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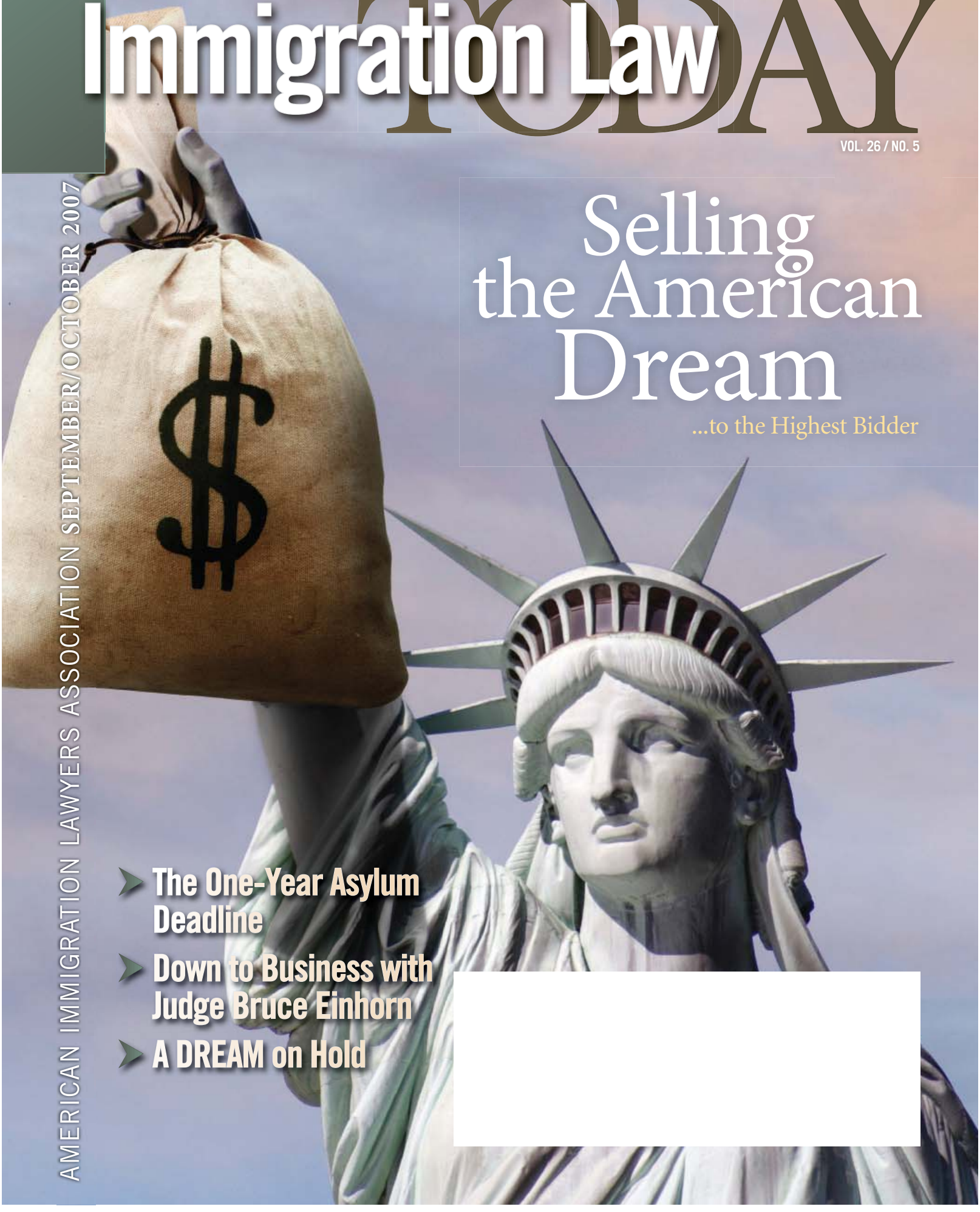

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- A DREAM on Hold

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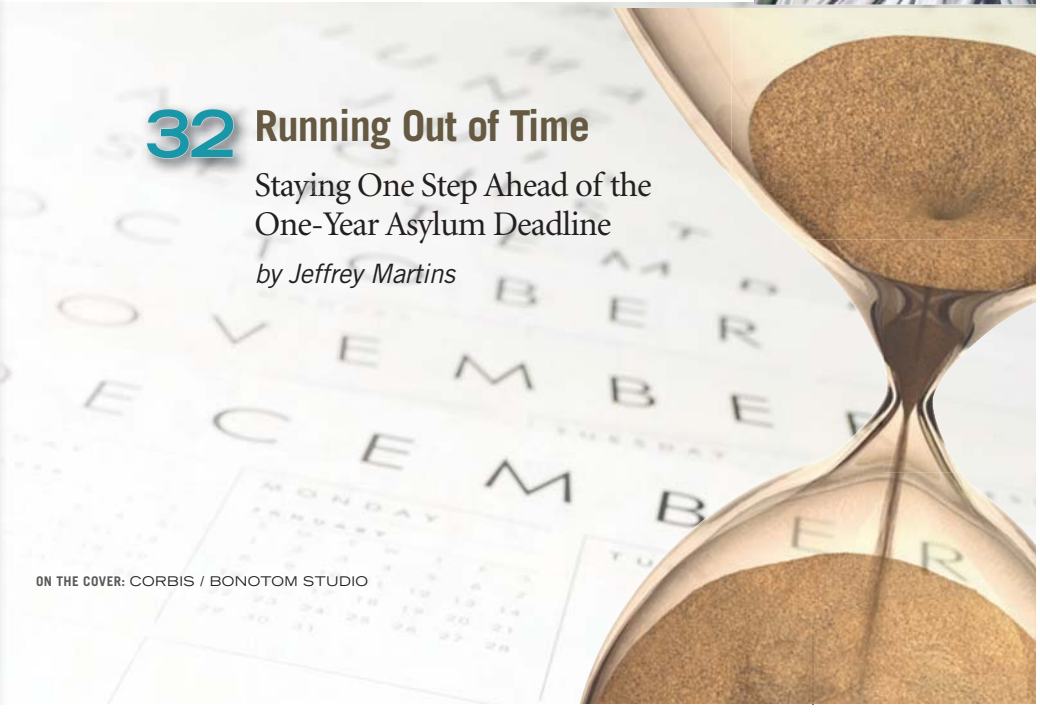

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Stepping into the Immigration Law Twilight Zone

AS WE ATTEMPT TO CATCH OUR BREATH after meeting the August 17 filing deadline that was tied to the resolution of the July Visa Bulletin gate—also known as VB gate—the following Rod Sterling quote from the Twilight Zone television series seems appropriate: "It may be said with a degree of assurance that not everything that meets the eye is as it appears."

The government's action in reversing its position on the July Visa Bulletin only reinforced the critical role that both AILA and the American Immigration Law Foundation (AILF) play in today's hostile environment toward immigration. Trying to explain the continual developments regarding the July Visa Bulletin to frustrated clients fell just short of trying to describe some parallel dimension. Although the frequently-asked-questions issued by U.S. Citizenship and Immigration Services (USCIS) were helpful, it still left us struggling with last-minute lucid options in what appeared to be a high-stakes shell game.

Myriad of Obstacles

Aside from the ensuing deluge of possible filings created by the Visa Bulletin reversal, there were a myriad of other obstacles, such as changes regarding the e-filing maintenance schedule, a USCIS prepaid mailers policy, and the premature posting of a requirement to use the new I-485 forms.

To make matters worse, U.S. Department of Labor enforced new regulations in July that included the elimination of labor certification substitutions. Attorneys have the added pressure of addressing pending and new client contracts in light of the restrictions placed by these new regulations on the source of payment for the labor certification process. As the impact of these regulations ripens, we will continue to review the options offered via litigation.

In addition, we have had to deal with the astronomical increase in filing fees, continuing proliferation of state and local immigration laws, and U.S. Secretary of Homeland Security Michael Chertoff's 26-point enforcement plan. To add insult to injury, we have the implementation of the long-awaited "no match letter" regulations as to the addition of letters from Social Security and the Department of Homeland Security on the menu of constructive knowledge examples.

> **The genius of our [U.S.] Constitution is that it provides rights even to those who evoke the least sympathy from the general public. In that way, all in this nation can be confident of equal justice under its laws.**
>
> ***—Lozano v. City of Hazleton***

Misery Strategy

We must be ready to face the continuation of the aptly named "Misery Strategy." (*See* Op-ed, "Misery Strategy," *The New York Times*, Aug. 9, 2007). The article states that due to the failure of immigration reform, the mantra of enforcement and punishment will be continually chanted through the election cycle and will unleash a flood of misery upon the undocumented and their employers.

This same misery approach was rejected by former Senator Alan K. Simpson (R-WY) and other legislators when immigration reform was finally passed as part of the Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603, 100 Stat. 3359). To his credit, Simpson noted that the legalization program contained in his bill was a pragmatic solution to a serious national problem.

Mind over Matter

This is a challenging time to be an immigration lawyer, and we will be playing a critical role in preserving the rule of law on many fronts. In the recent spate of lawsuits on the local legislative front, it was inspiring to read the U.S. district court's decision in *Lozano v. City of Hazleton*, ___F. Supp. 2d ___ (2007). When you are feeling exhausted from all the matters hitting the fan in your office, let your mind wander through the following quotation from that decision:

> The genius of our [U.S.] Constitution is that it provides rights even to those who evoke the least sympathy from the general public. In that way, all in this nation can be confident of equal justice under its laws. Hazleton, in its zeal to control the presence of a group deemed undesirable, violated the rights of such people, as well as others within the community. Since the Constitution protects even the disfavored, the ordinances cannot be enforced.

Hopefully, the quote will leave you with a smile on your face as you continue your work and duty with renewed vigor and conviction.

Kathleen Campbell Walker is a partner in and chairperson of Kemp Smith, LLP's immigration department in El Paso.

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pro BONO / by Gloria Goldman

The Wilson Four: A DREAM on Hold?

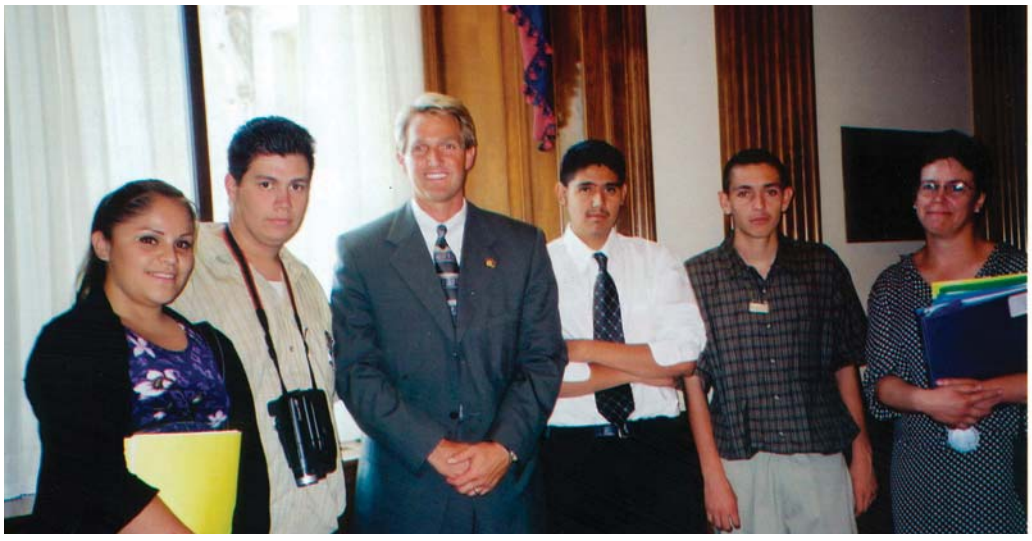
WHAT BEGAN AS A CLASS TRIP for nine high school students with exceptional abilities in engineering turned into a legal nightmare for four of those students who had crossed the United States and Mexican border when they were toddlers without legal documentation. Their plight spotlighted the continuing need for the Development, Relief, and Education for Alien Minors Act (DREAM Act) on behalf of undocumented students as a path toward citizenship.

From Scholars to Suspects

In June 2002, a group of nine high school students from Phoenix traveled to Buffalo, NY, to participate in an international solar-powered boat competition after placing second in a statewide competition. During their time in New York, eight of the students, the teachers, and two accompanying parents decided to visit Niagara Falls. One teacher asked the U.S. officers at the visitor center if the students could cross into Canada and back with only their school-issued identification cards. Without even crossing into Canada, the immigration officials demanded that all eight students (of Latino descent) prove that they were legally allowed to be in the United States. Oscar Corona, Luis Nava, Jaime Damian, and Yuliana Huicochea could not provide proof of their legal status.

Despite entering this country with their parents at very young ages and only knowing the United States as their home, these four exceptional students suffered nine hours of interrogation, racial slurs, fear, hunger, exhaustion, and coercion into signing incriminating documents before they were finally released.

Dubbed as the "Wilson Four" (since they attended Wilson Carter High School), the students faced an uphill battle in deportation proceedings, and their story generated nationwide media attention. In an interview on National Public Radio (NPR), Oscar Corona rhetorically asked the interviewer, "How am I not [an] American?" (*See* S. Simon, "Weekend Edition," NPR, Oct. 22, 2005).



The Wilson Four took their plea to the U.S. Capitol, with Judy Flanagan and Emilia Banuelos paying their airfare. From L–R: Yuliana Huicochea, Luis Nava, Congressman Jeff Flake (R-AZ), Jaime Damian, Oscar Corona, and Flanagan.

Fighting for Justice

Throughout this ordeal, the Wilson Four relied on Judy Flanagan and Marianne Gonko for legal assistance and support. Gonko was introduced to the case in 2002 while working as director at the nonprofit Friendly House in Phoenix, which was founded in 1920 and serves the immigrants' educational and human service needs. Gonko's co-worker was on the Wilson school board and alerted Gonko that the students had been apprehended. Gonko agreed to take the case as pro bono and teamed up with Flanagan to represent the Wilson Four.

Flanagan and Gonko worked tirelessly for four years after the Wilson Four's initial arrest. All their hard work paid off when the Board of Immigration Appeals (BIA) affirmed the immigration judge's (IJ) opinion to terminate the case. The thrust of Flanagan and Gonko's argument was constitutional: The U.S. officials at Niagara violated the students' Fourth Amendment rights, thus, the exclusionary rule applied to all the information garnered from the students' interrogation and detention as fruit of the poisonous tree. The IJ agreed, and in his written opinion stated, "Any bad faith violation of the Fourth Amendment is sufficiently egregious to require application of the exclusionary rule in civil proceedings." (*Citing Adamson v. CIR*, 745 F.2d 541, 545–46 (9th Cir. 1984)). The IJ further noted that according to the U.S. Supreme Court, a stop based on Hispanic appearance alone is egregious (*citing U.S. v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975)).

Final Push for DREAM Act

The Wilson Four brought the much-needed attention to many other undocumented young immigrants. The PEW →

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PRO BONO PROFILE: MEET MARIANNE GONKO

Marianne Gonko believes that everyone can benefit from pro bono, which she says is "the golden thread weaving through this [legal] profession [that helps] its members." Gonko is a solo practitioner in Phoenix specializing in deportation, and spends about 30 percent of her day on pro bono cases. While she admits that the cases can sometimes take up too much time, she has learned to prioritize her work. "Each lawyer will need to find the correct mix of those clients that can pay well, those that can pay a little, and those that can't pay at all," said Gonko.

