International Law Studies - Volume 72
The Law of Military Operations : Liber Amicorum Professor Jack Grunawalt
Michael N. Schmitt (Editor)

VIII

Guarding the Coast: Alien Migrant Interdiction Operations at Sea

Gary W. Palmer

THE INVOLVEMENT OF THE COAST GUARD in immigration matters is extensive. Its wide variety of roles and missions includes:

- Protecting the safety of life at sea, regardless of immigration status;
- Preventing the entry of undocumented migrants into the United States through at-sea interdiction;
- Facilitating parole into the United States by the Immigration and Naturalization Service (INS) for prosecution, or turnover to another nation with criminal jurisdiction over the matter, of aliens found committing criminal acts at sea;
- Seizing conveyances and arresting alien smugglers, and gathering evidence in alien smuggling cases to help ensure the successful criminal prosecution of those involved, and/or civil forfeiture of their vessel;
- Inspecting vessels and facilities subject to Coast Guard jurisdiction in cooperation with the INS to ensure that any aliens being employed are engaged in activities consistent with their immigration status;

- Detaining aliens, when encountered on vessels subject to Coast Guard jurisdiction, who have entered the United States illegally, until disposition instructions are received from the INS; and
- Complying with appropriate procedures for handling claims to refugee status and requests for political asylum made during the course of Coast Guard operations.

Despite these roles and missions, the Coast Guard is neither the architect of national immigration policy nor even the lead federal agency for immigration law enforcement. However, the task of enforcing U.S. immigration laws at sea rests almost exclusively with the Coast Guard. This paper first surveys the basic legal authority for Coast Guard interdiction and repatriation of illegal migrants encountered at sea, then looks at how that legal authority is exercised within the factual context of several different types of alien migrant interdiction operations.

Basic Legal Authority

On 14 August 1949, Title 14 of the United States Code was enacted into positive law.[1] For the Coast Guard, a key provision was 14 United States Code (USC) §89, which authorized the Coast Guard to

> . . . make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the U.S. has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or operation of any law, of the United States, address inquiries to those onboard, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance. . . .[2]

14 USC §89 was initially enacted[3] in response to the decision of the Supreme Court in *Maul v. United States*,[4] which affirmed the jurisdiction of the Coast Guard over U.S. flag vessels under former §3072 of the Revised Statutes for violations of laws respecting the revenue. However, Justice Brandeis, in his concurring opinion, expressed his concern that more explicit statutory authority would be required to authorize seizures of vessels for violations of laws other than those pertaining to collection of revenues. Congress responded to that suggestion by adopting essentially the language that exists in 14 USC §89(a) today.

While 14 USC §89 articulates the extent of the Coast Guard's law enforcement authority and who may exercise it, 14 USC §2 defines the Coast Guard's law enforcement mission in more general terms. It states:

> The Coast Guard shall enforce or assist in the enforcement of all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States; shall engage in maritime air surveillance or interdiction to enforce or assist in the enforcement of the laws of the United States; shall administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States covering all matters not specifically delegated by law to some other executive department; . . .

By virtue of the powers conferred by this statute and 14 USC §89, the Coast Guard is the principal federal maritime law enforcement agency of the United States. It is in this role that the Coast Guard performs the mission of alien migrant interdiction operations at sea.

Despite the broad statutory authority conferred on the Coast Guard by 14 USC the Supreme Court has held that ". . . an Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains."[5] And, under both Article 6 of the 1958 Convention on the High Seas (High Seas Convention)[6] and Article 92 of the 1982 United Nations Convention on the Law of the Sea (LOS Convention),[7] a vessel on the high seas is subject solely to the exclusive jurisdiction of the flag state. While the United States is a party only to the High Seas Convention, these provisions in both treaties confirm existing maritime law and practice and are a codification of existing customary international law.[8]

