

HIAS POLICY RESOLUTION

Restoration of Due Process Protection for Immigrants

At the core of the work of the Hebrew Immigrant Aid Society (HIAS) over its 124-year history is a commitment to insuring that refugees and immigrants receive fair treatment when seeking to begin a new life in the United States. Based on this belief, in 1904 HIAS began stationing staff on Ellis Island to help immigrants facing deportation. Today, HIAS attorneys and other advocates continue to defend the rights of asylum seekers and immigrants before the Department of Homeland Security and in the courts. But even with the best assistance, if the underlying law is not just, immigrants cannot receive justice.

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

IIRIRA and AEDPA require the detention and deportation of LPRs who have committed only the most minor of crimes – such as shoplifting. While HIAS recognizes that immigration enforcement is of primary importance to our national security, laws that mandate the detention and removal of immigrants who were never sent to prison, or who have paid their debt to society and have since been rehabilitated and are contributing to their local communities and the nation, are not justified and create extreme hardship to American families. In some cases immigrants continue to face extended or even indefinite detention notwithstanding rulings by the Supreme Court.

These harsh laws include provisions that have removed immigration judges' discretion to balance the severity of the offense with humanitarian factors that would justify release from detention or waiver of deportation. They also



severely limit an immigrant’s ability to seek protection from the courts through judicial review, a basic protection of individuals from unconstitutional government action. More recently, the REAL ID Act, enacted in May 2005, has placed additional significant restrictions on judicial review.

HIAS is particularly concerned about the impact of these due process changes on refugee communities. For example, a refugee who arrived in the United States as a young child but has not yet become a citizen may be returned to a country that he or she may not know or even speak the language, solely because of a single mistake made as a youth. America should offer these refugees a second chance and not send them back to the country from which they, as children, fled persecution.

HIAS opposed the 1996 changes to the law because they violate American principles of fairness and due process. They divide families, many of which include U.S. citizens, and fail to provide a fair process that can make distinctions between immigrants who are a threat to society and those who, while having made mistakes in the past, should be allowed to remain with their families and contribute to their communities.

HIAS is also troubled by “streamlining” regulations in effect since September 2002 that permit a single member of the Board of Immigration Appeals to, without opinion, affirm the decision of an immigration adjudicator. These new review procedures deny immigrants a chance for meaningful review of their cases and compromise the integrity and transparency of the appeals process.

HIAS recognizes that the events of September 11th have forced the U.S. to take a hard look at any laws or policies that could make the United States vulnerable to terrorism. HIAS agrees with such a process. At the same time, however, HIAS is deeply concerned by efforts by anti-immigrant activists and “restrictionist” members of Congress to conflate immigration with terrorism in order to achieve their goal of closing America’s doors to newcomers. Immigrants that have resided in the United States legally for many years, who have worked in and for this country, and who make up an essential part of millions of American families, should be treated fairly. All aspects of their lives – both the good and the bad – should be fully

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considered by an impartial adjudicator before a decision is made on whether they will be deported or deserve a second chance in the United States.

RESOLUTIONS

HIAS regrets that Congress has not enacted legislation to ensure that immigrants receive fair treatment. HIAS supports legislative efforts to restore balance and fairness to the immigration process. Many of the changes to the law made in 1996 should be reversed and the due process protections in the deportation and detention systems that existed prior to the passage of IIRIRA and AEDPA should be restored.

HIAS believes that immediate attention should be paid to the following policy concerns. A more reasonable definition of aggravated felony should be instituted to ensure that individuals who commit relatively minor crimes are not included in the definition. Long-time legal permanent residents should be permitted to present their cases to a judge to determine whether, based on the facts, they should be detained or released, and whether they should be removed or permitted to remain in the U.S. Judges should be provided with discretion to offer waivers of deportation when warranted by the equities of the case and humanitarian concerns.

Mandatory detention of LPRs should be ended, and individual bond hearings should be reinstated for immigrants in removal hearings. Additionally, although the Supreme Court has ruled that U.S. immigration law does not permit indefinite detention in most circumstances, indefinite detention continues and violates the basic tenets of due process. This practice should be ended immediately.

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

While HIAS endorses efforts to protect the United States against terrorism, HIAS opposes the use of "secret evidence" – confidential information that is not disclosed to the alien in immigration proceedings – except in those extraordinary cases where there are legitimate national security concerns. The circumstances where secret evidence should in principle not be used include, but are not limited to, proceedings: (1) to deport non-citizens; (2) to deny immigration benefits to non-citizens; (3) to consider the release of non-citizens on bond; and (4) to deny admission to returning lawful permanent residents, people who have been paroled into the United States, and asylum seekers. In cases where secret evidence is being used for national security reasons, the non-citizen and the court or the adjudicator should, at a minimum, be provided with an unclassified summary of the classified information, prepared in accordance with appropriate judicial standards and supervision, that preserves the individual's ability to confront the evidence and prepare a defense. HIAS calls on all interested parties to work together to produce acceptable legislation in this area.

To insure that immigrants' rights are protected, HIAS believes that the crucially important judicial review function must be retained. The Board of Immigration Appeals (BIA) "streamlining" regulations should be revisited and amended to ensure that each immigrant's case is carefully and thoughtfully reviewed and that each immigrant is provided with the reasoning underlying the BIA decision. While efficiency is an important goal, fairness and due process are always more important, particularly in cases where a person's liberty and entire future is at stake. Without these vital checks, government mistakes and discrimination will be undetected and undeterred.

As an organization that has long opposed the curtailment of due process rights in IIRIRA and AEDPA, HIAS believes that LPRs who are in proceedings or were deported under this unfair process should be given a second chance and should be permitted to apply for any protections restored by Congress.

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

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