Gonko has devoted her entire legal career to assisting deserving but underrepresented and struggling immigrants. She chose to concentrate in deportation because "[m]any of those clients can't afford competent representation, and need low-cost [agencies] to help them. Deportation is a challenge for me; hard work but rewarding."

However, Gonko did not originally aspire to become a pro bono advocate, and law was not her first career choice. She has a degree in Fine Art and Antiquities and worked in the advertising field for 12 years. Gonko eventually sought a different career path and became a legal assistant for an immigration law firm before proceeding to law school. She joined the nonprofit Friendly House directly after passing the Arizona bar and worked her way up to director.

The Wilson Four was not the only nationally publicized pro bono case that Gonko has handled. While working for Friendly House, she was asked by the Mexican consulate general to assist a woman whose boyfriend had murdered her parents and two siblings, kidnapped her two children, and escaped to Mexico. The boyfriend was later extradited to the United States, and Gonko filed the woman's U visa and worked on the special immigrant juvenile petition for her younger brother. "Helping clients like these whose lives have been turned upside down by horrendous events, helping them achieve something so they can put their lives back little by little is just [the] right thing to do," said Gonko.

Hispanic Center reports that an estimated 11.5–12 million persons of Latino origin living in the United States as of 2006 were undocumented (*see www.pewhispanic.org*). In 2005, 16 percent of these persons—nearly 2 million—were children who had illegally entered with their parents, and 65,000 high school students across the country were here without papers.

In an interview with NPR (*see* "Weekend Edition," NPR), Arizona Governor Janet Napolitano, who prosecuted many undocumented aliens during her time as a district attorney in Arizona, said:

> It's not as simple … as some would have us believe … there are some issues of fundamental fairness here that need to be taken into account. I'd like all those kids to get engineering degrees, get good jobs, and keep those jobs right here in Arizona.

However, despite what Napolitano might desire, infants, toddlers, and children who illegally entered the United States with their parents are just as susceptible to deportation proceedings as the adults who brought them here. The case of the Wilson Four is a prime example as to why this country would benefit from the passage of the DREAM Act or some similar bill. As it stands, the bill—in all its incarnations—has never been brought to a vote in either the House or the Senate. The bill's text also has been included in various immigration-related bills, including the Comprehensive Immigration Reform Act of 2007, which failed in a 46–53 cloture vote in the Senate.

Despite Gonko and Flanagan's success, the BIA's decision did not solve all of the Wilson Four's immigration problems. The IJ merely terminated the proceedings because the students' Fourth Amendment rights were violated by the illegal search and seizure. Oscar Corona, Jaime Damian, and Yuliana Huicochea still are not legally permitted to be in this country, and like all children without papers, they are in the unfortunate position of always looking over their shoulders for possible threats. Only Luis Nava was fortunate enough to become a permanent resident under Immigration and Nationality Act §245(i).

Both Gonko and Flanagan currently work in their respective private law offices. They continue in their quest to help deserving immigrants gain their legal status one pro bono case at a time.

Gloria Goldman is a partner in Goldman & Goldman, PC in Tucson.

ON THE RECORD with

by Richard J. Link

IMMIGRATION JUDGE (IJ) BRUCE J. EINHORN possesses a multitude of experience with high-ranking government officials and the media from his days as a special prosecutor of fugitive Nazi war criminals. This high-profile exposure emboldened him to not care so much about what others think of his decisions or his open criticism of government litigative policies. Such an independent streak was displayed in a recent opinion that also proved to be his swan song. On January 29, 2007, Einhorn terminated proceedings against the remaining two men in the infamous "L.A. 8" case, delivering a sharp rebuke to government officials for their litigation conduct. The L.A. 8 were accused of providing material support for the Popular Front for the Liberation of Palestine. Upon rendering that 11-page decision, and after nearly 17 years on the bench, Einhorn stepped down, leaving the hectic life of an IJ behind him. Now that he is retired, Einhorn plans to bring attention to the need for systemic reform of immigration law and to advocate policies that will advance civil and human rights. Einhorn recently spoke candidly to *ILT* about his time on the bench, the L.A. 8 case, his views on recent legislative proposals, and his plans for the future.

You spent more than a decade working in the Department of Justice's (DOJ) Office of Special Investigation, prosecuting accused war criminals, including Nazi collaborators. How did this background distinguish you as an IJ?

My background was markedly different from that of many [IJs], whose prosecutorial experiences as trial attorneys for legacy Immigration and Naturalization Service (INS) and/or [Department of Homeland Security (DHS)] were with the very same sort of respondents whose fate they then held in their hands as IJs. For example, it is one thing to adjudicate asylum claims made by people whose asylum requests one routinely opposed as a government counsel. It is quite another to adjudicate asylum claims (as I did) as one whose previous litigation opponents were *alleged persecutors* rather than alleged victims of persecution. Moreover, as a young [DOJ] prosecutor, I contributed to the drafting of the modern asylum statute. Hence, as a judge, I had a perspective on human rights law—almost a proprietary one—that legacy INS/DHS counsel who became IJs lacked.

My approach to credibility resolution—to judging the demeanor of witnesses and the often complicated and less-than-straightforward way in which they tell their terrible stories, and to understanding the *cultural* issues that often affect the manner in which they speak—was formed in part by my experiences with Holocaust survivor witnesses from around the world, and from witnesses to mass murder whom I deposed in foreign settings. Few other IJs had the opportunity to face these challenges before they took the bench. All this is not a criticism of my judicial colleagues; it is just plain fact. Every time I faced a respondent who claimed past persecution or requested cancellation relief, I was able to draw on a lifetime of understanding that "there but for the grace of God go I." The late Supreme Court Justice Felix Frankfurter once observed (and I paraphrase), "Judges take to court what they learn as men [and, he should have added, as women]." I didn't take my personal politics into the courtroom, but I did take my unique experiences with human suffering of a kind most of us (thankfully) can only imagine.

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Do these differences in background account for the wide disparity in the asylum grant rate among IJs? Is an asylum-seeker's chance of success in any way dependent on the IJ to whom his or her case is assigned?

It would be disingenuous not to admit that among the hundreds of [IJs], opinions vary in regard to asylum cases, particularly with regard to credibility determinations and interpretations of

Judge Bruce J. Einhorn

the meaning of "persecution" and "social group." However, the disparity of views is often influenced by the disparity of views taken by the various federal courts of appeal that review IJ asylum determinations. For example, the Ninth Circuit Court of Appeals has developed a more flexible standard for reviewing credibility determinations than the Fifth and Eleventh Circuits; peripheral discrepancies in an asylum applicant's testimony and in his or her documents are not seen as significant to his or her overall credibility in the former as they are in the latter. Consequently, IJs in the Ninth Circuit are faced with precedent very different from [IJs] in other jurisdictions. Also, the disparity in asylum determinations by IJs may well be influenced by the different kinds of cases they face: the quality and quantity of African and Albanian cases in the Northeast, for example, may affect the grant or denial rates of [IJs] in that area of the country, as opposed to the quality and quantity of Indo-Pakistani and Indonesian cases in California courts.

The chances of an asylum-seeker's success in immigration court are affected by the nature and experience of the judge to whom he or she is assigned. However, the quality of the asylum-seeker's counsel is at least as important. Some lawyers—including legal aid attorneys, AILA members, and lawyers with significant experience in asylum cases—greatly enhance the chances for relief by virtue of their first-rate presentations. Other counsel who accept cases from notaries and immigration "consultants" and who barely prepare for their hearings are bound to reduce the chances for asylum relief. Lastly, the ability and compassion of DHS attorneys also impact the results of asylum cases.

The "L.A. 8" case began in 1987 as an attempt to deport eight individuals associated with the Palestinian Front for the Liberation of Palestine on dubious grounds that shifted over the years. What was the posture of the L.A. 8 case when it came before you? What parts of it did you preside over?

I was the fourth immigration judge since 1987 to be assigned to the proceedings. I came aboard in May 1992, when six of the L.A. 8 cases had been administratively closed. Thus, the only cases over which I ever presided were those of Mr. Hamide and Mr. Shehadeh—ethnic Palestinians born in Jordan who hold lawful permanent residence in the United States. It should be noted that for a number of years during the 1990s, the Ninth Circuit had stayed any further deportation proceedings in my court on grounds of "selective prosecution" by the government. The U.S. Supreme Court then held by a 5–4 vote that whatever selective prosecution had motivated the commencement of the cases was constitutionally permissible, and deportation proceedings were recommenced in my court.

I then dismissed a portion of the cases twice. The first dismissal was based on a provision in the Immigration Act of 1990 (IMMACT90) that prohibited the filing of a deportation charge based on alleged terrorist activity when the respondent already had been subject to a deportation case prior to IMMACT90. →

The law was then changed specifically to allow for such retroactivity, but I again dismissed a portion of the cases based on a federal regulation regarding who may withdraw an order to show cause. My second decision to dismiss was remanded by the Board of Immigration Appeals. In January 2007, I then terminated in their entirety both deportation proceedings, based on the government's unconstitutional and otherwise unlawful failure to comply with my order to identify potentially exonerative evidence regarding the allegations and charges made against respondents Hamide and Shehadeh. I understand that my decisions to terminate are now on appeal.

Judge Einhorn and wife, Terri, pictured here with U.S. Supreme Court Justice Samuel Alito (center), who served with Einhorn at the Department of Justice in the 1980s.

What do you think was motivating the government to pursue the L.A. 8 case? Did it have any credible arguments, or would you view it as an example of prosecutorial abuse?

My knowledge of what motivated the government to pursue the cases is hearsay. Since my last decision in these cases, I have been told that they were initiated by legacy INS in 1986–87, under pressure from the FBI because of a lack of evidence necessary to pursue the respondents in criminal court on terrorism charges, and because of some concern that the respondents would flee the jurisdiction because they knew themselves to be under federal investigation. Ironically, when the respondents appeared before a Los Angeles [IJ] for bond redeterminations, they were released from custody over the government's objections. To my knowledge, none of the original L.A. 8 respondents has fled to undisclosed locations.

Since my termination orders in January 2007, I have pondered the reasons for DHS's continued prosecution of Hamide and Shehadeh despite my earlier dismissals, and why [DHS] would largely ignore the terms of my pretrial order regarding the identification of potentially exonerative evidence. In light of the Bush administration's arguments that its conduct of the war against terror—and in particular its treatment of detainees at Guantanamo—should be immune from congressional and judicial review, I've concluded that the behavior of the government in my court in *Hamide* and *Shehadeh* was an effort to seek the deportation of alleged terrorists (and I emphasize the word "alleged") with minimal interference and limitation from IJs, who, after all, are part of the executive branch and hence part of the same "team" as DHS. In short, I believe that the government's arrogance precipitating my orders to terminate proceedings was predicated on a theory of the "unitary executive," which the present administration has employed to stifle dissent within the government from its "antiterrorist" policies, be they lousy or otherwise.

It has been reported that DOJ has appointed several individuals to serve as IJs even though they have little or no experience with the U.S. immigration system. Have you witnessed how a lack of experience on the part of IJs has played out in the courtrooms?

There always have been the occasional nepotistic appointments to immigration judgeships. However, in my 28 years with the Justice Department, spanning five different presidential administrations, and my 17 years as an IJ, I have never seen anything like the attempt under George W. Bush to politicize the selection of immigration judges. After all, I am a moderately liberal Democrat who was appointed to the immigration court in the administration of the first President Bush. The more partisanship has become a staple of judicial appointments, the less independence the immigration courts and the [Executive Office for Immigration Review] have enjoyed within DOJ. More and more, my colleagues have started looking over their shoulders to see what kind of political animal the new Bush appointees to the immigration court are. Remember that immigration judges serve at the pleasure of the attorney general. Therefore, the independent judgment and intestinal fortitude of sitting IJs may well be affected by the partisanship that influences the selection of new judges. All this is not a criticism of my colleagues, who, after all, are human beings with families and bills to pay. Rather it is a criticism of a militantly right-wing administration possessed of an imperial presidency and a raging contempt for the independence of the judiciary.

I know of one instance—reported recently in the *Los Angeles Daily Journal*—of a Bush-Gonzales appointee to the immigration court at the detention center in Lancaster, CA, who was "persuaded" to resign after he regularly walked into his courtroom carrying a revolver. He also was reputed to routinely utter the "F" word in hearing after hearing. Even DHS prosecutors were appalled by his extreme and injudicious behavior. I know of other Bush administration appointees who have required and received additional

coaching and hand-holding from the chief judge's office because of their lack of knowledge in immigration law and their inability to demonstrate proper judicial demeanor in the courtroom.

Does an IJ's inexperience in immigration law work to the advantage of the government or the alien?

Invariably, the appointment of unqualified IJs by a right-wing administration works against respondents more than it does the government. However, what such appointments do even more is unfairly discredit the entire IJ corps—most of whose members check their politics at the courthouse door.

In August 2006, at the [IJs]' annual conference, Attorney General Alberto Gonzales appeared and sternly lectured the IJ corps on the need to accord respect for respondents in removal proceedings. I find it disingenuous and hypocritical in the extreme that a public official who, as White House counsel, signed off with approval on a memorandum that supported the legality of torture-like interrogation techniques on Guantanamo detainees—and who referred to the protections for prisoners in the Geneva Conventions as "quaint"—would presume to lecture judges on how they should treat the foreign-born. If I were an alien detainee, I would deliver my fate to a pre-Bush administration [IJ] over the attorney general every time.

What qualifications do you think should be required of judges who sit on the immigration court?

An incoming [IJ] should possess some significant experience in immigration law, public international law, or human rights law, and in litigation or public legislative activities. Government and private counsel should be considered equally. Additionally, experience in cross-cultural activities (in addition to a legal background), like work in the diplomatic corps, and degrees and/or activities in cultural anthropology, social psychology, comparative government, and education should be given consideration. Potential [IJs] should be screened (as they reportedly are) for their likely judicial temperament, and for their ability to separate personal partisan views from their interpretation of law and their willingness to fairly weigh evidence, including witness credibility.

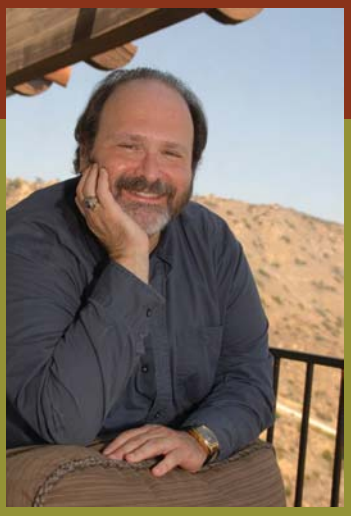
I would also encourage incumbent IJs to participate in circuit-based continuing judicial education conferences, where they could meet by region and in workshop settings discuss recent developments in case law, quality of counsel issues, and judicial demeanor. The annual, national IJ conference is just too unwieldy for intimate back-and-forth among the judges.

Frankly, it is high time that the immigration court be made an independent, Article I institution, whose appointments are made by the president upon recommendation of a nonpartisan panel of sitting and retired judges, the chief immigration judge, some academics, and distinguished DHS and private counsel. Such changes would ensure the independence of the court, and better guarantee the bona fides of its judges.

What do you think are the top three problems in today's immigration system, and how should these issues be tackled?