There are, however, several exceptions to the principle of exclusive flag state jurisdiction. The most commonly relied upon exception permits a warship to board any vessel not entitled to complete immunity if there are reasonable grounds to suspect it is engaged in piracy, slave trading, unauthorized broadcasting, or that it is a stateless vessel or of the same nationality as the warship.[9] This is known as the "right of visit." It is a limited exercise of authority solely for the purpose of verification of the aforementioned circumstances. Unless the vessel is determined to be the same nationality as the warship, a stateless vessel, or a vessel engaged in piracy (or other universal crimes), any further exercise of complete criminal jurisdiction requires a separate, independent basis.[10] In immigration matters, this normally is found in an affirmative waiver of exclusive jurisdiction by the flag state and express consent by the flag state to an exercise of jurisdiction by the United States.[11]

This waiver and consent to jurisdiction may be sought and given on a case-by-case basis or take the form of a standing special arrangement pursuant to treaty, exchange of diplomatic notes, or executive agreement.

In October 1994, President Clinton forwarded the 1982 United Nations Convention on the Law of the Sea to the Senate for advice and consent. In so doing, the President recognized reliance on flag state consent as a basis for jurisdiction in immigration matters by stating:

> . . . the United States and other members of the international community have developed procedures for resolving problems that have arisen in certain contexts, including drug smuggling, illegal immigration and fishing, when States are unable or unwilling to exercise responsibility over vessels flying their flag. These procedures, several of which are contained in international agreements, typically seek to ensure the flag state gives expeditious permission to other States for the purpose of boarding, inspection, and where appropriate, taking law enforcement action with respect to its vessels (emphasis added).[12]

Thus, 14 USC §89 does not authorize the Coast Guard to conduct searches and seizures of foreign flag vessels carrying illegal migrants on the high seas without the consent of the flag state.[13] However, if this consent is obtained, the Coast Guard may then stop the vessel on the high seas, search for illegal migrants, and take appropriate action consistent with United States law.

Under 14 USC §89(b), Coast Guard officers acting pursuant to their general law enforcement authority are deemed to be agents of those executive agencies charged with administration of a particular law. When conducting alien migrant interdiction operations, the Coast Guard relies on this agency theory to enforce compliance with the Immigration and Nationality Act on behalf of the INS and the Attorney General. More specifically, the Coast Guard enforces 8 USC §1185(a)(1), which states, *inter alia*, that it is unlawful for an alien to ". . . enter . . . or attempt to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may subscribe." The Coast Guard also enforces the provisions of 8 USC §1324 which make it a crime to knowingly bring, or attempt to bring, an alien into the United States at other than a designated port of entry.

Coast Guard interdiction policy is determined largely by national security goals and Presidential directives. The current strategy calls for focusing United States maritime interdiction operations as far at sea as possible. The manner in which these operations are conducted, however, is dependent upon a combination of many factors. The primary ones are: (1) the nature and

magnitude of the threat, (2) the type and number of resources available, and (3) the applicable law.

The remainder of this article examines the application of both the law and Coast Guard resources to specific migrant interdiction operations. It focuses on Coast Guard efforts to interdict Haitian, Cuban, Dominican, and Chinese migrants attempting to enter the United States illegally in overloaded and unseaworthy craft. The peculiar difficulties of each type of interdiction are illustrated with factual examples. Finally, it attempts to show how the nature and magnitude of migrant activity, as well as Coast Guard interdiction operations, is directly influenced by changes in law and policy.

The Immigration and Nationality Act of 1952

"It is undoubtedly within the power of the Federal Government to exclude aliens from the country."[14] However, prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,[15] aliens who resided in the United States or arrived at the border were accorded certain procedural rights under the Immigration and Nationality Act of 1952 (INA)[16] before being excluded or deported. Those residing illegally in the United States were subject to deportation only after a formal evidentiary hearing.[17] Aliens arriving at "ports of the United States" who did not appear to the examining immigration officer to be clearly entitled to land were subject to a less formal exclusion proceeding by which they too were eventually subject to removal.[18] Whether an alien is "excluded" or "deported" turns upon whether they have "entered" the United States.[19] Aliens who have made an "entry" are entitled to deportation proceedings, while those who are seeking admission but who have not made an "entry" are afforded only an exclusion proceeding.

