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## **Human Rights as a Factor in United States Immigration Policy**

Address by

**Leonel J. Castillo**

*Commissioner, Immigration and Naturalization Service*

A recent television special on the plight of undocumented aliens contained a short segment of an interview with a Mr. G. Castillo from Mexico. Mr. Castillo explained why he entered the United States without papers. In simple, clear terms he said he came because he had to feed his family.

For a few days after that program, I was teased, good-naturedly, about my "cousin."

There are many areas of American law which provide the opportunity to set an example before the world of our concern for human rights. Immigration law and policy are among these and have been the focus of considerable attention.

Our immigration policies also illustrate the difficulty of continuing our best traditions under new and changing conditions. The revision of these policies, while maintaining our traditional posture, tests the inherent tensions of the pragmatic humanism which President Carter espouses . . . and I strongly support.

Enforcement and application of the immigration laws pose some major questions for human rights advocates. For many people, no judicial or administrative decision could be of worse consequence than one which requires them to leave the United States or prevents them from entering.

I would like to discuss some of these questions and problems which have to be resolved and tell you of some of the actions the Immigration and Naturalization Service has taken which reflect our concern for human rights.

One of the more difficult situations we face is the issue of refugees. The Immigration and Nationality Act, which governs the admission of aliens to the United States, was drafted and passed in 1952 — an age when Americans considered Communism the greatest threat to our security and to world peace.

Many provisions in the Act reflect that thinking. Among them is a section which allows entry to the United States for persons fleeing from Communist-dominated or Middle Eastern countries because of persecution based on race, religion or political opinion.

However, there are no specific provisions for refugees from other types of tyranny, even though many countries are ruled by repressive governments. Political dissent may be an excuse for imprisonment by such governments, especially in the Latin American countries of Chile, Uruguay and Argentina. And refugees who have fled in fear of persecution are common throughout Latin America. Many have not found safe haven.

Because of the limitations in the immigration law, it has been difficult for the United States to assist these people. There have been two programs to enable Chileans to enter the United States, but the numbers have been restricted.

Those who have come to this country have been able to do so only under an emergency provision of the Immigration and Nationality Act. This is the parole provision which grants the Attorney General authority to allow people to enter temporarily for emergency reasons or reasons in the public interest.

This authority when applied to groups of persons rather than individuals is exercised only after consultation with the Senate and House Judiciary Committees.

There is some concern in Congress that this was not intended to apply to groups of people — only individuals — and legislation has been introduced to restrict the Attorney General's parole authority.

Consultation in the case of the Chileans to be paroled found little enthusiasm among the members of the Congressional committees; and there were strict limitations upon the program.

No U. S. Government funds were allowed to be used in relocating the refugees to the United States. This is in contrast to the Indochinese parole programs which have involved millions of dollars of U.S. funds.

Many refugees were inadmissible to the United States because of membership in the Communist Party . . . one of the restrictions under the law which could not be waived. Others had difficulty proving that they were subject to persecution and were rejected. As a result, it is probable that many political refugees remain in Latin America.

However, there is legislation pending which would change the U. S. legal definition of refugee to conform more closely to the United Nations Convention on the Status of Refugees, to which the United States is a signatory. This would allow consideration of political refugees from Latin America and some other countries on a group basis, rather than one at a time as must be done now.

One of the first problems I looked at after becoming Commissioner last spring was that of Haitian refugees who were fleeing to the United States from the oppression and poverty in their own country.

Were they economic refugees, ineligible to enter this country? Or were they, in fact, political refugees? If so, although they were not covered specifically by the law because they weren't fleeing from Communism, they might still remain if each could make a strong case that they faced persecution for political activities if returned to their country.

Over the past several years a large number of Haitians have arrived at our shores by boat. Most have requested political asylum. They have presented their asylum claims to an Immigration Service District Director; but most have been denied on the finding that they were economic refugees who had left home only because they could not find jobs.

INS has been faced with considerable litigation involving due-process challenges to the procedures followed by the District Directors in deciding the asylum requests. The Haitians sought full hearings before an Immigration Judge on their claims.

While court decisions were pending on this question, I reviewed the entire matter and came to the conclusion that the fairest and most efficient way to handle the asylum cases would be to allow the applicants to present their claims in evidentiary hearings before Immigration Judges.

This change in INS procedures grants the Haitians and others an opportunity to make a complete and detailed record of the merits of their asylum claims, and the hearing officer can consider every aspect of their request to remain in the United States.

Regulations implementing the new procedures are now being drafted. Those who would be affected by it may have their cases deferred until it becomes effective. Those who have already received decisions by the District Directors and wish to present their asylum claim before an Immigration Judge may reapply under the new procedures.

In addition, we released from jail 120 Haitian asylum applicants who were held while their claims were being decided; and we granted them permission to obtain jobs.

Further, we are ensuring that aliens seeking asylum are informed of their right to counsel and told about organizations offering free legal services.

Another immigration matter in which human rights played a strong role concerned Filipinos who had fought alongside U. S. troops in World War II . . . more than 30 years ago. Special legislation granted these veterans the right to become naturalized United States citizens.