First and foremost, the immigration laws are in need of comprehensive reform, of a kind that sadly was recently thwarted in the U.S. Senate by a minority of its members. There exist about 12 million undocumented, foreign-born workers in the United States, and it is ludicrous to think that [DHS], even with the assistance of local law enforcement (a partnership that I oppose), could identify, detain, and seek the removal of so many human beings spread across our large country. Indeed, if DHS could have accomplished all this, or even a significant portion, it would have done so already. It is equally ludicrous to believe that our nation's already over-burdened →

GETTING PERSONAL: Bruce J. Einhorn



Date and Place of Birth: December 7, 1954, Orlando, FL; raised since the age of 6 months in Brooklyn, NY.

Favorite Childhood Memory: Meeting my future wife, Terri, in the local schoolyard.

Favorite Color: Columbia Blue. (I received my B.A. from Columbia in 1975.)

Favorite Type of Food: Prime rib, thick cut, medium done. (My cardiologist tells me that this is now a memory, not an expectation.)

Music Currently in Your iPod: Mozart, Sinatra, and the Ramones (the greatest punk rock band of all time, bar none).

Most Prized Possession: A framed and autographed New York Yankees Jersey and baseball worn and thrown by Roger "The Rocket" Clemens.

Favorite Book/Author: *A Canticle for Leibowitz*, by Walter Miller.

Hobbies: Reading history books and detective fiction by the tons; collecting baseball memorabilia and attending baseball games; playing pool; and watching the film Chinatown over and over again.

Family: Childhood sweetheart wife of 27 years, Terri; sons, Lee (26), a professor of English at the University of Washington in Seattle, and Matthew (24), a vice president with Paramount Pictures in Hollywood. And let's not forget my three canine companions: Gulliver, Shane, and Chloe!

Sports Teams You Root for: The New York Yankees, The New York "Football" Giants … and did I mention the Yankees?

immigration courts—particularly in the large metropolitan areas of Los Angeles, San Francisco, New York, and Miami—could fairly and efficiently handle the adjudication of millions more removal cases. A federal government that can't even find one [Osama] bin Laden is hardly in a position to find 12 million individuals.

Congress needs to pass a comprehensive immigration law that allows for the orderly immigration legalization of the undocumented and their families, with the exception of persons possessed of serious and/or violent criminal records. Furthermore, such legalization should be permitted *within* the United States. It is downright silly to think that heads of undocumented households would leave their spouses and children unattended and without legitimate sources of income in the United States while they travel to their home countries and wait for months or years to obtain green cards for themselves and their immediate families. I fully understand that many foreign-born people have waited patiently in their home countries for immigrant visas, and may well not appreciate the legalization of those who entered the United States without inspection. However, the cure for that problem is not the junking of comprehensive legalization of the undocumented. Rather, the cure would be an increase in the numbers of immigrant visas permitted each year.

> For the rule of law to prevail, litigation must have a beginning and an end. If men and women find no mortality in litigation as they find in themselves, they will seek closure of their grievances in the fiery wreckage of *Götterdammerung*. One way or another, all things must come to an end.
>
> —Immigration Judge Bruce J. Einhorn, from the preamble to his decision to terminate the L.A. 8 proceedings

Second, I believe that greater national priority must be given to increased economic cooperation with our neighboring states to the south in order to enhance the economic opportunities for citizens from Mexico and all of Latin America, from which the majority of undocumented workers in the United States come. This cooperation may include an expansion of the North American Free Trade Agreement, and increased loans to Mexico and the Central American republics to increase and enforce minimum wage requirements for workers in their own countries. I am confident that a cost-benefit analysis would reveal that our government would spend less by virtue of this kind of cooperation than it does in having millions of undocumented foreign-born here in the United States, with all of the problems that attend such a fact of life.

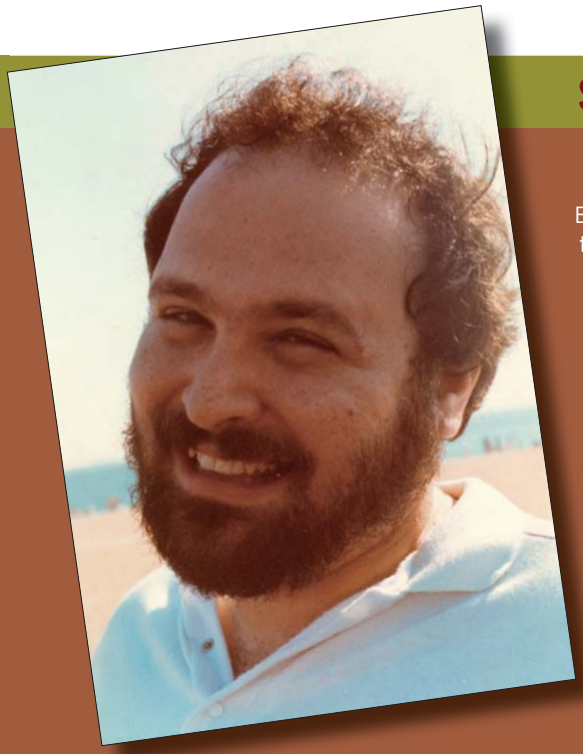
Third, the national government must begin to think of immigration issues more practically, in terms of our national security. For example, many credible sources—including congressional and nongovernmental—estimate that it will cost us about *$9 billion* to complete and man the wall or barrier fence authorized to separate the southwestern United States from Mexico. However, those same sources estimate that at the present time, our federal government spends only *6 cents* per passenger to prevent terrorism on our nation's commuter and transcontinental railways. Considering the train-based terrorism that has plagued our European allies, including Britain and Spain, a major change in our homeland security priorities is long overdue. Additionally, it is highly unlikely that Christian Latinos who enter the United States illegally and come here for economic reasons would be susceptible to recruitment by Muslim extremists from al-Qaeda. Our focus, and our limited resources, should be redirected to the protection of internal targets of potential terrorism, of a kind generally committed by legally present aliens and U.S. citizens.

What, if anything, is right with our current immigration system?

The continued existence of our laws for refugee and asylum protection encourage me that our nation may continue to serve as a beacon of hope and a haven for the oppressed around the world. Additionally, I have been encouraged by what I perceive to be the increased ability and compassion of DHS's trial attorneys for Immigration and Customs Enforcement (ICE). At least in Los Angeles (where I sat as a judge and where a number of the trial attorneys are former law clerks of mine), I worked with a number of prosecutors who carefully and intelligently balanced the legitimate interests of [DHS] in the enforcement of the immigration laws with a genuine compassion for respondents and their families, and a fair and reasonable approach to relief applications. These trial attorneys have learned the value of a principle enshrined in Mr. Justice Fortas's concurring opinion in the Supreme Court's decision in *Giles v. Maryland*, 386 U.S. 66, 117 (1967), that "[t]he State's pursuit is justice, not a victim." It would be a great and noble blow for justice if the trial attorneys' regional and national supervisors embraced the same principle.

Is a plan for comprehensive immigration reform the path to take toward fixing our immigration system?

It would be a very large step in the right direction. Immigration reform would allow our government to concentrate its money and personnel on seeking the identification and removal of criminal aliens. Also, such reform would



SNAPSHOT: Bruce J. Einhorn

B.A. in History, magna cum laude, Columbia University, 1975. Elected to Phi Beta Kappa, the national honors fraternity, that same year.

J.D., New York University School of Law, 1978.

Law Clerk, Judge Julia Cooper Mack, District of Columbia Court of Appeals, 1978–79.

Member, U.S. Department of Justice Honor Graduates Program, 1979

Special Prosecutor and later Chief of Litigation, Office of Special Investigations, U.S. Department of Justice, Washington, D.C., 1979–90. The character of the prosecutor in the motion picture, The Music Box, was largely based on me.

Thirteen separate citations for outstanding performance as DOJ prosecutor.

Youngest judge in any court of the state of California upon appointment as an IJ in 1990 at age 35.

National Commissioner, Anti-Defamation League.

Adjunct Professor of International Human Rights Law and War Crimes Studies, Pepperdine University School of Law, Malibu, CA, 1991–present.

reduce the obscenely bulging caseloads of DHS/ICE and of the immigration courts, and allow for more time and reflection to be spent on each investigation and hearing. Indeed, such reform might just persuade the less beleaguered leadership of ICE to reflect on concerns of justice and allow its trial attorneys to have a major say in whether certain immigration cases should be filed at all in court. Trial attorneys could then function more like assistant U.S. attorneys, whose powers of prosecutorial discretion have served the justice system well.

Any thoughts on some of the piecemeal legislation up for consideration in Congress, *e.g.*, AgJOBS, DREAM, STRIVE?

A "comprehensive" bill that emphasizes the legalization of undocumented, noncriminal aliens already present in the United States, and an increase in the number of visas available for both nonimmigrant workers and applicants for permanent residence, would be the best means of reforming our system for years to come. I also think that we need to review the precise terms of the various bills more carefully when consolidating them into one comprehensive package. For example, in the Senate bill, the Secretary of DHS is given virtually unfettered discretion in whom to release from immigration detention. Thus, the bill appears to eliminate the authority of [IJs] to review bond determinations in a host of cases. Such a lack of review offends due process. Additionally, the Senate bill appears to allow "intelligence agencies"—*i.e.*, the Central Intelligence Agency (CIA)—to intervene in the immigration reform process. Such allowance should be carefully circumscribed, especially in light of the "family jewels" documents recently revealed regarding the illegal and often incompetent intrusion of the CIA into U.S. domestic affairs.

You were instrumental in drafting legislation that is the basis of current asylum law. How did your involvement in this come about? What further reforms in this area do you believe are necessary?

Most people, and many immigration lawyers, are unaware that the United States had no general law for asylum until the Refugee Relief Act of 1980 was passed. During its early years, [DOJ's] Office of Special Investigation (OSI), where I served as an attorney, was its default agency for human rights issues. The evening before a vote was to be taken in Congress on the asylum bill, DOJ and OSI assigned me to work on a revamp of the legislation, and to include in it a bar from relief for those who had participated in the persecution of others. At that time, personal computers and home faxes were nonexistent, so armed with a pen, paper, and the hubris of youth, I spent the whole night dictating a rewrite of the bill over the phone to DOJ and congressional staffers. The bill was then passed, and I was granted the privilege of having a small role in the advancement of human rights law.

I would like the asylum law—or the regulations that further its application—to specifically include "rape," "attempted rape," and "sodomy" as cognizable forms of persecution on account of race, religion, political opinion, membership in a particular social group, or political opinion. I would like to see the same done for "domestic abuse" and "incest" under the social →

group category—at least where the home government was unwilling or unable to prevent the violence in question. Finally, I also would like to see DHS spend more resources and time on reviewing asylum applications filed. DHS asylum officers should have more than 20 minutes or so to interview asylum applicants. Most of those applicants are simply referred to the immigrant courts for prosecution. Careful analyses of asylum applications by DHS might decrease the number of asylum cases referred to the courts.

Are there any cases that you represented or have presided over that have made an impact on your life, or that have affected you personally?

As a Nazi war crimes prosecutor, I located, prepared, and propounded a survivor witness who was a Polish Gentile whose anti-Nazi views landed him in a slave labor camp where he was greatly abused and from which he barely survived. As a naturalized U.S. citizen, he was divorced and childless, poor, and largely unrecognized as a wartime hero by his own ethnic and religious communities. The status accorded him in court as a credible witness and a brave dissident from Nazi rule resulted in a major public embrace of him by the local press where he lived and by the Jewish Holocaust survivor community, which honored him for his sacrifices during World War II. As he was transformed from an anonymous victim to a respected citizen, his whole sense of self-esteem grew geometrically. I took great comfort in his "rebirth."

As an immigration judge, I granted asylum (without government appeal) to a woman badly abused by her political opponents in a Central American government. She came to this country alone and damaged both physically and psychologically. Sometime after she won her case, she wrote me that she had found a loving husband, a good job, and a happy home. She also enclosed a photograph of her U.S.-born child, adding as a caption to it, "But for your help, this baby of mine would not even have existed or come to live in freedom." I cried like a baby myself.

Why did you retire when you did? And what are your plans for the future?

Principally, I retired for reasons of health: 2006 left me with coronary artery disease, severe asthma, and arthritis. I needed to take time to attend to my personal well-being, and as part of that, to end the 80–mile-per-day commute to and from court in Los Angeles freeway traffic. Also, at age 52, I did not want to wait to spend more time engaged in other activities about which I care deeply, including teaching and writing about public law and policy, and participating in civil and human rights work. Indeed, thanks to an invitation from AILA Publications, I am drafting my professional autobiography. I also have done commentary for CNN and local media.

If, in the near future, a more enlightened administration comes to power, I might be interested in serving in government again in a senior role—*e.g.*, as chief judge of a truly independent immigration court, as assistant secretary or deputy assistant secretary of state for Human Rights, or as U.S. ambassador-at-large for War Crimes. In lieu of all that, however, I would like to expand my educational and written work. I have outlined a multi-volume history of the evolution of the concept of "citizenship" in the West. And who knows? I might just have the time to do the job.

If there was only one piece of advice that you would give law students or new immigration attorneys, what would it be?

Be very careful with whom you associate in practice. Avoid notaries and immigration consultants as you would the plague, and carefully review the reputations of any experienced counsel with whom you may work. In your career, you will have many clients—but only ONE reputation.

Richard J. Link is a legal editor with AILA.