Other aliens could be prevented from entry by Executive actions that did not trigger any procedural rights. In *Haitian Refugee Center, Inc. v. Gracey*, the District court stated:

> The Immigration and Nationality Act has established procedures for the exclusion of aliens, including the entitlement to a hearing. *See* 8 USC §1226. Those rights, however, are reserved for aliens arriving "by water or air at any port within the United States from any place outside the United States." *Id.*... Again, because those "exclusion or deportation" proceedings are restricted to aliens arriving "at any port within the United States," 8 USC §1221, it is clear that the interdicted Haitians are entitled to none of these statutorily-created procedural rights, including the right to counsel.[20]

In either a deportation or exclusion proceeding, an alien could seek asylum as a political refugee.[21] Section 243(h)(1) of the INA provided:

> The Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that such alien's life or freedom would be threatened in any such country on account of race, religion, nationality, membership in a particular social group, or political opinion.[22]

Congress thereby intended[23] to incorporate the provisions of the 1951 Convention on the Status of Refugees[24] as amended by the 1967 Protocol Relating to the Status of Refugees (the Convention),[25] Article 33 of which provides:

> Article 33 - Prohibition of expulsion or return ('refoulement')
>
> 1. No contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country *in which he is*, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country (emphasis added).

The text of Article 33 does not apply by its terms to actions taken by a country beyond its borders. In fact, the language of Article 33.2 suggests that an alien entitled to the benefit of Article 33.1 must be located within the territory of a contracting state. As a result, the Supreme Court determined that since INA §243 was intended to incorporate the provisions of the Convention, and neither suggested any extraterritorial application, §243 applied only in the context of the domestic procedures by which the Attorney General determined whether to deport or exclude an alien.[26]

Since 1980, the Coast Guard has been involved in operations to prevent illegal migrants from entering the United States and, thereby, from implicating any statutorily-created procedural entitlements.

Haitian Migrant Interdiction Operations

The near total collapse of the Haitian economy in the late 1970s and early 1980s under the repressive regime of then "President-for-Life" Jean Claude

Duvalier resulted in a flood of economic migrants from Haiti attempting to reach the United States by boat.[27]

In response, President Reagan delegated express authority to the Coast Guard to interdict and return illegal aliens on the high seas. He did this by promulgating Executive Order 12,324,[28] which was signed in September of 1981 in response to what he characterized as a "serious national problem" of "continuing illegal migration by sea."[29] It was promulgated pursuant to the authority of the President under 8 USC §1182(f) and his inherent authority under the foreign affairs power of the Constitution[30] to suspend entry or impose restrictions on entry of aliens. The Order directed the Secretary of Transportation to issue instructions to the Coast Guard to enforce the suspension of the entry of undocumented aliens into the United States by sea. It also authorized the Coast Guard to interdict certain defined vessels for this purpose if they were suspected of being involved in the "irregular transport of people,"[31] or other violations of United States law on the high seas (including, but not limited to the INA), and to return the vessel and transport its passengers to the country from which they came. The defined vessels included "[v]essels of foreign nations with whom [the United States has] arrangements authorizing the United States to stop and board such vessels."[32] By its terms, the Executive Order authorized these actions only outside the territorial waters of the United States.

The United States and Haiti had entered into a bilateral agreement on 23 September 1981,[33] six days before Executive Order 12,324 was signed. That agreement applied to private Haitian vessels on the high seas when there was reason to believe that such vessels were involved in the irregular carriage of passengers outbound from Haiti. It gave the United States permission to board such vessels to determine their registry, condition, and destination, as well as the status of those on board. When the circumstances suggested that a violation of U.S. immigration laws had been or was being committed, the vessel and persons on board could be detained and returned to Haiti upon prior notification to the Haitian government. Haiti also gave assurances that interdicted Haitians would not be prosecuted for illegal departure.

