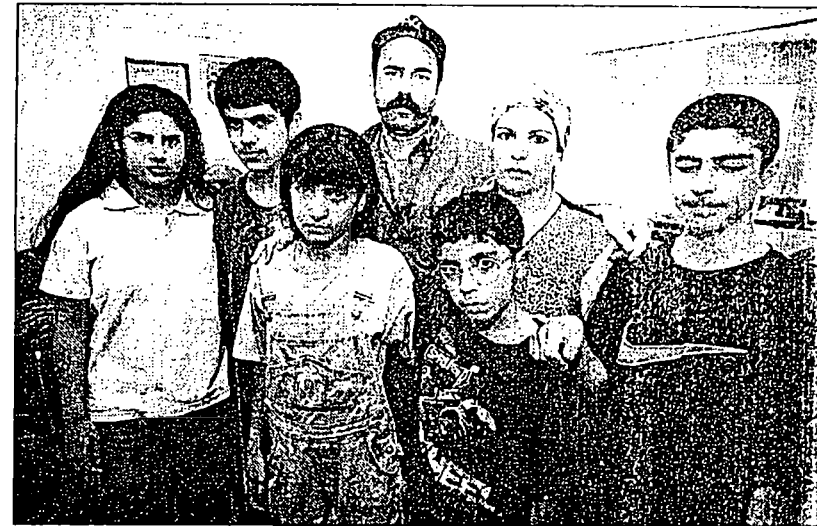


PHOTO BY AMANDA BROWN

Hamouda Hayek of Belleville, rear center, his wife, Seham, and their family faced deportation when this 1998 photo was taken. That possibility is now closer to reality since Hamouda Hayek's arrest.

Clan faces removal after decade in U.S

and on local sports teams.

But none of that seemed to matter much in the end, Fernandez said, as Hayek's appeal to defer deportation on humanitarian grounds was turned down.

"It's almost impossible to reach the conscious of an agency that is caught up in this anti-immigrant hysteria," Fernandez said of the INS and the tough new laws passed by Congress.

Hayek came to the United States from the Gaza Strip in February 1989 on a tourist visa, which he overstayed, according to his attorney.

For nearly a year, he worked as a machine operator until he'd saved enough money to bring his wife and their five children to New Jersey in January 1990.

His youngest child, son Ayoub, now 10, was a year old.

In 1993, Hayek paid \$2,500 to an immigration consultant who filed a fraudulent asylum application claiming, without his knowledge, that Hayek was a Palestinian Liberation Organization member, according to Seham Hayek. He was not.

Many of his problems may stem from the fraudulent application, his attorney said.

Finally, Hayek withdrew his asylum application. In order to avoid having a deportation on his record, which would prevent him applying for future residency, he reluctantly agreed to voluntarily leave the country in January 1999.

In the meantime, he appealed to local politicians for help but got nowhere, his wife said. Hayek's failure to leave resulted in his arrest.

Seham Hayek expressed concern over what country would accept the family, since they are Palestinians without passports, only expired Israeli travel documents.

The INS does not discuss pending, individual cases, but Barbara Francis, a spokeswoman for the INS

in Washington, D.C., said Palestinians facing deportation have not presented a problem for the United States and generally do not languish in INS detention centers as they wait for one country or another to accept them.

Lynn Durko, a spokeswoman for the INS in Newark, said Hayek is the only Palestinian among 274 immigrants held in the Elizabeth detention facility, a non-criminal adult facility.

"They said they're going to keep him (in detention) until they send him out of the country," Seham Hayek said. "We called senators' offices, congressmen's offices — nobody helps. I can't think anymore."

Advocates for the Hayeks have pointed out that deportation would be hardest on the children, ages 10, 11, 13, 15 and 17.

The younger children have difficulty understanding their predicament; the older ones have struggled but somehow remained focused on their studies, Anhar said.

"Our parents are always telling us, 'Keep up (in school). You've got to prove that you want to live here,'" Anhar said.

Judge keeps man in jail until deportation case decided

By Frank Trejo

Staff Writer of The Dallas Morning News

A Denton County man facing deportation for a crime he committed 16 years ago must remain jailed until his case is decided, a judge ruled Thursday.

Immigration Judge D. Anthony Rogers said that Ed Portillo, 35, must be held without bond because he was once convicted of a crime involving a firearm.

But the judge noted that Mr. Portillo appears to be among the few "lucky" non-citizens convicted of crimes. That's because he may get an opportunity to persuade a judge he deserves a second chance.

Mr. Portillo is a native of Mexico who has lived in the United States for more than 25 years as a legal immigrant. The federal Immigration and Naturalization Service apprehended him March 17 after agents learned he had pleaded guilty to aggravated robbery in 1983. Mr. Portillo served five years' probation and paid restitution years ago.

However, under provisions of an immigration law passed by Congress in 1996, Mr. Portillo's 1983 conviction can be used to deport him.

On Thursday, Mr. Portillo's attorney, Lisa Wickstrom Marino, filed papers to block the deportation.

To qualify for that relief, Mr. Portillo must prove he has been in the country legally for more than seven years and has been rehabilitated and that his deportation would adversely affect his wife, a U.S. citi-

Guilty plea in 1983 at issue



Ed Portillo . . . Mexico native will have a rare chance to persuade a judge he should be allowed to remain in the United States.

zen, and his child.

Mr. Portillo's wife, Karen, was among nearly 100 friends and relatives who crowded into the Earle Cabell Federal Building in Dallas on Thursday hoping to see her husband released on bond. He has been held at the Denton County Jail since his apprehension.

"We had hoped he was going home today," Mrs. Portillo said. "Now, we're going to have to wait until April 16."

Mrs. Portillo said she had no doubt that Mr. Portillo could provide ample evidence that he deserves a second chance.

"He's the kind of person who would give anybody anything that they asked for," she said. "That's why there are so many people here."

Judge Rogers stressed that Mr. Portillo was lucky his crime was not an aggravated felony. That would have blocked any possibility of a second chance.

People convicted of crimes classified as aggravated felonies by the INS must be

deported. Immigration judges cannot consider any extenuating circumstances, such as how long ago the crime occurred or whether the person has been a pillar of the community since his or her conviction.

The judge also said that although some people have described the 1996 law as mean-spirited and anti-immigrant, he does not have a problem with its general intent.

Congress decided that noncitizens who live in the United States must adhere to certain values, Judge Rogers said. If they don't, he said, they lose the privilege of living here.

The judge, however, said many people hope Congress reconsiders and allows people to prove they should be given a second chance.

"As a citizen, not as a judge, I, too, would hope they [Congress] would reconsider, and let people have that opportunity," he said.

That, Judge Rogers said, would allow judges to weigh individual cases.

Most of Mr. Portillo's supporters at the courthouse Thursday were members of his church, Trinity Presbyterian in Denton.

The Rev. Kent Miller said this episode has been a "real eye-opening experience" for the congregation.

"As a predominantly white group, we weren't even aware of this law and that Congress had passed it," he said. "Unfortunately, as it so often happens, we don't think about anything until it affects us. And now it has affected us."