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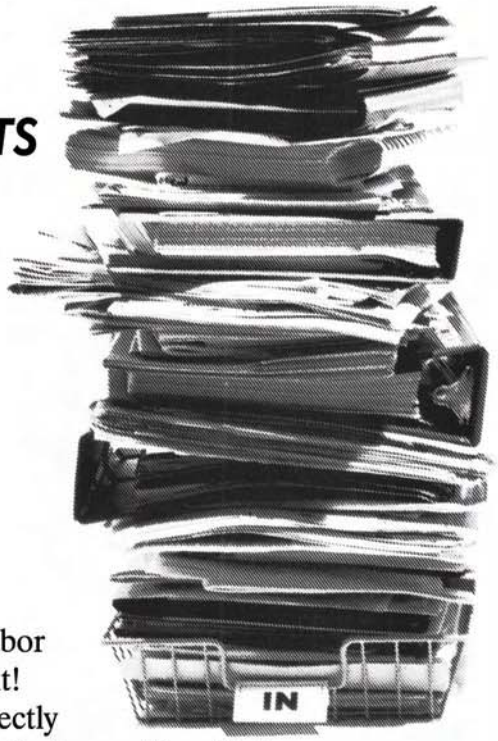

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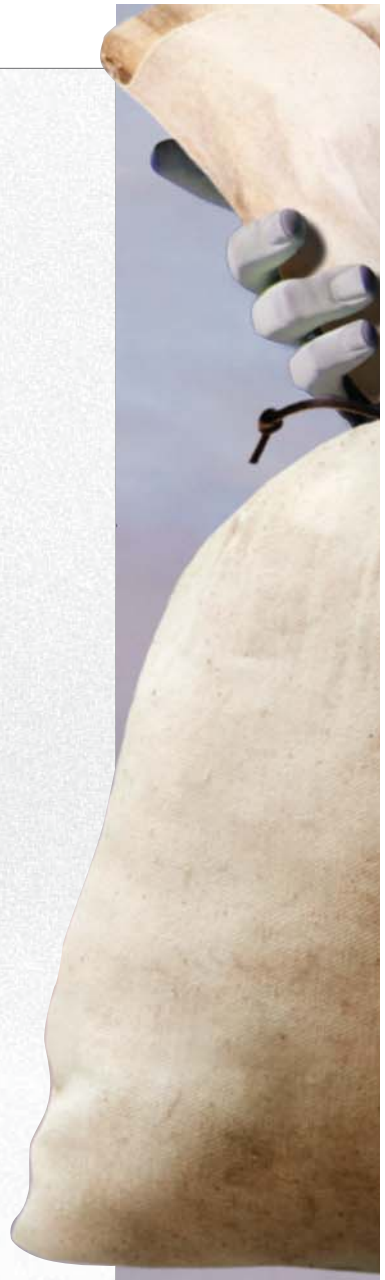
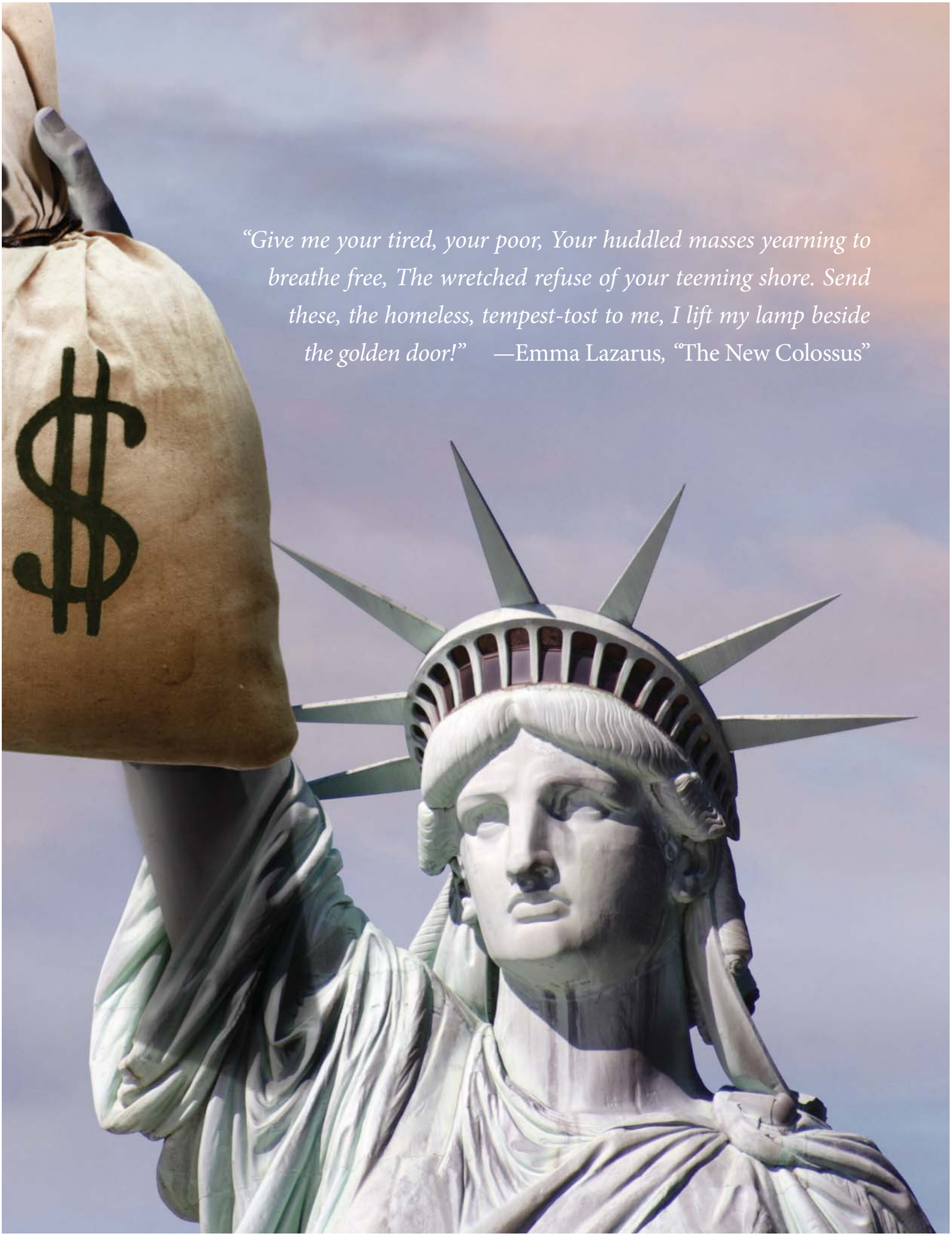


EMMA LAZARUS WROTE "THE NEW COLOSSUS" IN 1883, forever marking the entrance to the United States.[1] Just as the Colossus at Rhodes is said to have straddled the shorelines of ancient Greece, Lazarus saw the Statue of Liberty as the New Colossus, welcoming ships of impoverished and homeless immigrants to the New World. The reality behind the famous words inscribed on the statue is an appropriate metaphor for the new immigration filing fee increases. Instead of welcoming the poor and destitute, filing fees practically bar access to thousands of qualified petitioners—many of whom are already taxpayers. Increased fees affect not just immigrants and lawful permanent residents (LPRs), but also those U.S. citizens who petition for their family members abroad. As Rep. John Conyers (D-MI) exclaims, "Many in the immigrant community see the increase for what it is, increasing the costs of the American dream; telling those least fortunate among us that they probably need not apply."[2]

The Immigration and Nationality Act (INA) §286(m) provides for the collection of fees "at a level that will ensure recovery of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants." Additionally, the INA states that fees also may be set at a level that will recover any additional costs associated with the administration of the fees collected. U.S. Citizenship and Immigration Services (USCIS) only requested $30 million from Congress this year because it plans to use the fee increase to fund 100 percent of its operations. While USCIS should charge a fee for its services, the increases appear to be an attempt to discourage indigents from immigrating to the United States. Under the user fee statute (31 USC §9701 (1982)), USCIS has the authority to set fees to cover its costs; however, the fees must be fair and cannot be arbitrary or capricious. The method USCIS uses to calculate fees →



"Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!" —Emma Lazarus, "The New Colossus"

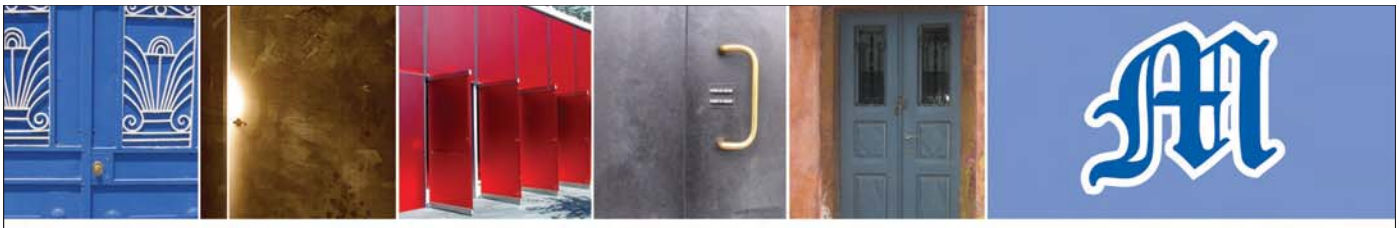
is vague and unfairly delegates costs to some types of applications more than others. Furthermore, the fees could potentially violate equal protection and due process because they are set so high that only the wealthy can afford to apply.

Immigration Filing Fees History

Funding for USCIS has remained somewhat consistent since 1988, when Congress established the Immigration Examination Fee Account (IEFA) (Pub. L. No. 100-459, §209, 102 Stat. 2186 (1988)). IEFA funds "the provision of immigration and naturalization benefits, and other benefits as directed by Congress" by charging a fee to review immigration benefit applications, petitions, and biometric services. (*See* 8 CFR §103 at 9). In 1990, Congress enacted subsequent legislation to provide asylum processing and other services free of charge, resulting in a corresponding increase in immigration filing fees to cover these costs (different statutes limit the filing fee for Temporary Protected Status, and a fee for Premium Processing Service for certain employment-based applications). Since IEFA was enacted, USCIS has increased filing fees on six separate occasions, mostly due to inflation.

USCIS's filing fees are considered "user fees" because immigration benefits the user and not the general public. A user fee is defined as the "price a governmental agency charges for a service or product whose distribution it controls."[3] When determining user fees under IEFA, USCIS is required to conform to the Chief Financial Officers Act of 1990, which obligates USCIS's chief financial officer to review the fees on a biennial basis and "make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." (*See* 8 CFR §103 at 8). Additionally, the Office of Management and Budget (OMB) establishes "[f]ederal policy regarding user fees assessed for Government services and the basis upon which agencies set user charges sufficient to recover the full cost to the Federal Government." The OMB Circular A-25 states that the objective of the U.S. government is to recover the "full cost" of providing specific services to users. USCIS also considers the accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB). FASAB defines full cost to include direct and indirect costs that contribute to the output, regardless of the funding sources. Lastly, the Government Accountability Office (GAO) investigates the effectiveness of government agencies and periodically reviews USCIS's operations (*see www.gao.gov*).

Unlike U.S. Customs and Border Patrol (CBP) and U.S. Immigration and Customs Enforcement, USCIS is the only agency →



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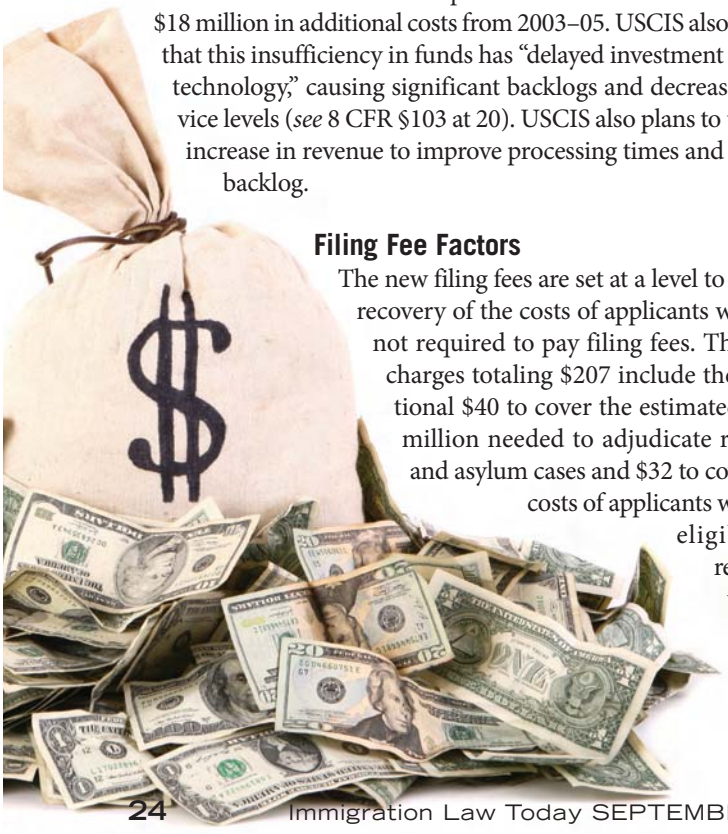
under the Department of Homeland Security (DHS) that charges a user fee for its services. CBP collects a nominal fee from all passengers flying into the United States that is incorporated into the price of an airline ticket for inspection at a port of entry into the United States (*see* 19 USC §58c(a)(5)(B)).

USCIS Justifies Fee Increases

USCIS based the new fees on several factors, including a significant funding gap. USCIS lists its annual costs at $2.329 billion—the previous fees generated only $1.250 billion in revenue, resulting in a funding gap of $1.079 billion. (*See* 8 CFR §103 at 18). To cover this gap, USCIS previously had relied on fees from temporary programs (which are now ending) and funding from Congress.[4] This year, USCIS only asked Congress for $30 million to reduce backlogs, fund operations, and "transform USCIS into a 21st century organization." (*See* AILA InfoNet Doc. No. 0705364). This is a paltry amount compared to the more than $4 billion in budget that Congress has allotted to USCIS for the past 10 years.

Another justification for the fee increases is that certain costs were not accounted for in the previous fee structure (*see* 8 CFR §103 at 19). In 2004, GAO published a report stating that USCIS's fees were not sufficient to fully fund its operations, and not all of the costs are identifiable because USCIS cannot track the status of each application (*see* GAO-04-309R, (Jan. 5, 2004) at 2, 12). At a minimum, GAO determined that $101 of each application was not covered by the current fees, including: new integrated card production systems, new national customer service center, national records center, interagency border inspection system hiring of term/temporary employees, hiring of additional adjudication officers, and expansion of service operations. Furthermore, settlement of class action lawsuits, outsourcing studies, and the establishment of a new Office of Citizenship caused USCIS to incur around $18 million in additional costs from 2003–05. USCIS also claims that this insufficiency in funds has "delayed investment in new technology," causing significant backlogs and decreased service levels (*see* 8 CFR §103 at 20). USCIS also plans to use the increase in revenue to improve processing times and reduce backlog.



Filing Fee Factors

The new filing fees are set at a level to ensure recovery of the costs of applicants who are not required to pay filing fees. The base charges totaling $207 include the additional $40 to cover the estimated $191 million needed to adjudicate refugee and asylum cases and $32 to cover the costs of applicants who are eligible to receive a waiver, among other charges. (*See* 8 CFR §103 at 80). Additional fees such as the "Make Determination" and "Issue Document" fees are then calculated along with the base fees, resulting in the "Total Unit Processing Activity Cost."

As a result, certain fees were readjusted based on per unit costs. For example, Form I-360, the petition for an Amerasian widower or special immigrations, averaged 20,000 or fewer applicants a year and produced a high unit cost. USCIS decided to limit the fee increases for these applications to 96 percent and to redistribute the remaining costs to other applicants.[5] Application fees relating to legalization under the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. No. 99-603, 100 Stat. 3359) and Form I-829, Petition by Entrepreneur to Remove Conditions of Status, were increased by 250 percent. USCIS justified this incredible increase by stating that IRCA legalization applicants and Form I-829 petitioners "did not appear to involve a substantial rational for a lower fee than would otherwise be charged under applicable methodology." (*See* 8 CFR §103 at 84). Aside from these forms, the remaining filing fees were increased on average 96 percent.

USCIS expects the new filing and biometric fees to generate $2.331 billion in annual revenue for the fiscal years 2008 and 2009. Processing benefit applications is expected to cost $2.329 billion. There is a $2,000 difference between revenue and cost allowed for calculation error.

Legal Ramifications

USCIS has the authority to charge fees under the user fee statute, 31 USC §9701 (1982). The statute states in pertinent part:

> It is the sense of Congress that each service or thing of value provided by an agency … to be self-sustaining to the extent possible. The head of each agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Each charge shall be—(1) fair; and (2) based on (A) the costs to the government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and other relevant facts.

The filing fee increases potentially can be challenged in court as inconsistent with the above-statute on three grounds: (1) increased fees will have a chilling effect on adjustment of status, naturalization, and legal means of immigrating to the United States; (2) they contradict the requirements that fees be "fair," and (3) the fees do not bear a reasonable relationship to the cost of services rendered.