Interdiction of migrants at sea may be accomplished in departure, transit, or arrival zones. However, forward deployment of available Coast Guard resources, as opposed to waiting to interdict at or near landfall in the United States, is preferred for several reasons. First, the vessels used by migrants are usually grossly overloaded, unseaworthy, and incapable of making the 700-mile trip from Haiti to the United States without risking substantial loss of life. Second, aliens residing illegally in the United States or arriving at the border

were entitled under former §243(h) of the INA to a deportation or exclusion hearing. The differences between exclusion and deportation, and the varying procedural protections attached to each, depended upon whether the alien had made an "entry" into the United States.[34] Aliens making an entry were entitled to deportation proceedings. Those seeking admission upon arrival, but prior to "entry,"[35] could have their status determined at an exclusion proceeding. Since §243 did not by its terms have extraterritorial application,[36] migrants interdicted at sea were not afforded access to either of these processes.[37]

The best reason to interdict migrants at sea, however, is that it saves lives. Without the nearly constant presence of a Coast Guard cutter in relative proximity to the territorial sea of Haiti, many migrants bound for the United States would die. Haitian migrant vessels are typically crude, handmade, wooden-hulled vessels.[38] Primarily, they are lateen or sloop-rigged sailing vessels of 30-50 feet in length, or more substantial double-decked, wooden-hulled freighters, 50-80 feet in length, with high, upswept bows, and a large deck house aft. The latter are generally powered by unreliable engines prone to mechanical failure. Most do not carry charts, compass, or navigational instruments of any kind. Navigation is based primarily on following the prevailing winds, wave patterns, and changes in water color along the Bahama Bank until the loom of light from Miami is seen on the night horizon. Due to the large number of people on board (some may carry as many as six to eight persons for every foot of deck length) and complete lack of sanitary facilities, conditions on the vessels are typically appalling. Cooking, if any, may be done over open charcoal fires, and some vessels even carry live goats as provisions. The vessels usually have little freeboard due to their overloaded condition, and constant flooding results.

After the migrants are removed, the vessels normally cannot be towed, due to either their physical condition or the presence of large numbers of migrants on the Coast Guard cutter. Rather than be left adrift as derelicts, where they could constitute a potentially deadly hazard to navigation, these vessels are usually destroyed. The vessels are at times unsinkable with gunfire or ramming, because the inherent natural buoyancy of their wooden construction often keeps them floating just below the surface despite the infliction of major damage. As a result, most cutters resort to burning the vessels to the waterline, then breaking up the remains by ramming or other means to minimize the size of the debris.

Executive Order 12,324 expressly prohibited the return of any refugee without their consent.[39] As a result, migrants interdicted on the high seas

pursuant to the Executive Order had to be screened for colorable claims to refugee status. For that purpose, Coast Guard cutters on patrol in the Windward Passage between Cuba and Haiti initially had INS agents and Creole-speaking interpreters assigned. When a cutter came upon an overloaded and unseaworthy Haitian vessel bound for the United States, the migrants were taken on board the cutter, given an abbreviated medical examination, issued a blanket, and fed a meal (typically of beans and rice). Due to space limitations, the migrants were normally kept on the flight deck, forecastle, or fantail of the cutter.[40] The cutter's crew would attempt to rig awnings to shelter the migrants as best they could from the effects of wind, weather, and the hot Caribbean sun beating on the steel decks of the cutter. The cutters also carried or improvised portable toilets, and otherwise attempted to treat the migrants with as much dignity as possible.

Under Executive Order 12,324, the migrants were individually interviewed by INS agents while onboard the cutter to determine if any had potentially valid claims to refugee status. This process often took days. While their status was being decided, the cutter remained at sea and out of sight of land. As time wore on, the migrants sometimes became impatient. With overcrowding, discontent, boredom, and the prospect of an imminent return to Haiti rather than the promise of arrival in Miami, some migrants even became belligerent.[41] Disturbances sometimes broke out on Coast Guard cutters that in a few instances had to be quelled through the use of physical restraints, fire hoses, or chemical agents such as CURB 60[42] or pepper spray.

After the interview process was complete, those who were determined to be economic migrants were "screened out" and repatriated. Repatriations usually took place dockside in Port au Prince, where the Haitians were turned over to the Red Cross. Those who made a colorable claim of status as a political refugee were "screened in" and transported to the United States so that they could file a formal application for political asylum.

