

HIAS POLICY RESOLUTION

Restoration of Due Process Protection for Immigrants

At the core of the work of the Hebrew Immigrant Aid Society (HIAS) over its 120-year history is a commitment to insuring that refugees and other immigrants receive fair treatment when seeking refuge. Based on this conviction, by 1904 HIAS began stationing staff on Ellis Island to help immigrants facing deportation. HIAS attorneys and other advocates continue to defend the rights of asylum seekers and other immigrants before the Immigration and Naturalization Service (INS) and in the courts. But even with the best assistance, if the underlying law is not just, immigrants cannot receive justice.

The present level of protection offered by the United States' immigration laws does a grave injustice to the basic Constitutional principles of due process and is an affront to America's history as a nation of immigrants. Of particular concern are changes made in the law in 1996 when Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the Anti-terrorism and Effective Death Penalty Act (AEDPA). Among the ways that these harsh pieces of legislation have hurt immigrant families are by: inappropriately expanding the definitions of aggravated felonies for immigration purposes; instituting mandatory detention and the indefinite detention of lawful permanent residents (LPRs); eliminating an immigration judges' discretion to issue waivers if the equities do not warrant removal; limiting judicial review of many immigration decisions; and using classified information in immigration proceedings.

IIRAIRA and AEDPA require detention and deportation of LPRs, many of whom have committed only the most minor of crimes - such as shoplifting - years before the passage of these laws. Immigrants who may never have been sent to prison, or who may have paid their debt to society and have since created productive lives contributing to their local communities and the nation, are now detained and deported



back to countries to which they may have little or no connection. In some cases, where removal is not possible because their country of origin will not accept them,

immigrants face the possibility of extended or even indefinite immigration detention long after they have already completed their prescribed criminal sentence.

Expanding on the harshness of these laws are provisions that have removed immigration judges' discretion to balance the severity of the offense with other humanitarian factors that would justify release from detention or waiver of deportation, leading to a more just result. They also severely limit immigrants' ability to seek protection from the courts through judicial review, a basic protection of individuals from unconstitutional government action.

HIAS is particularly concerned about the impact of these due process changes on refugee communities. For example, a refugee who arrived in the United States as a young child and lived nearly his or her whole life in the United States but has not yet become a citizen may be returned to a country that he or she does not know and does not even speak the language, or remain indefinitely detained, because of a single youthful act. America should offer these refugees a second chance and not send them back to the country from which they fled persecution.

HIAS has opposed the 1996 changes to the law because they fly in the face of Constitutional principles of fairness and due process. They divide families, many of whom include US citizens, and fail to provide a fair process that can make distinctions between immigrants who are a threat to society and those who, while having made some mistakes in the past, should be allowed to remain and contribute to their families and the community.

Several important bills were introduced in the 106th Congress to restore due process protections for immigrants, offering hope that the injustices created by the 1996 laws would soon be ended. HIAS

applauds these efforts, and regrets that Congress failed to enact any legislation to insure that immigrants receive fair treatment.

HIAS resolves to support legislative efforts in the 107th Congress to restore balance and fairness to the immigration process. Changes to the law made in 1996 should be reversed and the due process protections in the deportation and detention systems that existed prior to the passage of IIRAIRA and AEDPA should be restored.

Several key areas of the law that HIAS believes should receive immediate attention include the following:

A more reasonable definition of aggravated felony should be instituted that includes a requirement that the immigrant have received a five-year or greater prison sentence with at least five years of actual time served. Retroactive application of the law, including limits on relief from deportation, should be ended, and judges should be provided with discretion to offer waivers of deportation when warranted by equities of the case and other humanitarian concerns.

Mandatory detention of LPRs should be ended, and individual bond hearings should be reinstated for immigrants in removal hearings. Additionally, the indefinite detention of LPRs when removal is not possible because the immigrant's home country refuses to accept the immigrant back, is a practice that violates the basic tenets of due process and should be ended immediately.

Lawful permanent residents who have criminal convictions some time in their past and who temporarily travel abroad should not be automatically barred from reentry as "inadmissible aliens" as if they were seeking admission to the United States as first time visitors. These LPRs, many of whom have lived in the United States for many years and may only have been convicted of a minor offense, should not be subject to mandatory detention and deportation, but should be permitted to be granted waivers of removal and benefit from INS' prosecutorial discretion.

HIAS also broadly opposes the use of "secret evidence" - confidential information that is not disclosed to the alien in immigration proceedings - except in those extraordinary cases where there are legitimate national security concerns. The cases where secret evidence should generally not be used include, but are not limited to, proceedings: (1) using secret evidence to deport noncitizens; (2) denying immigration benefits to noncitizens based on secret evidence; (3) refusing to release noncitizens on bond based on secret evidence; and (4) denying admission to returning lawful permanent residents, people who have been paroled into the United States, and asylum seekers, based on secret evidence. In the very limited category of cases where secret evidence is being used for national security reasons, the noncitizen and

the court or the adjudicator should, at a minimum, be provided with an unclassified summary of the classified information, prepared in accordance with appropriate judicial standards and supervision, that preserves the individual's ability to confront the evidence and prepare a defense. HIAS calls on all interested parties to work together to produce acceptable legislation in this area.

To insure that immigrants' rights are protected, HIAS believes that the crucially important judicial review function must be retained. Without this vital check, government mistakes and discrimination can easily go undeterred. As an organization that has long opposed the curtailment of due process rights in IIRAIRA and AEDPA, HIAS also believes that LPRs who are in proceedings or were deported under this unfair process should be given a second chance and should be permitted to apply for any protections restored by the 107th Congress.

HIAS resolves to support the above principles through education, public outreach and advocacy activities undertaken in collaboration with concerned local communities and colleagues from cooperating Jewish, refugee, immigrant and civil liberties organizations. HIAS calls on Congress, the Bush Administration and the non-governmental community to join together to craft a reform program to afford greater justice and protection for immigrants, their families, their employers, their entire communities.