



HIAS POLICY RESOLUTION

EFFECTIVE IMMIGRATION ENFORCEMENT: The Foundation for a Sound Immigration System

Approved by HIAS Board of Directors August 2, 2004

PREAMBLE

For over 123 years the Hebrew Immigrant Aid Society (HIAS), the American Jewish community's international migration agency, has advocated for a generous immigration system that honors America's tradition as a nation of immigrants and a protector of refugees. This policy position has developed from the Jewish community's religious teachings and ethical traditions of welcoming the stranger, and our history as a people of migration in response to persecution, intolerance, bigotry, and ethnic strife.

Essential to the creation of a well-functioning immigration system are the core principles of rule of law and effective immigration law enforcement. Only through a serious commitment to enforcement will the American people be assured that a compassionate policy towards immigrants, refugees and visitors – designed to serve our country's social and economic needs – can be implemented in a manner consistent with the security requirements of the United States. Ineffective immigration enforcement undermines America's confidence in our immigration system by creating an impression that dangerous terrorists or criminals from abroad can obtain admission and thereby threaten the United States.

All residents of the United States – regardless of their citizenship or immigration status – have important roles to play in keeping our country safe. Migrants, both temporary and permanent, have a civic and moral responsibility to protect the security of our society by reporting crimes, assisting law enforcement in anti-terrorism investigations, promoting public health, supporting education to foster the development of the U.S. economy, and ensuring the safety of public roadways.

In June 2003, HIAS endorsed a Policy Resolution calling for Comprehensive Immigration Reform, recognizing that this effort is a timely and important component of effective immigration enforcement and national security policy. By offering the current population of undocumented migrants an opportunity to earn legal status and by effectively regulating future flows of immigrant workers and family members, immigration enforcement officials will be able to best utilize scarce resources to focus on the most dangerous criminal and national security threats.

HIAS believes that paramount American and Jewish values of immigrant rights, civil liberties, pluralism, fair treatment and proportionate responses to legal infractions can and must coexist as essential components of U.S. immigration enforcement policy. Developing effective and balanced approaches to immigration enforcement is a crucial challenge confronting the American government and American society – particularly in light of the clear dangers of the post 9/11 world.

RESOLUTIONS

HIAS resolves to work closely with other organizations in the Jewish Community to advance balanced policies to protect the security needs and fundamental values of the Jewish Community and the United States, while promoting an effective and humane immigration system.

To ensure that our immigration enforcement system is true to America's fundamental principles and responsive to our security needs, HIAS resolves to strongly encourage the United States government to implement the following Immigration Enforcement Principles when developing programs to regulate visas, protect U.S. borders, and enforce our nation's immigration laws. Congress, the Administration, and the public should continuously review our nation's immigration enforcement policies and programs to ensure that our security and our civil liberties are being met to the greatest extent possible.

HIAS IMMIGRATION ENFORCEMENT PRINCIPLES ENFORCEMENT AUTHORITY PRINCIPLES

Immigration policy is an inherent and exclusive function of the U.S. Government that should be implemented by those federal agencies empowered to oversee and enforce our nation's immigration laws. The responsible federal agencies must be provided with sufficient financial, personnel, and technological resources to ensure they can fulfill their mission. Since immigration enforcement plays a vital role in protecting the United States from terrorist and criminal threats, as well as in defending the integrity of U.S. laws, this crucial function must not be undermined by a failure to seek and obtain appropriate funding for these purposes.

In the absence of Comprehensive Immigration Reform that would resolve the unfortunate reality of millions of undocumented migrants, federal, state, and local governments should develop policies that encourage foreign national residents to fulfill their essential role in enhancing national security and public safety. State and local law enforcement agencies are principally responsible for the protection of their residents from criminal activity and for the development of relationships with the diverse communities within their jurisdictions that are necessary to solve local crimes. Because such duties are so important, non-federal law enforcement officials should not be obligated to enforce violations of the civil immigration law – a complex and constantly changing field of federal law outside of the experience and training of local law enforcement. In accordance with current law, local law enforcement may continue to provide information to

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federal officials for use in federal immigration enforcement.

Consistent with current law, immigration enforcement is a civilian law enforcement function of the United States government that should not be delegated to the military.

BORDER AND VISA SECURITY PRINCIPLES

Enhanced intelligence from the CIA, FBI and other agencies is essential to focus all aspects of our national security agenda – including immigration enforcement – on individuals who pose security threats to our country. Without integrated and accurate national security “watch lists,” the Department of Homeland Security (DHS) and other government agencies cannot direct enforcement activities against the most threatening targets. Instead, they are likely to waste precious resources on efforts that are ineffective, unduly intrusive on the civil liberties of U.S. residents and visitors, and unnecessarily alienating to immigrant communities that could provide useful intelligence for anti-terrorist investigations.