Chilling Effect

Immigrants provide economic growth and create new jobs. In February 2007, a report by the Center for an Urban Future found that in 2005, an average of 0.35 percent of the adult immigrant population (or 350 out of 100,000 adults) created a new business each month, compared to the 0.28 percent of native-born populations (or 280 out of 100,000 adults). (*See* AILA InfoNet Doc. No. 07040264). Despite the significant economic benefits entrepreneurial immigrants provide to society, the largest fee increase is the fee for Form I-829, a petition by an entrepreneur to remove conditions of status. An "investor visa" requires an investment of $1 million in a new commercial enterprise in the United States that employs 10 U.S. →

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How USCIS Defines Administrative Costs: The Huge Monkey on Immigrants' Backs

While USCIS is not required to set fees to cover the administrative costs of the agency, INA §286(m) permits USCIS to recover administrative costs. USCIS interpreted the terms "administrative costs" and the "costs of providing adjudication services" to include:

- *New technology, backlog reduction, and website improvements;*
- *$31.3 million for fraud detection and prevention;*
- *Class action settlements, outside contractors, and fee waivers;*
- *$12.4 million for FBI background checks;*
- *$15 million for internal investigations of misconduct;*
- *$15,000 for federal and contract employees;*
- *Material contribution to the USCIS counter-intelligence program;*
- *$3 million to support 14 staff members who will enhance emergency preparedness operations;*
- *$1.6 million to conduct security clearances for all USCIS employees;*
- *$14 million to support the Cuban Haitian Entrant Program;*
- *$124.3 million to upgrade and maintain the USCIS information technology environment;*
- *$900,000 to print and distribute guidebooks for new naturalized citizens; and*
- *$3 million that will actually go to CBP to handle human resources and occupational safety requirements and establish a national recruitment program*

Even if the terms "administrative costs" and "providing such services" are interpreted broadly, a court should find that these terms do not include extra services such as distributing naturalization handbooks and funding CBP. Furthermore, the statute does not permit USCIS to set fees high to investigate employees for wrongdoings, pay for prior backlog due to the agency's inefficiency, or pay for class action suits. USCIS essentially is asking immigrants to pay the price of the agency's wrongdoing, and that is beyond its scope under INA §286(m).

citizens or authorized immigrant workers (*see* INA §203(b)(5)(C)). The new fees will add $1,435 to the original immigrant petition and, after two years of conditional residency, an additional $2,850 to adjust the entrepreneur's status to that of a permanent resident—totaling $4,285 in two years (not including the costs of petitioning for the entrepreneur's immediate family members). Indubitably, investments in the U.S. economy and new jobs for American workers are the type of immigration that the government seeks to encourage. In fact, INA §203(b)(5) sets aside 7.1 percent of worldwide visas per year exclusively for immigrant investors. However, costly filing fees send a discouraging message to potential investors that their business is not welcome in the United States.

Previous filing fee increases already have delayed or hampered immigrants who are eligible to naturalize. When Congress raised the naturalization fee in 1999 from $95 to $225, the number of naturalization applications significantly declined by more than 70 percent (*see www.cliniclegal.org*). The current fee to apply for naturalization is $595. While there is a fee waiver available for people who are eligible, many are just above the poverty line or fear that their application will be denied even if they are granted one (*see www.uscis.gov*). Because there is no timeframe for adjudication of a fee waiver, immigrants often wait many months for a result.

The naturalization fees also create a significant burden for asylees and refugees who rely on disability benefits, since they must naturalize within seven years of becoming an LPR in order to maintain their legal status. Undoubtedly, the fee increase coupled with the recent release of the new naturalization test sends a message that USCIS wants to discourage the impecunious from naturalizing. Immigrants who are prohibited from naturalizing are further alienated from American culture and the political process.

Naturalization is one of the principle components of the American political system, as well as one of the few subjects mentioned in both the Declaration of Independence and the U.S. Constitution. USCIS, therefore, should encourage naturalization because it is a "powerful symbolic gesture of commitment to the United States" in which immigrants pledge to "support the values and laws of the United States and renounce their allegiance to any other country." (*See* Migration Policy Institute, *Immigration Fee Increases in Context*, 15 at 2. (Feb. 2007)).

Contrary to Notion of Fairness

USCIS's implemented increases also implicate the user fee statute that all fees be "fair" and cost-justified, obliging the agency to justify all increments. In *Raton Gas Transmission Co. v. FERC*, 852 F.2d 619 (D.C. Cir. 1988), a mere doubling of fees based on a recalculation of costs was held to be unfair and without sufficient explanation. The standards promulgated in *Raton* state that fee increases must be accompanied by a clear explanation as to why the increases are cost justified. If the increases do not provide a clear explanation, they will be deemed "unfair" and in violation of the statute.

The majority of the new filing fees have more than doubled and USCIS cannot provide a detailed explanation for this increase. For example, the rationale behind the $515 increase for Form I-485 is vague and unfairly shifts the costs to immigrants who do not benefit from the services. Interim benefits for employment authorization documents (EADs) and advance parole will now be included in the $930 fee. However, many Form I-485 applicants are not eligible for these benefits because they already are authorized to work, their unauthorized presence prohibits them from traveling, or they are under the age of 16 and cannot work (*see* AILA InfoNet Doc. No. 07040264). This increase →

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does not explain how interim benefits would be made available nor for what time period. Many I-485 applications take more than six months to process, but it seems unlikely that USCIS will grant advance parole and EAD to all pending applications for an indeterminable time period.

USCIS also has eliminated the ability to apply for a Form I-485 fee waiver, since applicants for permanent residence must prove that they have an income within 125 percent of the poverty line. However, the fees incurred by a family of four (with children over 14) applying for permanent residency would total $4,040 with biometrics, and a sum of this magnitude could place a family below 125 percent of the poverty line. For example, if the family makes $25,000, they would qualify to adjust their status. However, fees totaling $4,040 would reduce the family's income to just over $20,000, placing them at the poverty level. The significant fee increase for I-485 applicants is without adequate explanation and unfairly shifts costs of interim benefits to users who are not eligible for these benefits. Furthermore, the fee increases fail to correspond with IEFA's projected cost increase. IEFA estimated the budget to increase by 32 percent, but the average application fee increase is 96 percent. USCIS is basically committing to provide a 2–4 percent increase in productivity in exchange for a 66 percent or greater increase in fees.

No Relationship to Cost of Services Rendered

User fees must be based on "the costs to the government, the value of the service of thing to the recipient, public policy or interests served, and other relevant facts." (*See* 31 USC §9701). INA §286(m) authorizes USCIS to collect fees for providing adjudication and naturalization services and administering fees, but not to collect fees for national security. However, the new filing fees include payments to the FBI for fingerprint, name, and security checks, which benefit national security and processing Freedom of Information Act requests when calculating costs. Clearly, these costs benefit national security and violate INA §286(m).

The fee increases also cover funding for Internal Security and Investigative Operations for investigation of misconduct of federal and contract employees. Applicants should not have to pay the price of USCIS employee wrongdoings. The attorney general claims that the fees are going to provide "better service," but good service should be the function a government agency (*See* AILA InfoNet Doc. No. 0705364). Passing these costs to the immigrant petitioner is not reasonable and does not fall within USCIS's authority under INA §286(m).

Potential Violation of Equal Protection, Due Process

The new filing fee increases may violate the Constitution because they essentially bar access to applicants. The Equal Protection clause of the

Fourteenth Amendment provides that "no state shall make or enforce any law which shall ... deny to any person within its jurisdiction equal protection of the laws."(U.S. Const. Amend XIV, §1). Although the Fourteenth Amendment only applies to state governments, the Fifth Amendment's Due Process clause bars the federal government from making a classification that would violate the Equal Protection clause if done by a state (*see Bolling v. Sharpe*, 347 U.S. 497 (1954)). The Equal Protection clause "is essentially a direction that all persons similarly situated should be treated alike" under the law (*see City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985)). While laws may classify persons for specific reasons, these classifications cannot be arbitrary. Substantive due process claims are similar to equal protection claims, since they ask whether the state has impinged on a fundamental right (*see* E. Chemerinsky, *Constitutional Law Principles and Policies* (Aspen Publishers, 2002)).

Fundamental Rights

The first step in analyzing a due process or equal protection claim is to determine whether the statute is based on a "fundamental right." Rights that have been held to be fundamental are the right to vote, the right to have access to courts, and the right to migrate interstate. If a statute is based on a suspect class or a fundamental right, the court uses a strict scrutiny analysis. Under strict scrutiny, a classification is upheld if it is necessary to promote a compelling governmental interest. In order to prove there is a compelling governmental interest, a state must assert there is a compelling interest and that the statute uses the least restrictive means of achieving this interest (*see* C. Austin, "Due Process, Court Access Fees, And the Right to Litigate," 57 *NYUL Rev*. 768, 776 (1982)). The main difference between an equal protection and due process challenge is how the constitutional argument is phrased (*see* Chemerinsky, at 763). If the right is safeguarded by equal protection, the court asks whether the "the government's discrimination as to who can exercise that right is justified by a sufficient purpose." Under a due process analysis, the issue is whether "the government's interference is justified by a sufficient purpose."

Filing Fee Violations

While immigrants do not have a right to the immigration benefit for which they are applying, they do have a right to have their application adjudicated once they have met the requirements set forth in the INA. The U.S. Supreme Court in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), held that due process and equal protection principles converge in filing fee cases. The Court was careful to point out that generally, access fees only warrant rational basis review, with the exception of criminal or quasi criminal cases. The court explained that *M.L.B.* falls under this category because "termination adjudications involve the awesome authority of the state to 'destroy permanently all legal recognition of the parental relationship.'" (*See* Chemerinsky, at 884, citing *M.L.B.* at 105.)

One potential argument that the fees implicate a fundamental right is that immigrants who are petitioning for relatives fit into the same category as the petitioner in *M.L.B.* The new filing fee rules prohibit petitioners from requesting a fee waiver if the application requires them to prove that their relative will not become a public charge.

☛ **PRACTICE POINTER: Since choices about marriage, family life, and the upbringing of children were among the associational rights the Court held to be of basic importance in society in M.L.B., an LPR or a U.S. citizen could argue that the right to marry or bring a family member from overseas is also a fundamental right. Excessive fees combined with a prohibition on fee waivers for this type of application might be viewed by the courts as implicating a fundamental associational right.**

Even if the filing fees are not in violation of a fundamental right, an applicant/petitioner could still argue that they violate equal protection and due process under the lower level standard of review known as rational basis. Petitioners might have a better equal protection and due process argument under this review because the filing fees implemented by USCIS draw a significant distinction between immigrants based on a particular characteristic: their wealth. Higher fees discourage low income immigrants from applying for benefits.

Under a rational basis level of review, the fees will be upheld so long as they bear a rational relationship to a legitimate governmental purpose. A petitioner could argue that the fees actually deter from the original purpose of INA §§201–204 that set the worldwide levels of immigration, numerical limitations on individual foreign states, allocation of immigrant visas, and procedure for granting immigrant status. Although these sections do not set fees, they inherently contemplate that fees will be consistent with the right to apply.

☛ **PRACTICE POINTER: Even if there is no violation of a fundamental right, a petitioner still could argue that this significant increase in application fees actually contradicts the government's purpose in promoting family reunification and employment-based immigration, and does not bear a rational relationship to a legitimate government goal.** →

USCIS May Be Acting Outside of Scope

If a court is unwilling to consider the constitutional issues of the fee increase, it still could be invalidated on ultra vires rather than substantive constitutional grounds. Under ultra vires, the court decides if a rule is invalid because it is beyond the scope of the agency's delegated powers. First, the court considers how much power the legislature intended to delegate. If the legislature did not intend to delegate that much power the court can invalidate a particular rule or an entire statute. Courts have struck down ultra vires rules when the agency interprets a rule to permit broad authority. In *Kent v. Dulles*, 357 U.S. 116 (1958), the Court struck down a rule permitting the U.S. secretary of state to deny passports to Communists and "grant and issues passports under such rules as the president shall designate." The court invalidated the regulation holding that the statute did not confer authority to *deny* passports as a result of political activity.

Costly American Dream

The United States has been concerned with allowing indigents into the United States since 1882. While the number of immigrants from Europe has remained somewhat consistent since 1988, the number of people immigrating from developing countries in South and Central America, Asia, and Africa—where people tend to have less money—has dramatically increased (*see* Yearbook of Immigration Statistics, *www.dhs.gov*).

The increase in USCIS filing fees should be challenged in court for violating the user fee statute and due process and equal protection amendments. Immigrants should only bear the costs of adjudicating their application/petition without paying for USCIS shortcomings. As it stands, the new filing fee structure becomes an earth-shattering reality to many otherwise-qualified applicants who cannot afford to pay the increasingly costly and elusive American Dream. ILT

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Endnotes

[1] *Colossus of Ancient Greece Inspired Poet Emma Lazarus*, Asbury Park Press, Inc., July 4, 2004 at 6.

[2] "Proposed Immigration Fee Increase," 110th Cong. 1-33 (2007).

[3] *See* C. Gillette and T. Hopkins, "Federal User Fees: A Legal and Economic Analysis," 67 *B.U.L. Rev.* 795, 800 (1987).

[4] Temporary Protected Status, §245(i) penalty fees, and funding from Congress to reduce backlogs. *See* 8 CFR §103 at 16.

[5] Forms include I-690, I-695, N-300, and I-470.

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Running out of TIME

Staying One Step Ahead of the One-Year Asylum Deadline

by Jeffrey Martins

FEW REFUGEES WHO REACH THE SAFETY OF U.S. SHORES are aware that they have one more crucial step to take before calling this country home: applying for asylum within one year of their date of arrival in the United States. In fact, for the past 10 years, refugees who did not file an asylum application during their first year of residence in the United States—or those who did not demonstrate a good reason for an exception to this deadline—have been denied asylum. Virtually every legal organization condemned this filing deadline when it was enacted as part of Immigration and Nationality Act §208(a)(2)(b) because it contains few positive aspects and overwhelming negative results. The American Bar Association has called for this law's repeal and the United Nations High Commissioner for Refugees has rejected it because it violates U.S. international obligations of *nonrefoulement*.[1] This makes for a precarious asylum setting, especially since the number of denials resulting from the one-year deadline has nearly doubled in recent years.

Congress passed this one-year filing deadline in 1996 along with a host of measures that have precipitated much of the current immigration crisis and the resulting debate about comprehensive immigration reform (CIR). Consistent with long-term trends of restricting immigrant appellate rights, these measures foreclosed debate on the issue by preventing appellate review of the implementation of the law. Prior to the REAL ID Act of 2005 (Pub. L. No. 109-13, div. B, 119 Stat. 231, 302–23), every circuit court that was presented with a filing deadline question declined to exercise jurisdiction in compliance with jurisdiction-stripping statutes. Pertinent cases include *Hakeem v. INS*, 273 F.3d 812 (9th Cir. 2000); *Ismailov v. Reno*, 263 F.3d 851 (8th Cir. 2001); *Fahim v. INS*, 278 F.3d 1216 (11th Cir. 2002); *Tarrawally v. Ashcroft*, 338 F.3d 180 (3rd Cir. 2003); *Castellano-Chacon v. INS*, 341 F.3d 533 (6th Cir. 2003); and *Tsevegmid v. Ashcroft*, 336 F.3d 1231 (10th Cir. 2003). This filing deadline has resulted in a hodge-podge of decisions with varying results from immigration judges (IJs) with vastly different standards—leading to the randomness and inconsistency of securing protection for asylum-seekers (see "Syracuse University Study of Immigration Judge's Asylum Approval Rate Disparities" at *http://trac.syr.edu/immigration/reports/160/*).