Between 1981 and 1991, approximately 25,000 Haitian migrants were interdicted by the Coast Guard. Then, on 30 September 1991, a military coup succeeded in overthrowing the Aristide government. In response to the subsequent killing and torture of hundreds of Haitians who opposed the military regime, a flood of migrants bound for the United States soon overwhelmed both the existing operational posture of the Coast Guard and the ability of the INS to screen the migrants for potential refugee status as required by Executive Order 12,324.

Executive Order 12,324 was superseded by Executive Order 12,807 on May 23, 1992.[43] The primary difference between the two was that Executive Order

12,807 no longer contained a requirement to screen migrants interdicted at sea for refugee status. In addressing a challenge to the new Executive Order on this ground, the Supreme Court said:

> During the six months after October 1991, the Coast Guard interdicted over 34,000 Haitians. Because so many interdicted Haitians could not be safely processed on Coast Guard cutters, the Department of Defense established temporary facilities at the United States Naval Base at Guantanamo Bay, Cuba, to accommodate them during the screening process. Those temporary facilities, however, had a capacity of only about 12,500 persons. In the first three weeks of May 1992, the Coast Guard intercepted 127 vessels (many of which were considered unseaworthy, overcrowded, and unsafe); those vessels carried 10,497 undocumented aliens. On May 22, 1992, the United States Navy determined that no additional migrants could safely be accommodated at Guantanamo.
>
> With both the facilities at Guantanamo and available Coast Guard cutters saturated, and with the number of Haitian emigrants in unseaworthy craft increasing (many had drowned as they attempted the trip to Florida), the Government could no longer both protect our borders and offer the Haitians even a modified screening process. It had to chose between allowing Haitians into the United States for the screening process or repatriating them without giving them any opportunity to establish their qualifications as refugees. In the judgment of the President's advisors, the first choice would not only have defeated the original purpose of the program (controlling illegal immigration), but also would have impeded diplomatic efforts to restore democratic government in Haiti and would have posed a life threatening danger to thousands of persons embarking on long voyages in dangerous crafts. The second choice would have advocated those policies but deprived the fleeing Haitians of any screening process. . . .
>
> On May 23, 1992, President Bush adopted the second choice. After assuming office, President Clinton decided not to modify that order; it remains in effect today.[44]

The terms of Executive Order 12,807 provided for the repatriation of undocumented aliens without the benefit of any screening process. It also stated that the "non-refoulement"[45] obligations of the United States under Article 33 of the United Nations Convention Relating to the Status of Refugees[46] do not extend to persons located outside the United States. The Executive Order again directed the Secretary of Transportation to issue appropriate instructions to the Coast Guard to enforce the suspension of the entry of undocumented aliens by sea and to interdict defined vessels carrying

such aliens. These instructions were to include directives to "return the vessel and its passengers to the country from which it came, *or to another country* . . . provided, however, that the Attorney General, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent."[47]

There have been a number of legal challenges to the Coast Guard's interdiction and repatriation of Haitian migrants at sea under both Executive Orders. In 1985, the District Court for the District of Columbia denied such a challenge to Executive Order 12,324, finding that §243(h) of the INA applied only to those Haitians who were already in the United States.[48] The next challenge came in 1991, alleging that the Government had failed to establish and implement adequate procedures to protect Haitians who qualified for asylum. The Eleventh Circuit Court of Appeals held that since Executive Order 12,324 did not limit the discretion of INS officials, migrants interdicted at sea could not obtain judicial review of INS decisions.[49] That court also held that the INA did not apply extra-territorially.