Accurate, effective, and updated databases – accessible to the relevant security agencies – that contain information specifically related to prohibiting the admission of terrorists and those who would threaten the security interests of this country are important tools in the immigration enforcement arsenal. Mistakes based on erroneous or outdated information may occur, thereby subjecting innocent individuals to legal sanctions. To protect the liberty of all while acting to prevent terrorists from infiltrating the United States, effective means of redress – including timely assistance from Ombudsmen – should be provided for individuals who are incorrectly included on terrorism watch lists.

Screening programs intended to deny visas, initiate enhanced review or bar admission to individuals suspected of terrorism or links to terrorist organizations are legitimate components of U.S. immigration and national security policy. However, these programs must be undertaken in a manner that respects the dignity of the individual and must provide an effective means of redress for individuals incorrectly included on “No Fly lists” and other security-related databases maintained by the U.S. government.

Visa issuance procedures must take into account security concerns, but should not promote a “siege mentality” in U.S. Consulates. Instead, the Departments of State and Homeland Security should be guided by the reality that the overwhelming majority of immigrants and visitors to the United States seek admission for legitimate and important purposes, including protection, family reunification, study, business, and tourism. While recognizing the government’s legitimate need to scrutinize visa applications for national security purposes, policies should be developed that permit visas to be processed in a reasonable period of time.

INTERNAL ENFORCEMENT, NATIONAL SECURITY AND CIVIL LIBERTIES PRINCIPLES

Programs to register and track the admission of foreign visitors, students and others, when applied in a nationality-neutral manner – such as the US-VISIT and SEVIS programs – are appropriate elements of an immigration enforcement system. These programs should receive all necessary financial, personnel and technical resources needed to allow for the highest quality implementation, and should include a redress mechanism for individual aliens improperly identified as national security threats. With sufficient care and attention, security needs and traditional American immigration values can coexist.

Expansion of the National Crime Information Center (NCIC) database to include all civil immigration violations – and, at the same time, to be exempt from the Privacy Act’s accuracy, timeliness, completeness and relevance requirements – is cause for significant concern. The NCIC, which is crucial for identifying fugitives, missing persons, and dangerous criminals, risks being overwhelmed by millions of additional records that are not connected to any terrorist threat or criminal activity. These policy changes could also lead to the arrest of innocent individuals based on inaccurate immigration data. Instead, lawmakers should consider expanding the NCIC in specific terrorism-related ways, such as by including a unified terrorism watch list.

In cases where an alien is suspected of violating both immigration and criminal or terrorism laws, prolonged immigration detention should not be used as a substitute for a criminal or national security prosecution. While the government maintains the right to prosecute all violations of immigration law, use of immigration detention and removal as an alternative to criminal prosecution raises grave concerns that the U.S. Government will inappropriately and inaccurately link immigration to terrorism, prevent suspects from obtaining important protections granted criminal defendants, and support excessive governmental secrecy that threatens to restrict essential Congressional and public oversight of the Executive Branch of government.

Since detention involves a fundamental loss of liberty, aliens held in DHS custody should promptly receive notice of all charges against them, unless certified as engaging in espionage or terrorist acts by the Attorney General. Recent DHS guidance makes important progress towards this goal by establishing – except during “emergency and extraordinary conditions” – a general requirement that initial custody status and immigration charging decisions be made within 48 hours and that an official Notice to Appear be provided within 72 hours. Further steps should be taken to ensure that any alien being detained is charged as quickly as possible, and that an alien being held for more than

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48 hours be brought before an Immigration Judge within a reasonable period of time to review the government's decision to detain without charges.

Mandatory detention should be limited to terrorist or the most dangerous criminal cases. Aliens in violation of immigration laws should not face indefinite detention without a finding by an Immigration Judge, subject to judicial review, that the alien is a danger to the community or national security. Periodic review should be provided for these aliens to ensure that they be released from custody at the earliest possible time.

Elementary notions of due process, proportionality, and fairness must be recognized when considering the impact of previous criminal activity on immigration status. Access to waivers and relief from removal should be reinstated so that immigrants do not suffer grave penalties for minor offenses – often committed many years before when the crime had no immigration consequences. When developing legislation, regulations, or guidelines to penalize aliens who violate immigration laws – such as failure to notify the government of a new address or when the government becomes aware that an individual is out of status through their compliance with the NSEERS program – the punishment must be proportionate to the severity of the violation. Prosecutorial discretion should be exercised in such cases to ensure that justice is served.

The immigration court system should be a strong, effective, and independent body to provide a venue for the fair consideration of immigration cases and a forum to assess questions of immigration law, particularly in cases involving asylum or the incarceration of foreign nationals. Federal court jurisdiction to review immigration decisions should be restored.