Lack of Precedence

The Board of Immigration Appeals (BIA) during the past 10 years has issued only one published opinion regarding the one-year filing deadline for asylum applications. In *Matter of Y–C–*, 23 I&N Dec. 286 (BIA 2002), the BIA ruled that an unaccompanied minor had established extraordinary circumstances that excused his failure to file an asylum application within the first year after the date of his arrival. This minor was in the custody of legacy Immigration and Naturalization Service pending removal proceedings following his arrival in the United States. The BIA's refusal to establish any standard for the reviewing IJs' decisions regarding the one-year deadline, along with the federal courts' refusal to find jurisdiction has left IJs to interpret the law without any guidance or standard.

Furthermore, even the BIA's sole decision in *Matter of Y–C–* merely found that when the regulations specifically list an example of an exception to the rule, these regulations must be followed. The BIA offered no guidance in the implementation of the exceptions to the rule.

Narrow Exceptions

The asylum filing deadline allows for two exceptions. A late-filed application can be considered if there are either extraordinary or changed circumstances. →

Changed Circumstances

The term "changed circumstances" refers to circumstances that are materially affecting the applicant's eligibility for asylum (*see* 8 CFR §208.4(a)(4)(i)–(ii)). These include, but are not limited to:

- Changes in conditions in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence;
- Changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk; or
- In the case of an alien who had previously been included as a dependent in another alien's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

The applicant has to file an asylum application within a reasonable period given those "changed circumstances." If the applicant can establish that he or she did not become aware of the changed circumstances until after they occurred, then this delayed awareness will be taken into account when determining what constitutes a "reasonable period."

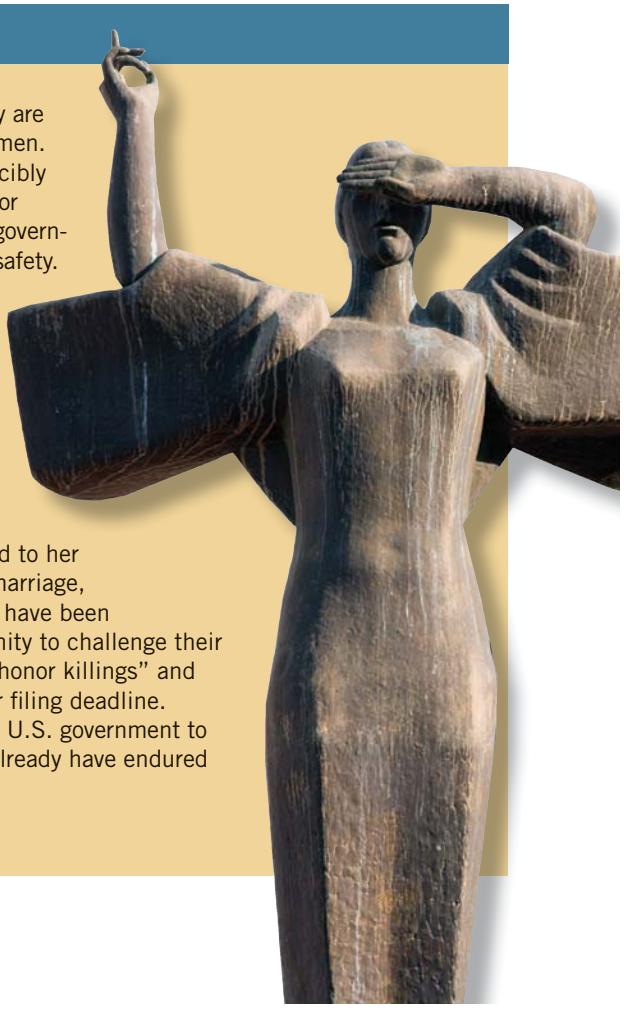
Extraordinary Circumstances

The term "extraordinary circumstances" refers to events or factors directly related to the failure to meet the one-year deadline (*see* 8 CFR §208.4(a)(5)). These circumstances may excuse the failure to file within the one-year period as long as the application is filed within a reasonable period. The burden of proof lies on the applicant to establish to the satisfaction of the asylum officer, IJ, or the BIA that he or she did not intentionally create the circumstances through his or her own action or inaction, that the circumstances were directly related to the applicant's failure to file the application within the one-year period, and that the delay was reasonable under the circumstances (*see* 8 CFR §208.4(a)(5)(i)–(vi)). The circumstances may include, but are not limited to:

- Serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the one-year period after arrival;
- Legal disability (*e.g.*, the applicant was an unaccompanied minor or suffered from a mental impairment) during the one-year after arrival;
- Ineffective assistance of counsel, provided that:
  - The alien files an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;
  - The counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond; and
  - The alien indicates whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not;
- The applicant maintained temporary protected status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application;

→

WOMEN AND ASYLUM



WOMEN AROUND THE WORLD often suffer persecution because they are female and experience persecution differently because they are women. Women who are beaten by their husbands, raped with impunity, forcibly sterilized, ritually mutilated, sold into sexual slavery, and targeted for death by relatives in the name of family honor can become refugees when their governments fail to protect them. Some of them flee to the United States in search of safety.

The United States has for many years experienced a proud tradition of protecting refugees, and has set an example for other countries in protecting women from gender-related violence. But the ability of refugee women to gain asylum in the United States was significantly undermined by the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) (Pub. L. No. 104-208, div. C, 110 Stat. 3009, 3009-546 to 3009-724). IIRAIRA created new barriers for asylum-seekers that have affected thousands of refugee women. A woman from the Dominican Republic who fled severe domestic violence was ordered deported under IIRAIRA's summary expedited removal process. A rape survivor from Albania was deported to her country of persecution under the same process. Women who have fled forced marriage, rape, forced sterilization, domestic violence, and other gender-related violence have been detained in jails—sometimes for lengthy periods of time—without the opportunity to challenge their detention before a judge. Other women who sought asylum based on fears of "honor killings" and genital mutilation have had their asylum claims rejected based on the one-year filing deadline.

Human Rights First and other nonprofit organizations continue to call on the U.S. government to restore fairness to the asylum process so that vulnerable women refugees who already have endured severe persecution are not unfairly denied a safe haven in this country.

Source: www.humanrightsfirst.org/asylum/asylum_02.htm

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New Statistics Show Need for Judicial Review, Administrative Reforms, and Legal Representation

IJs DENY ASYLUM APPLICATIONS at widely disparate rates, according to a 2006 report issued by Syracuse University's Transaction Records Access Clearinghouse (TRAC). Most IJs denied about 65 percent of asylum requests, about 10 percent of the judges denied asylum in 86 percent of cases, while another 10 percent denied asylum in 34 percent of cases.

The TRAC statistics also followed asylum cases from 2004–05, and concluded that while having a lawyer did not ensure success (65 percent of those requests are denied), the denial rate for those without legal representation is far higher at 93 percent.

Representation	Number	Percent Denied
All asylum seekers	297,240	69.0%
No attorney	51,258	93.4%
Attorney	245,982	64.0%

Source: http://trac.syr.edu/immigration/reports/160/

■ The applicant filed an asylum application prior to the expiration of the one-year deadline, but that application was rejected by U.S. Citizenship and Immigration Services as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter; and
■ The death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family.

Many IJs seem to consider these examples to be the *only* filing deadline exceptions, rather than the guidelines envisioned by Congress and despite the regulations' clear language that changed and extraordinary circumstances are not limited to the examples above. The BIA's refusal to consider cases has fostered an atmosphere where asylum-seekers who have been in the United States for more than a year are throwing themselves at the mercy of the court.

Inconsistent Results

The inconsistencies of varying IJ interpretations to this one-year filing deadline is underscored in two similar cases involving homosexual applicants in domestic partnerships. The author was successful in securing a grant for asylum for one homosexual client by using the entry into a domestic partnership as changed circumstances, while another IJ denied asylum to the second client after finding that the applicant was homosexual before and after entering into a domestic partnership. The latter IJ used the "I don't buy it" standard. She did not believe the applicant's explanation that his public expressions of partnership were the culmination of a coming-out process where he finally admitted to others his sexual orientation.

Furthermore, there is no rhyme or reason as to how an asylum applicant is granted asylum. For example, an IJ denied asylum to an accompanied minor under the rationale that the regulations must have included "unaccompanied minors" as an example to explicitly distinguish the term "accompanied minors." However, the BIA has accepted the accompanied minors rationale as an exception. (See *Hakeem v. INS*, 273 F.3d 812 (9th Cir. 2000)). Yet another IJ denied asylum to a Yemenese applicant who had a pending application for extension of his nonvisitor status and applied for asylum only five weeks after the extension application was denied.

However, an IJ granted asylum to a woman who feared an honor killing after refusing to enter into a prearranged marriage. The IJ found an exception solely based on the client's desire to reconcile with her family. Another IJ found an exception to the author's client who suffered mental trauma and depression, while yet another IJ rejected depression as an extraordinary circumstance in another case handled by the author.

Nonrefoulement Obligations

Nonrefoulement is the idea that "no refugee should be returned to any country where he or she is likely to face persecution or torture." (*See* G. Goodwin-Gill, The *Refugee in International Law* (2nd Ed., Clarendon Press, Oxford, (1996) 117). At its most basic level, the principle prevents the government of State A from returning refugees from State B to State B, where there is a valid concern that they could be in danger should they be returned (*see www.refugee.org.nz/JessicaR.htm*).

While the government often argues that withholding of removal satisfies U.S. obligations of *nonrefoulement* and acts as a safeguard for those denied asylum, this is little more than a panacea for refugees who are denied asylum and have left family behind. (*See INS v. Cardozo-Fonseca*, 480 US 421 (1987); *Castellano-Chacon v. INS*, 341 F.3d 533 (6th Cir. 2003)). Among the many differences between withholding of removal and asylum, those granted withholding cannot bring immediate family to join them in the United States—ever. They are not allowed to have derivative family members gain any benefits, adjust or become citizens, or travel. Essentially, those granted withholding only are allowed the right to stay and work.

This is some comfort—albeit minimal—and hardly a substitute for all the rights that are unavailable to these people. For example, in a recent case, the author represented a mother who was granted withholding of removal while her 10-year-old daughter was ordered removed after the pretermission of the mother's asylum application severed the daughter from her mother's application and forced her to submit her own, which was denied.

Withholding of removal requires a much higher level of proof that there is a danger of persecution in the applicant's home country. Furthermore, there is no guarantee that someone denied asylum because of the one-year filing deadline will even qualify for withholding of removal—which could result in the removal of a bona fide refugee who possesses a well-founded fear of return.

REAL ID Review

An almost certainly unintended by-product of the REAL ID Act is the potential reestablishment of jurisdiction over certain questions of immigration law at the federal circuit courts, including questions involving the one-year filing deadline for asylum. Prior

to REAL ID, circuit courts had jurisdiction to only review whether the BIA had failed to consider the issue, and had consistently found that they could not review the BIA's determination that an applicant was barred from asylum by the filing deadline.

Even after REAL ID, the First, Third, Sixth, and Eighth Circuits have declined to review what were determined to be purely factual determinations. (*See Mehilli v. Gonzales*, 433 F.3d 86(1st Cir. 20006); *Sukwanputra v. Gonzales*, 434 F.3d 627 (3d Cir. 2006); *Almuhtaseb v. Gonzales*, 453 F.3d 742 (6th Cir. 2006); *Yakovenko v. Gonzales*, 477 F.3d 631 (8th Cir. 2007)). However, REAL ID does allow the review of "questions of law" and constitutional claims. Thus, courts now may be able to hold IJs to standards and possibly moderate the erratic nature of decisions. So far, only the Second and Ninth Circuits have found that "questions of law" include certain legal determinations regarding whether a person satisfied the one-year filing deadline or qualified for an exception. (*See Ramadan v. Gonzales*, 427 F.3d 1218 (9th Cir. 2005); *Chen v. Gonzales*, 471 F.3d 315 (2d Cir. 2006)). Although both these courts denied the instant petitions, their holdings give hope that there may be some review to temper the decisions of the government to pretermit asylum applications.

Amenable Alternatives

The only rationale for this one-year filing deadline that is advanced by its supporters is that it forces asylum-seekers to come forward earlier rather than attempting to avoid detection for years before submitting an application. This, of course, presumes that asylum-seekers are aware of this limitation when they first enter the United States, but there is little or no evidence to support this dubious proposition. Simply denying a refugee the protection of staying in the United States based on when the application was submitted is quite draconian, and there are better alternatives to encourage asylum-seekers to come forward sooner. Now that asylees are allowed some of the same benefits of refugees—including cash assistance, English lessons, and job training—it would seem much more humane and rationale to simply deny asylees these benefits if they already have been settled in the United States for more than a year before they are granted protection. Certainly, an individual that has been in the United States for more than a year is in less need of this type of assistance than a newly arrived refugee. In addition, this would allow the United States to recover some of its humanitarian leadership and principles by recommitting itself to the protection of refugees. Of course, the real solution is for Congress—as part of CIR legislation—to recommit the United States to protecting refugees and ending this misguided experiment with arbitrary deadlines. ILT

Jeffrey Martins is a former asylum officer in San Francisco and has been in private practice specializing in asylum and refugee issues since 2001.

Notes

[1] ABA, Report to the House of Delegates (Feb. 2006); United Nations High Commissioner for Refugees, The Scope and Content of the Principle of *Nonrefoulement*, Opinion (June 20, 2001).

/ by Alan Goldfarb, David Ross Rosenfeld, and Reid Trautz

The Importance of Being Confidential

ANY LEAK OF CONFIDENTIAL INFORMATION by legal staff regarding a client could ruin a lawyer's reputation—resulting in the loss of all clientele and any future business. In simple terms, such a breach can cause the lawyer to lose his or her livelihood. Law firm employees must understand that all information concerning clients—whether written or unwritten—coming to the employees' attention while in the course of their employment must be treated with utmost confidentiality. The information cannot be shared with anyone outside the firm, and cautiously within the firm.

Communication Policies

American Bar Association Ethics Opinion 99–413 instructs that lawyers must use their best efforts to keep information confidential when communicating with clients and others. Create written policies for communicating with clients and other business contacts, as well as acceptable use for non-business use by employees.

E-mail Address Books

Create a policy that no e-mail is to be sent without first checking the proper address. Turn off the auto-fill features, as they make users lazy. Make sure each client's e-mail listing in your computer includes the client's full name to ensure proper client identification; do not just have the e-mail address, *e.g., JB007@aol.com*.

Encryption

Most jurisdictions do not require use of encryption software when sending and receiving e-mail. However, many jurisdictions support the concept that "as to any confidential communication, the sensitivity of the contents of the communication or the circumstances of the transmission may, in specific circumstances, dictate higher levels of security." Thus, encryption software may be required in some matters. The challenge—as in so many ethical areas—is to recognize those extraordinary situations and exercise sound judgment in relation to them.

Security Software

Use anti-virus protection to protect your systems and subscribe to software updates. When using a spam filter, always remember to check your spam folder for important e-mails. Also, frequently back-up computer data to protect e-mails and other client information. It is vital to use firewall protection to make sure no hackers get into your files.

Inadvertent Disclosure

Across the board, "most ethics panels agree on one point: A lawyer who receives inadvertently transmitted confidential documents from the opposing lawyer has a duty to notify the opposing lawyer promptly." *See* Virginia Legal Ethics Opinion (LEO) No. 1702 (1997) at 6. It states:

> It is the committee's opinion that the conclusion reached in ABA formal opinion 92–368 correctly states the ethical duties of a lawyer who receives inadvertently transmitted confidential documents from opposing counsel or opposing counsel's client. Those ethical duties foster the bedrock ethical principle of safeguarding client confidences and secrets. (See LEO No. 1643). Just as a lawyer may not take and use documents from opposing counsel's briefcase inadvertently left behind (see LEO No. 651), it is not ethically permissible for a lawyer to keep and use documents inadvertently transmitted to him by opposing counsel … safeguarding client confidences and secrets is a categorical imperative that should not hinge on someone pushing the wrong number on a facsimile machine, or putting documents in the wrong envelope. *Id.* at 9.