However, the Immigration Service withdrew its naturalization personnel from the island before the legislation expired and before many persons had time to take advantage of this opportunity.

A few years ago a group of Filipinos pursued their claim to citizenship in a District Court in San Francisco. The court agreed that they had been denied the opportunity to naturalize and granted them citizenship.

The Government appealed and that case had been pending for many months. Upon examining the issue, I became convinced that the District Court's decision was not only based upon sound legal reasoning, but that there were also strong humanitarian reasons for allowing the decision to stand. So I recommended to the Solicitor General that the appeal be withdrawn, and this was done.

Another area of Immigration Service policy that required close examination was the detention of aliens who have been found unlawfully in the country. The INS has authority to detain people believed to be deportable pending a determination of their status.

However, this authority must be exercised carefully and in accordance with constitutional limits on the deprivation of liberty. An alien may not be detained or required to post bond unless there is a great risk that he will abscond or is a threat to national security. Detention cannot be used as a deterrent or punishment for unlawful entry to the United States.

I have great concern for this right and have directed that restraint be used in exercising the detention authority. INS District Directors have been told that they are directly responsible to me for the use of sound judgement in ordering aliens detained.

The Immigration Service has had no definitive standards for detention facilities. And I found some to be lacking in basic needs. In December, we began the development of standards to emphasize human rights and dignity in INS detention policies.

We are examining the need for improvement in four major areas: population of the facility; INS personnel; services and programs; and physical conditions. We are redoing some of the facilities and adding such basics as recreational areas and reading material.

There is yet another area of immigration procedure in which human rights is very much involved. That is in providing service to both aliens and citizens. The law allows immigrants to bring to this country relatives from abroad.

It is unconscionable that people should have to wait a year or more to be reunited with their families because of the Immigration Service's inability to process their applications. Yet that has been happening.

It is also unpardonable that people must form lines as early as midnight to see an immigration officer for assistance the next day. Yet that

has been happening also. And it is even worse when standing in such a line is necessary to obtain routine information because telephone lines to INS offices are always busy. But that has been true also.

However, we are taking steps to correct these deficiencies, which may inadvertently result in denial of human rights. Through the use of task forces, we have reduced our applications backlog and the time a family must wait to be united in this country.

The addition of automated equipment and telephone lines is enabling more people to reach INS by phone. Opening of satellite offices away from downtown centers puts INS within easier reach of the public it serves.

We have not completed all of these steps, but we have made a beginning. And we are re-examining all immigration policies in the light of today's needs and the current world situation.

Among the most pressing problems President Carter was committed to acting upon was that of unlawful immigration. It is one of great complexities, involving international relations, human rights, our economy and that of other countries, primarily Mexico. And a great deal of emotion surrounds any discussion of the subject.

One school of thought says "close the border and send back all of those who have entered illegally." While another side proposes full amnesty for all who are here.

In America where the government must represent a broad spectrum of public thought, neither of these solutions is possible. A compromise had to be sought.

Last August the legislative proposals and other means of improved immigration controls were proposed. It is an important first step to bring some protections to persons who now are unable to benefit from the warm rays of protection of the U. S. Constitution.

It will improve controls and will allow those undocumented aliens who have been here since before 1970 to stay permanently. Those who entered the United States before 1977 and have remained, will be allowed to stay for five more years.

They can visit their families outside the country but cannot bring them here to join them. They can work and will be covered by all laws protecting workers; but they cannot participate in social service programs.

This is not enough to satisfy some groups who continue to demand full amnesty for all. It creates second class residents, they say . . . people who cannot participate fully in this society. They will not have enough rights.

To those who oppose this legislation on such grounds, I ask, what is the alternative? And what rights do the undocumented aliens in this country have now?

The answers are: there is no alternative, except for the situation to continue as it is now. Undocumented aliens have virtually no rights and are exploited. This plan brings them out of the darkness of oppression and into the bright sunlight of freedom.

No more will a parent have to be concerned about going to the corner drugstore for medicine for a sick child, and perhaps not returning. What is a more basic human right than the privilege of living without fear of the authorities? This plan ensures that right.

The program which will be considered by Congress starting next month reflects both a respect for the law and a compassion for those who have broken it.

The Universal Declaration of Human Rights approved by the United Nations in 1948 recognizes as among the three most fundamental rights the right to such vital needs as food, shelter, health care and education.

Yet, we all know that there are places where these are not available to the majority of the population. And many people denied these rights seek to find them in the United States. How many can we accept? That question has not been resolved. However, the growing pressures of population increases and lack of jobs in many countries demand that we find answers. For those living in hunger, poverty and unemployment the term "human rights" is meaningless.

We are a rich and powerful and free nation — our strengths attract persons. I submit to you that it is our best tradition and our national interest to treat the citizen and the non-citizen in a human and decent fashion. He should ask for no less and settle for no more.

As I close, let me remind you again of that program in which the plight of Mr. Castillo, undocumented alien, was described.

Let me finally remind you that he is not my "cousin," but my brother. And our human rights program is designed to treat him as fairly and generously as if he were yours also.

Thank you.