The role of judges in reviewing administrative actions such as bond determinations, the right to counsel, and limitations on attorney-client privilege, and in ensuring that the United States government acts consistently with the core American values of openness, fairness and due process is of central importance. All detained aliens should receive an individualized bond hearing, and should be released unless they are found to be a flight risk or a danger to the community or national security.

Immigration hearings should not be subject to blanket closure policies, and should only be closed – in whole or in part – based on a demonstration to an Immigration Judge that the closure is necessary to protect either the privacy interests of the non-citizen or national security.

Post 9/11 anti-terrorism legislation, while containing many important national security policy improvements, includes certain provisions that should be revised to provide greater protection to individual liberty while not compromising U.S. security interests. These provisions include laws that permit DHS to deport an alien for aiding a terrorist organization, even if it is not officially designated as such by the government. In these cases, the government

should be required to demonstrate that the alien knew or should have known that they were aiding terrorist activities. Material assistance to designated terrorist organizations should remain grounds for removal without this further requirement. Additionally, to protect the freedom of speech of Lawful Permanent Residents returning from abroad, mere statements believed to be supportive of terrorist organizations should not be grounds for inadmissibility.

While in principle using classified information is an unacceptable curtailment of Constitutional due process protections, in the face of concerted terrorist threats there may be cases where classified information is necessary. Therefore, a policy should be developed on the use of classified information that allows the government to obtain court approval to utilize such evidence only when it is absolutely essential for national security or to protect a crucial source of information. In cases where a court permits its use, the defendant must be provided with as wide an array of due process protections as is possible, including a non-classified summary of the evidence sufficient to prepare a defense.

PRIVACY AND IDENTITY DOCUMENT PRINCIPLES

The enforcement of immigration laws involves difficult questions relating to the relationship between the necessity of the government to establish the alien's identity and an individual alien's privacy interests – including both control over their personal information and interference with their activities by government agencies. The government should take all possible steps to limit infringements on the privacy of the immigrant or non-immigrant applicant, particularly in the case of asylum seekers where the applicant's life may be at risk if the government of their home country becomes aware of their status. Among the approaches most likely to help reach this important balance is a vigorous use of Privacy and Civil Rights Officers, Ombudsmen, and Inspector General Offices throughout the U.S. government, a system most recently created for the new DHS.

The use of biometric data – such as fingerprints or other physical characteristics – has the potential to play a very important role in targeting immigration enforcement efforts against individuals who may represent a threat to the United States. As such, it can help avoid false negatives that endanger security during screenings, as well as false positives that bar legitimate immigrants and visitors from admission into the United States. Despite these benefits, the use of biometric identifiers also raises significant privacy concerns – such as the storage and security of biometric data – that must be taken into account when developing biometric screening programs.

As a matter of human dignity and an enhancement of security, all individuals, including undocumented migrants, should have access to documents to establish their identities. For many, the

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only possible form of identification is an identification card produced by the consulate of his or her country of citizenship. Such documents do not provide any immigration benefits or access to public assistance for which the migrant is not otherwise eligible. The acceptance of consular identification cards by financial institutions, local police departments and other agencies does not undermine U.S. immigration law enforcement. To ensure the greatest reliability of these documents, the United States government should work closely with other countries to develop procedures for consular identification cards, possibly including biometric identifiers. However, these procedures should not require countries issuing consular identification cards to disclose data about recipients of these documents to the U.S. authorities without an individualized determination that the person is the subject of a criminal or national security investigation.

Aliens wishing to do harm to America can misuse identification documents that may also be used for legitimate purposes. Policies that are aimed at preventing this abuse must have a significant impact on the problem and should be sensitive to concerns about civil liberties. Procedures that bar access to official forms of identification, but result in aliens obtaining easily available fraudulent documents, are counterproductive. Instead, greater emphasis should be placed on developing strategies to identify individual threats through enhanced intelligence activities and to produce and recognize secure documents for sensitive activities.

CONCLUSION

Effective immigration enforcement is of fundamental importance to the future of the American immigration system. The government's immigration enforcement officials must be provided with the needed tools – including sufficient financial and technical resources – to ensure that they are lawfully able to identify and punish threats while efficiently processing visas of arriving immigrants and visitors. Policy initiatives such as Comprehensive Immigration Reform, programs to engage immigrant and visitor communities in keeping the country secure, and research and development in technology to enhance immigrant and non-immigrant screening can play an important role in defending the United States from danger in the post-9/11 world.

Inherent in the success of U.S. immigration enforcement policy is a commitment to integrating American and Jewish values of welcoming immigrants, protecting refugees, defending civil liberties, promoting pluralism and ensuring just treatment of newcomers. While posing a daunting challenge, HIAS firmly believes that these values can be protected while creating effective and innovative programs to enforce U.S. immigration laws, process visas, screen entrants, remove immigration violators and defend the national security of the United States.