The rules of evidence do not, however, displace ethical standards governing lawyers. See *Gunter v. Virginia State Bar*, 238 Va. 617, 621 (1989), rejecting the argument "if it's legal, it's ethical," as far too restrictive under the Code of Professional Responsibility:

> The lowest common denominator, binding lawyers and laymen alike, is the statute and common law. A higher standard is imposed on lawyers by the Code of Professional Responsibility … We emphasize that more is required of lawyers than mere compliance with the minimum requirements of that standard. The traditions of professionalism at the bar embody a level of fairness, candor, and courtesy higher than the minimum requirements of the Code of Professional Responsibility. *(See* LEO No. 651*).*

Boilerplate notices on fax cover pages do not necessarily put the receiving lawyer on notice of an inadvertent transmission. Hence, a rule prohibiting the receiving lawyer from reading an inadvertently transmitted document would violate reality. Even so, once the receiving lawyer discovers that he or she has a confidential document inadvertently transmitted by opposing counsel or opposing counsel's client, that lawyer has an ethical duty to notify opposing counsel, to honor opposing counsel's instructions about disposition of the document, and to not use the document in contravention of opposing counsel's instructions.

Use of Disclaimers

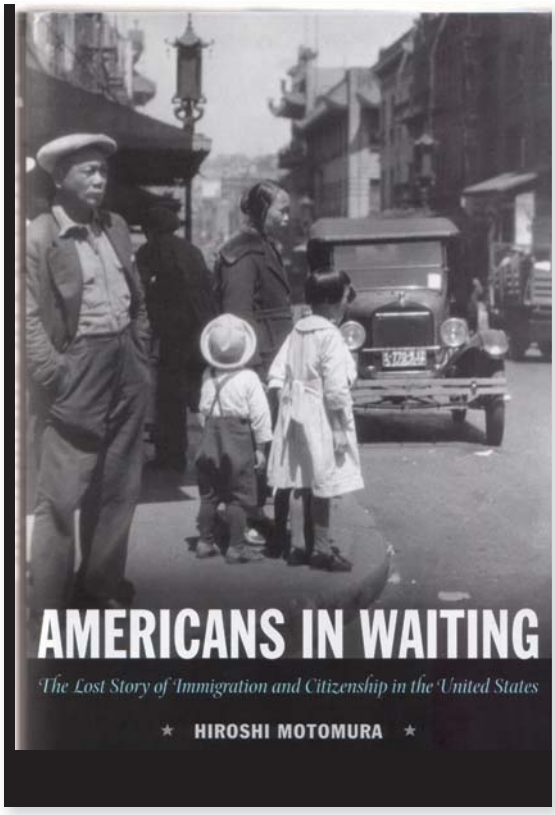
Although some question their real value, consider adding a privacy statement to the *beginning* of each e-mail so it is the first thing a reader sees. Use the automatic signature function of Outlook and many other e-mail applications to include a disclaimer such as: "This message contains information that may be privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY." Client-attorney confidentiality is forever—even after the employment relationship ends. Therefore, it is incumbent upon firm lawyers to instruct staff about confidentiality, and to refresh that lesson periodically. Requiring employees and contractors to sign a confidentiality pledge or agreement will place staff on notice that having written communication policies in place is a smart idea in the fast-paced world in which attorneys practice. Confidentiality must be strictly observed, or the result will not only be injurious to the client, but may subject the firm lawyers to possible disciplinary action for breach of the Rules of Professional Conduct. ILT

Alan Goldfarb is a named partner at Davis & Goldfarb, PLLC in Minneapolis and a member of AILA's DHS/CIS Ombudsman Liaison Committee; **David Ross Rosenfeld** practices in Alexandria, VA; and **Reid Trautz** is director of AILA's Practice and Professionalism Center.

Americans in Waiting—Crossing the Threshold to Citizenship

ARE IMMIGRANTS TO THIS COUNTRY EXPECTED TO BECOME U.S. CITIZENS and integrate into mainstream society, or should they return to their home country if they do not choose the path to citizenship? These questions become even more complicated as the right to deport is relatively broad while the right to deny admission into this country is even broader. *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (Oxford University Press; $29.95, paperback) tackles the task of dissecting the U.S. Supreme Court's interpretation of immigration laws for more than two centuries, and compares how noncitizens have been treated from one era to the next. The book stresses the fact that in order to gain an understanding of this country's present and future handling of immigration issues, one must understand the evolution of U.S. immigration law.

In *Americans in Waiting*, Professor Hiroshi Motomura combines his great knowledge of immigration law and history with individual stories to bring the book's major themes to life. His own life story gives the book a personal touch from the very first page. Even though Motomura grew up in the United States and felt more "American" than his traditionally Japanese father, he did not gain legal status here until he was 15 years old. In contrast, Motomura's father was a U.S. citizen by birth, but moved back to Japan shortly after. Growing up, the noncitizen Motomura was linguistically and culturally American, while his U.S. citizen father was not. He surmises, "My family history shows that the law makes distinctions of various kinds, most prominently by drawing a line between citizens and noncitizens, but that this line between 'us' and 'them' often does not match up with the ways in which families come to this country."



Three Models of Treating Noncitizens

The author describes three models for becoming an American: immigration as transition; immigration as contract; and immigration as affiliation.

Immigration as Transition

In colonial times, the first model of "immigration as transition" was used, as new immigrants were presumed to be "Americans-in-waiting" because they eventually would become U.S. citizens. In fact, until the early 1900s, most jurisdictions treated noncitizens very much like citizens, even allowing noncitizens to vote. There were penalties for not applying for citizenship within a certain period of time. This still has vestiges in current law, as permanent residents or asylees may lose some anti-discrimination protection under the Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603, 100 Stat. 3359) if they do not apply to naturalize when they are eligible.

An interesting twist on this model came with the 1848 Treaty of Guadeloupe-Hidalgo under which the United States paid $15 million to buy what is now California, Utah, Nevada, and Texas (plus parts of six other states) from Mexico. According to the treaty, the 60,000 Mexican nationals who did not leave by 1849 automatically became U.S. citizens. The Mexicans were the first large group of non-European settlers who were treated as Americans-in-waiting. Later immigrants from Asia, Latin America, and Africa would not benefit from the same presumption.

Immigration as Contract

A second model that evolved later is "immigration as contract," under which people were allowed to remain in the United States as long as they stayed out of trouble, but their stay was not expected to be →

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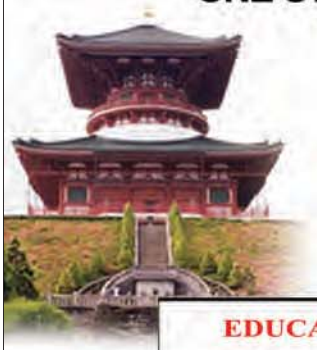

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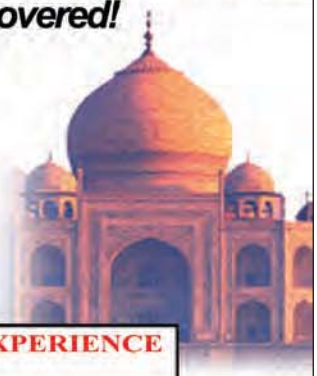

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permanent. This predominated in the late 1880s, with much of the regulation passed by individual states.

President Bill Clinton once exclaimed that "when immigrants come to America… they have to promise that they won't try to get on welfare and they won't take any public money." This is a classical statement of immigration as contract—newcomers are not considered Americans-in-waiting, or in transition, on their way to being accorded the same status as native-born citizens. Rather, new immigrants enter the United States as part of a contract to benefit the United States but not take from it.

Immigration as Affiliation

The final model is "immigration as affiliation"—the treatment of noncitizens should depend on the level of ties they have developed in this country. For example, in this year's immigration debate in Congress, many legislators argued that undocumented aliens must learn English before legalization. In the 1960s, the Supreme Court rejected some state laws limiting benefits to noncitizens and keeping them from being attorneys. The states had argued a special "public interest" in protecting its citizens. However, the Court found that noncitizens contribute to the economic well-being of the state, pay taxes, can be called to military service, and therefore, deserve the benefits of citizenship.

From State to Federal Immigration Enforcement

Immigration lawyers often surmise that they can represent clients in other states because immigration is federal law. However, the U.S. Constitution did not grant specific power to regulate immigration—it only states that Congress should "establish a uniform Rule of Naturalization." Why did the framers not mention immigration specifically? Motomura speculates that "immigration was a part of daily life … the national government's power to allow or limit the arrival of newcomers may have seemed so basic … that the founding document did not need to mention it."

Until the mid-1800s, most immigration regulations were at the state level, and then the Supreme Court in 1849 started to strike down state laws based on the Commerce Clause. The shift reflected the federal government's new role during the Civil War. National citizenship started to be as meaningful as state citizenship, and the Supreme Court began to develop the federal plenary power doctrine. Also, immigration policy became considerably less complicated with the end of slavery (before the Chinese Exclusion Act), as uniform rules could be used for all newcomers.

The growth of federal bureaucracy soon followed the increasing number of federal laws. In 1890, the federal government began to revoke its contracts with various states to inspect incoming aliens, and created a federal superintendent of immigration in the U.S. Treasury Department. This led to the implementation of formal federal processing stations at leading ports, such as Ellis Island. The courts provided great deference to the decisions of these new officials. In one case involving a young Japanese woman seeking entry, the Supreme Court wrote that "the decisions of

executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."

Regulating Borders

From the beginning of immigration rules, there were the challenges of regulating entry and identifying people while still keeping ports of entry moving. For example, the Chinese Exclusion Act required immigration officers at the ports to identify people based on information on certificates they carried, including "physical marks or peculiarities," and detailed measurements of "numerous body parts." Yet, despite specific efforts to keep out Chinese and Japanese citizens, the United States did little to control the borders until the mid-20th century.

The most important part of identifying people is figuring out who are the really bad apples. Over time, the focus has shifted from anarchists to subversives, then to communists, and most recently to terrorists. Exclusion and deportation began in earnest in the late 1800s as American business interests feared eastern European and Mediterranean political agitators. Motomura describes the 1918 case of Russian-Jewish anarchist Jacob Abrams. The Supreme Court upheld his arrest and deportation for distributing anti-war and pro-labor leaflets in English and Yiddish.

The Immigration and Nationality Act of 1952 (Pub. L. No. 82-414, 66 Stat. 163) retained much of the federal government's plenary power for ideological exclusion and deportation (although the goal then was to fight communism rather than anarchists). In one provision, refusal to testify about subversive activity within 10 years of naturalization was ground for revocation of U.S. citizenship. Today, the same issues are played out in the war against terrorism.

The Next Wave of Americans-in-Waiting

Motomura concludes Americans in Waiting by stressing that immigration as contract and immigration as affiliation are important paradigms to understand current law, but do not lead to a solution to the broken immigration system. Only going back to the first model of immigration as transition—the lost story of Americans-in-waiting—leads to a workable strategy.

It remains to be seen whether immigration as transition can make a comeback. At the "Jim Lehrer News Hour" on PBS earlier this year, an anti-immigration spokeswoman was asked whether it was practical to consider deporting 12 million people. She explained that to the restrictionists, this is a war of attrition. By gradually making it less pleasant for noncitizens to be here and incrementally tightening the border, the undocumented will leave and fewer will come. In this author's opinion, only time will tell if the next major immigration reform can adopt an idea of Americans-in-waiting, granting a future to those who are here and those yet to come. ILT

Dan H. Berger is a named partner at Curran & Berger in Northampton, MA, and chair of the American Immigration Lawyers Association Board of Publications.

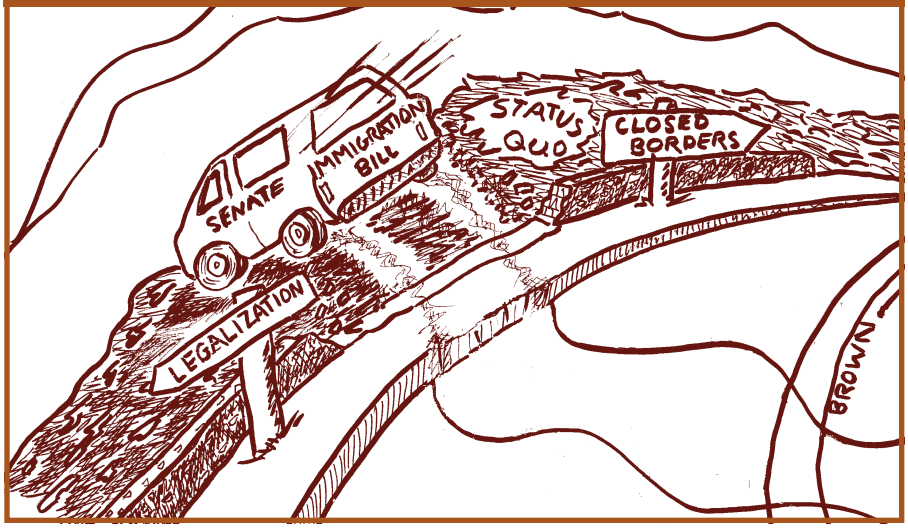
AILA's Atlanta Advocates Fight for Justice at the State Level

THE SUSTAINED ABSENCE OF COMPREHENSIVE immigration reform (CIR) legislation at the federal level has precipitated a prominent shift of the immigration debate from the nation's capital to state capitals and local municipal halls. Earlier this year, the National Conference of State Legislatures documented a two-fold increase in both the number of introduced and enacted state immigration-related measures between 2006 and the summer of 2007 (*see www.ncsl.org/programs/immig/2007immigrationupdate.htm*). Experts predict, "The country is on the verge of having 50 different state policies on immigration and immigrants, with numerous additional ordinances being enacted at the county and municipal level." (*See* National Immigration Forum, "50 States Policies on Immigration: Progress or Patchwork? at *http://immigrationforum.org*).

Anti-Immigrant Legislation in Georgia

While some of the initiatives seek to protect the rights of immigrants and their families, the overwhelming majority are aimed at restricting immigrants' access to employment, health care, driver's licenses, housing, and education. Some state legislatures have debated bills that deal with each issue separately, while others bundle several issues into one piece of legislation. One such legislation is the Georgia Security and Immigration Compliance Act (SB 529), which was passed in April 2006, and includes provisions that deal with the hiring of undocumented immigrants, use of public benefits, a human trafficking section, and unauthorized immigration services (*see www.galeo.org*). SB 529 is considered "the most comprehensive bill targeting immigrants in 2006, although even the bill that passed was less restrictive than the version that was introduced." (*See* AILA InfoNet Doc. No. 07020265).

JAN BROWN



From its introduction, SB 529 engendered emotionally charged arguments from the southern tip of Georgia up to the Tennessee border. Proponents of the bill defended the need for strict sate legislation because of the perceived threats and costs to communities caused by undocumented immigrants. They espoused that immigrants steal local jobs, promote criminal behavior, take advantage of public benefits, and are an overall burden on the economy. Their sentiments were echoed recently when a Virginia councilman proclaimed, "Left unchecked, illegal immigration will almost certainly put our county on a downward spiral, similar to the patterns to be found in the Third World countries these illegal immigrants left." (*See* J. Stirrup, "Reclaiming Our County," *The Washington Post*, July 15, 2007).