President Bush's promulgation of Executive Order 12,807 precipitated another round of legal challenges. The Supreme Court resolved those challenges by holding that repatriating migrants to Haiti without first determining whether they qualified as refugees was not prohibited by either §243 of the INA or Article 33 of the United Nations Convention Relating to the Status of Refugees.[50] The court found that since neither of those provisions had extra-territorial application, migrants interdicted at sea were not entitled to either deportation or exclusion hearings. Therefore, there is nothing in domestic or international law which prevents the President or the Attorney General from involuntarily repatriating undocumented aliens interdicted at sea.[51]

During fiscal year 1992 the Coast Guard interdicted 37,618 Haitian migrants. In response to the Haitian exodus, Operation Able Manner commenced on 15 June 1993 and was, at that time, the largest single peacetime operation in the history of the Coast Guard. It involved virtually every Coast Guard unit along the Atlantic and Gulf coasts. Today, Haitian migration has stabilized at an average of about 150 to 300 migrants a month, with occasional peaks in excess of those amounts. On 24 November 1997, 416 Haitians on an 80-foot wooden-hulled freighter were intercepted approximately six nautical miles southeast of Miami Beach.[52] The vessel refused to stop until shouldered by the Coast Guard Cutter *Maui*, a 110-foot patrol boat, which prevented the migrants from entering the United States. This was the largest single group of migrants interdicted since November 1995. All were repatriated to Port au

Prince, except for a pregnant, nineteen-year-old female suffering from dehydration and possible pneumonia, who was brought to Miami for medical treatment.

Despite the fact that there has been no formal agreement in place since 1994, when the 1981 Agreement was terminated by President Aristide according to its terms, Haiti continues to permit repatriation of all Haitian migrants interdicted by the Coast Guard at sea. Since the original interdiction agreement was entered into by the totalitarian Duvalier regime and abrogated by the democratic government of Aristide, any new standing interdiction agreement appears unlikely in the near future. United Nations peacekeeping forces assisted in recent elections in Haiti, but the results were tainted by fraud, essentially leaving Haiti without an effective government since the resignation of Premier Rosny Smarth in June of 1997.[53] With the departure of United Nations peacekeeping forces on 1 December 1997, a refusal by the Haitian government to accept the return of migrants for any reason could precipitate another mass exodus and have far-reaching consequences for both the United States and the Coast Guard.

Cuban Migrant Interdiction Operations

When Fidel Castro opened the port of Camarioca in 1965, over 6,000 Cubans fled to the United States.[54] After one of the vessels capsized, President Lyndon Johnson commenced eight years of "Freedom Flights," in which over a quarter million Cubans immigrated to the United States.

In 1980, the Mariel Boatlift brought more than 100,000 Cubans to U.S. shores. These Cuban migrants enjoyed a special status that the Haitian migrants did not. Unlike the Haitians, the Cuban Refugee Adjustment Act[55] permitted the Attorney General to grant permanent resident status to Cuban citizens present in the United States for at least one year. President Carter permitted the "Marielitos" to enter the United States, and Castro took full political advantage of this opportunity to rid Cuba of many criminals, mentally ill persons, and others that he considered to be undesirable elements.

In the years after the Mariel Boatlift, migrant attempts to evade Cuban authorities and reach the United States persisted on a small scale, but one which progressively increased in magnitude. Then, on 8 August 1994, Fidel Castro announced that the Cuban government would no longer forcibly prevent Cuban citizens from emigrating by boat. This policy precipitated a flood of "balseros" aboard homemade rafts and boats attempting to negotiate ninety treacherous miles across the Gulf Stream to the United States. In two

weeks, more than 2,700 Cubans were rescued by the units of Operation Able Vigil, with the rate of rescue at times reaching nearly 750 per day.[56] Many were lost at sea.