Advocating for Justice

Georgia's immigration advocacy community formed the Coalition for a New Georgia and mobilized around a strategy to educate the public and policy-makers about the true implications of SB 529, and dispel the popular myths about undocumented immigrants. The advocates hosted rallies for the community, teach-ins for student leaders, panels for attorneys, education sessions for advocates, and designated days to contact and visit with state lawmakers. Headed by the director of the Georgia Association of Latino Elected Officials, the coalition comprises representatives from 30 local advocacy groups, including AILA's Atlanta Chapter.

AILA contributes to the coalition by sending at least one member to attend every meeting, which—depending on the state activity—ranges from every month to every two or six weeks. By downloading information from the state and local pages on InfoNet, the Atlanta Chapter has been able to provide coalition members with relevant

In a conservative state like Georgia—where the successes can be few and far between—burn-out rate is high, so it is especially important to have a good leader who can channel that energy into productivity.

analysis and talking points that have proved invaluable in collaborative advocacy efforts. Together with other coalition members and the advocacy community, several AILA members attended a state CIR rally, while others have participated in state lobby days and met with legislators in the state capitol building and local districts. The advocates reached a broad audience as these events received positive coverage by the media.

While SB 529 was eventually enacted, the advocacy community successfully hollowed out the most restrictive measures in the bill. This small but significant victory has empowered the coalition to continue with educating employers, health care officials, and other members of the community about the impact of the new law and its ramifications on society.

Atlanta Chapter Advocates

In addition to their work in the coalition, AILA members have used the "AILA's Immigration Allies" document on InfoNet to initiate a relationship with the Service Employees International Union and foster its long-standing relationships with many other local groups, including: (1) the African Human Rights Coalition; (2) American Jewish Committee, Atlanta Chapter; (3) Atlanta Jobs for Justice; (4) Cobb/Cherokee Immigrant Alliance; (5) Health Professionals for a Healthy Georgia; and (6) the Mexican American Legal Defense and Educational Fund. The Atlanta Chapter also is eagerly working to build new relationships with the Atlanta Chamber of Commerce.

Chapter outreach initiatives have included seminars and workshops →

for state law enforcement agencies as well as meetings with Georgia's U.S. senators in their district offices. In each instance, AILA members were able to take advantage of the materials and sample Power Point presentations that are posted on InfoNet.

To help encourage newer members to participate in advocacy efforts, chapter leaders invited staff from AILA National to present a media and advocacy training in Atlanta. The training consisted of a broad overview of the current political landscape, a presentation about the important role that AILA attorneys play in the immigration social movement, and an interactive discussion about working with the media. As a result, many training participants have become more fluent in the language of advocacy and comfortable working with the press.

Ameliorating Winning Strategy

Engaging busy AILA attorneys is not an easy task, but the Atlanta Chapter continues to work with its members to get involved in the CIR debate at the state level. Leaders from the coalition speak at chapter events and have expressed their appreciation for the Atlanta Chapter's enthusiasm as grassroots advocates. In a conservative state like Georgia—where the successes can be few and far between—burn-out rate is high, so it is especially important to have a good leader who can channel that energy into productivity. Thus, the Atlanta Chapter strives to elect strong leaders who are tireless and

resilient in advocating for immigrants' rights. The chapter also promotes a personal touch to sustain active participation among the members. Members are encouraged to participate in phone trees, since a personal phone call goes a long way toward reaching someone than a steady stream of e-mails. ILT

Aimee Clark Todd is an associate in Powell Goldstein LLP's Atlanta office, and **Jenny Levy** is the AILA National grassroots advocacy manager.

Fighting Anti-Immigrant Legislation in Your State

- Search for immigration-related legislation in your state on InfoNet at *www.aila.org/state*.
- Look for immigration advocacy groups that are doing work in your state at *www.aila.org/state*.
- Review the collection of tools, fact sheets, issue analysis, and links that are relevant to the legislation in your state at *www.aila.org/state*.
- Contact AILA Manager of Grassroots Advocacy Jenny Levy at *jlevy@aila.org* or (202) 216-2407 with questions about state and local advocacy.

The Quest for Intercountry Adoption

A Somber Reality Against Unification

"IF ONE IS WILLING TO LIVE WITH AN OPEN HEART AND MIND, mixed with a little bit of adventure, sometimes it is amazing and wonderful what can happen as experienced." These are the words that Dr. and Mrs. Reynolds have lived by their entire lives. Now in their 60s, and living in the Bible belt of the United States, they are faced with a different and more sobering reality with U.S. Citizenship and Immigration Services (USCIS) in their attempt to adopt a severely disabled Honduran boy. The Reynolds's reality of hope and possibilities has met USCIS's reality roadblock of no exceptions.

L–R: Shirley Reynolds, Carlos, and Donald Reynolds pictured here with Rep. Zach Wamp (center), who was instrumental in bringing Carlos to the United States for treatment.

Adopting Baby Carlos

Donald and Shirley Reynolds' quest began in 1987 with the birth of a baby boy in Honduras. Baby Carlos immediately suffered from frequent seizures, numerous physical and mental disabilities, and multiple deformities resulting from fetal alcohol syndrome. His parents were unable to care for the severely disabled boy and abandoned him. Carlos was shuffled from one orphanage to another from 1987 to 1994 because many in Honduras did not want the time-consuming responsibility of caring for him.

Around the same time, the Reynolds participated in their first mission trip to Honduras, which was sponsored by the Red Bank Baptist Church in Chattanooga. From 1990 to 1996, the Reynolds made about 10 mission trips to Honduras. In 1996, they brought Christian ministry and dental assistance to 138 orphans at Orphanage Emmanuel, where they met Carlos for the first time. The director of Orphanage Emmanuel told the Reynolds that Carlos would not live beyond his 12th birthday. Carlos suffered from a progressive myelopathy secondary foramen magnum stenosis (congenital skull-base deformity), and required extensive and immediate multiple surgeries including spinal surgery, orthodontia, mouth surgery, and medical treatment for epilepsy.

The Reynolds took many mission trips to Orphanage Emmanuel between 1996 and 1999 and became Carlos's spiritual and physical caretakers. By 1999, they knew in their hearts that he would not live into his teenage years if they did not take him to the United States and care for him as parents. Therefore, the Reynolds decided to adopt Carlos with the intent of keeping him alive as long as possible with the assistance of medicine, their love and financial means, and deep faith in God.

Coming to America

By March 1999, Carlos had entered the United States and was immediately evaluated by physicians specializing in pediatrics, genetics, pediatric ophthalmology, pediatric neurology, orthopedics, craniofacial, and neurosurgery. Carlos was found to be suffering from a compression of the spinal cord at the foramen magnum and, if left untreated, it would result in his becoming a quadriplegic and imminent death.

Carlos's first surgery took place on July 2, 1999. Directly after the surgery, he developed a respiratory problem, had a tracheotomy tube inserted, and experienced three strokes. He became completely paralyzed and was confined to a wheelchair. Between July 2, 1999 and August 15, 1999, Carlos was in intensive care at a children's hospital and was later moved to a rehabilitation hospital. Soon after, he became an out-patient and attended rehabilitation sessions three times a week. Overall, the Reynolds paid medical charges that totaled hundreds of thousands of dollars. The cost for one of the hospitals alone was $74,255. But every penny spent was worth the sacrifice when Carlos returned to Orphanage Emmanuel in February 2000 as a relatively healthy boy wearing leg braces.

The Reynolds brought Carlos back to the United States in June 2000 for follow-up medical evaluations, treatments, and surgeries. Throughout the rest of the year, Carlos underwent many follow-up surgeries to help stop the never-ending numbing, physical pain he experienced on a daily basis.

Family Unity

Through the assistance of U.S. Rep. Zach Wamp's (R-TN) office, Carlos received B-1 medical visas and advance parole travel documents to enter the United States for the surgeries and all other progressive medical treatment received during these periods. Therefore, with the knowledge that Carlos could die any day at any moment, the Reynolds tried to create a sense of normalcy for him, which took place whenever he was healthy enough to leave the hospital.

Presently, Carlos's daily schedule consists of eating breakfast with the Reynolds around 6:30 am, studying with a tutor from 8:00 am to 4:00 pm at Temple Academy, and hanging out with friends until the Reynolds complete their work at their dental office. "The daily schedule is enjoyable and simple, and does not show the battle Carlos has fought to live—that is, unless he wants to show you his scars!" said Shirley Reynolds.

The Reynolds acknowledge the daily possibility of death and the fact that Carlos "still has his seizure disorder, speech impediment, can't read even though he goes to private school, and by some, would be considered illiterate," added Reynolds. "But he is no dummy and constantly amazes us; and best of all, he is full of life!"

USCIS Interference

For purposes of adoption under Immigration and Nationality Act §101(b)(1)(F), the term "child" means an unmarried person under 21 years old who is:

> A child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen →

The daily schedule is enjoyable and simple, and does not show the battle Carlos has fought to live—that is, unless he wants to show you his scars!
—Shirley Reynolds

and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: Provided, [t]hat the [a]ttorney [g]eneral is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, [t]hat no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

USCIS issued Carlos an Authorization for Parole of an Alien into the United States that was valid from February 2004–March 2006. Carlos's last entry into the United States was in January 2006, and he was paroled as an adjustment of status (AOS) applicant with a parole date of January 3, 2007. The remarks section of the Authorization for Parole states:

> AUTHORIZATION: The holder of this authorization is an applicant for adjustment of status under the Immigration and Nationality Act. The holder departed the United States temporarily and intends to return to the U.S. to resume processing of the adjustment of status application. Contingent upon his or her prima facie eligibility, the holder of this document shall be paroled into the U.S.

USCIS classified Carlos as an AOS applicant even though he became the adopted son of the Reynolds on July 16, 2000, (at 19 years old), and the Reynolds did not file Forms I-130 and I-485 until the beginning of August 2006. On October 2, 2006, a Notice of Decision from USCIS denied the Form I-130, declaring that Carlos cannot be classified as the adopted child of the Reynolds for immigration purposes. USCIS further explained that it does not recognize nunc pro tunc adoptions.

The author's firm filed a Form EOIR-29 on November 13, 2006, and despite several case update requests, USCIS has made no further notification of action on the case. The EOIR-29 simply sits at a USCIS office

along with its arguments of allowing exceptions for humanitarian purposes, fact-based good faith exceptions for bona fide adoptions, and for the fact that Congress in 1957 simply desired to promote and protect bona fide adoptions in which a child has been made a part of a family unit.

What More Can Be Done?

A possible happy ending to this story would be that USCIS would open its ears and listen to the sad reality that some people simply do not have the luxury to logically think of and plan for every rule and regulation. Sometimes people must devote their entire energies to keeping a baby boy alive, and that these very actions speak volumes of a true family unit. Perhaps if the Reynolds had devoted more time to following all immigration regulations and policies →

Carlos undergoes a typical, grueling rehabilitation session at Siskins.

CHAVEZ WORLD

and less time to keeping Carlos alive, then Carlos may not have reached his 20th birthday like he did on June 20, 2007.

Another possible ending to a story like this is the advocacy of a private bill that is an individual, discretionary exception to the general law. A private bill allows for an individual to seek assistance from a member of Congress to enable an applicant to obtain permanent residency under reasonable exceptions, especially on behalf of adopted children. The primary purpose of this type of bill is to correct an injustice that cannot be remedied under existing public laws, and eventually make dreams come true—starting with the Reynolds's quest for family unity. ILT

Terrence Olsen is a partner in the Olsen Law Firm in Chattanooga.

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Honors and Appointments

■ **The State Bar of Texas** awarded **John Nechman** the **2007 Judge Norman W. Black Award** for his work on behalf of immigrants.

■ **Susan S. Im** has been appointed for a two-year term as president of the **Asian Professionals Organization of West Michigan**, effective July 2007.

■ **Lisa Laurel Weinberg** was the grand prize winner of the second annual **"Be the Change"** award, presented by the **Massachusetts Conference for Women** to a Massachusetts woman who personifies compassion for her community and commitment to improving the lives of those around her.

On the Move

■ **Carl Falstrom** has joined **McGlinchey Stafford PLLC**'s New Orleans office as of counsel, practicing in the firm's labor and employment section.

■ **Stone & Grzegorek LLP** in Los Angeles is pleased to announce that **Elsie Hui Arias** has joined the law firm.

■ **Frederick W. Hong Law Offices** welcomes **Jackie Nyhart**, former consular associate at the U.S. embassies in Laos and Philippines, in the firm's Beijing office.

■ **Maggio & Kattar, P.C. of Washington, D.C.**, welcomes its newest associate attorney, **Haesung Han**. Haesung has experience managing a wide range of immigration issues, from family-based petitions to meeting the immigration needs for large German conglomerates.

Announcements

■ **Elizabeth R. Blandon, P.A.** in Broward County, FL, celebrates its fifth anniversary by opening a satellite office in Miami-Dade County.

■ **Law Office of Maria Aguila, P.L.** in Jacksonville has moved offices to 3955 Riverside Ave., Suite 2F, Jacksonville, FL.

■ **Frederick W. Hong Law Offices** has moved its Beijing office to Majestic Towers No. 18 Gongti Donglu, Bldg. 1, Suite 11-D, Chaoyang District, Beijing, China.

■ Englewood, NJ, **Mayor Michael Wildes** was a panelist with the **New Jersey State Law Enforcement Asian-American Association** at a regional conference on U.S. immigration law affecting New Jersey municipalities.

■ **John L. Pinnix** wrote the foreword and commentary on and was a speaker at the ***Campbell Law Review*'s** symposium entitled **"Immigration Law: A Practical Guide for North Carolina Practitioners"** that took place at The Cardinal Club in Raleigh.

Author, Author

■ Husband-and-wife immigrants' rights activists **Michele Pistone** and John J. Hoeffner co-authored ***Stepping out of the Brain Drain: Applying Catholic Social Teaching in a New Era of Migration*** (Lexington Books 2007)—which adopts a less critical view of "brain drain" and brings focus to a traditionally maligned and largely ignored aspect of the current immigration debate.

■ **Maria Isabel Casablanca** and **Gloria Roa Bodin** are pleased to announce the recently published ***Immigration Law for Paralegals*, 2nd Ed.** (Carolina Academic Press 2007).

New Parents

Gary Chodorow is the proud father of **Jacob**, born August 6, 2007, in Shenyang, China, and weighing in at 3.8 kg.

In Memoriam

Family and colleagues mourn the untimely passing of **Levan Wingate** on May 29, 2007, who was a longtime AILA member before working for the South Carolina Employment Security Commission.

Michael E. McKenzie, beloved friend and mentor to many AILA members for more than 30 years, passed away on July 4, 2007. He will be remembered for his great Irish humor and the wealth of legal knowledge that he generously shared.

Calling All Writers!

The skill of writing is to create a context in which other people can think.
—Edwin Schlossberg

Are you interested in writing for AILA's *Immigration Law Today*, the premiere journal serving the immigration law field? We're always in need of well-written, quality articles on matters of interest to the immigration bar. Our team of experienced legal editors can help you shape your ideas and present them in a way that will engage the reader and provide valuable insight and advice to our audience of experienced practitioners. For more information, contact us to discuss your ideas and deadlines for submissions at *ILT@aila.org*.

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