In a press conference on 19 August 1994, President Clinton stated:

> In recent weeks the Castro regime has encouraged Cubans to take to the sea in unsafe vessels to escape their nation's internal problems. In so doing, it has risked the lives of thousands of Cubans, and several have already died in their efforts to leave. This action is a cold-blooded attempt to maintain the Castro grip on Cuba, and to divert attention from his failed communist policies. He has tried to export to the United States the political and economic crisis he has created in Cuba, in defiance of the democratic tide flowing throughout this region. Let me be clear: The Cuban government will not succeed in any attempt to dictate American immigration policy. The United States will do everything within its power to ensure that Cuban lives are saved and that the current outflow of refugees is stopped.[57]

In order to stem the tide of Cuban migrants and prevent further loss of life, the policy that provided for permanent resident status was terminated. President Clinton also ordered the Coast Guard to interdict Cubans at sea and transport them to Guantanamo Bay, where they received treatment similar to Haitian migrants interdicted at sea. From there, the United States engaged in a program of voluntary repatriations while negotiating with other countries to accept migrants into safe havens. By the end of fiscal year 1994, a total of 38,560 Cuban migrants were interdicted.[58] This exceeded the total number of Haitians interdicted during the mass exodus of fiscal year 1992.

Further negotiations with the Cuban government resulted in a joint communiqué between the United States and Cuba on 2 May 1995.[59] In this communiqué, the United States agreed to allow Cuban migrants to enter the United States only by applying for a visa or refugee status at the United States Interests Section in Havana. It further permits 20,000 Cubans per year to enter the United States legally. This agreement has facilitated the direct repatriation of approximately 75 percent of all Cubans intercepted at sea,[60] with the remainder going to Guantanamo or to the United States at the direction of the INS.[61] It also reaffirmed a commitment to in-country processing of refugee claims through the United States Interests Section in Havana. This policy has achieved its purpose of deterring dangerous migration from Cuba by boat by offering a safe alternative.[62] Since the 2 May 1995 accord, illegal migration from Cuba has been significantly reduced and remains relatively stable at about thirty to fifty migrants per month.[63]

A legal challenge was asserted to determine whether Cuban migrants temporarily given safe haven at the United States Naval Base at Guantanamo Bay could assert rights under the INA and Article 33 of the United Nations Convention Relating to the Status of Refugees. The Eleventh Circuit Court of Appeals[64] rejected the argument that leased military bases in foreign countries (such as Guantanamo Bay) are ports of entry or otherwise "within the United States" for purposes of the INA. It also held that granting safe haven did not create a protected liberty interest, the deprivation of which would require the government to provide due process of law.[65]

Dominican Migrant Interdiction Operations

A relatively new development in Coast Guard alien migrant interdiction operations is the emergence of the Dominican Republic as a major source of undocumented aliens. Puerto Rico lies sixty miles beyond the east coast of the Dominican Republic. Migrants navigate the Mona Passage in small, open, wooden boats known as "yolas," powered by outboard motors. They are often camouflaged, covered with tarps, and drift during daylight hours to avoid detection. Many of these attempts to enter the United States illegally through Puerto Rico are organized alien smuggling ventures. Organizers can receive more than $40,000 for a single run.[66]

With the decline in Haitian and Cuban migrants after 1994, the Coast Guard was able to dedicate more resources to patrolling the Mona Passage. Between 1994 and 1995, the number of undocumented aliens interdicted by the Coast Guard in the Mona Passage increased by more than 800 percent, from 371 to 3,375.[67] Since that time, the Coast Guard has been patrolling the Mona Pass with a nearly constant presence of several cutters and aircraft. These efforts resulted in the interdiction of 6,273 Dominicans in fiscal year 1996. When a yola is intercepted, the migrants are typically repatriated to the Dominican Republic, either by rendezvous and transfer to the Dominican Navy or by direct dockside repatriation in the Dominican Republic.

A recent case illustrates the role of the Coast Guard in the Mona Passage. On 5 February 1997, the Coast Guard cutter *Courageous* was participating in Operation Frontier Shield[68] in the Mona Passage. They spotted an overloaded, 50–foot yola approximately 35 miles west of Puerto Rico. The cutter immediately launched both of its small boats. While they were handing out lifejackets to the migrants in preparation for their transfer to the cutter, the yola capsized, and 108 persons ended up in the water. One drowned, and three

were reported missing. The others were transferred to the INS in San Juan, Puerto Rico, three days later.

The four Dominicans who coordinated the smuggling venture were indicted on 12 February 1997 for attempting to bring aliens into the United States illegally. The indictment charged them with violations of 8 USC §1324(a)(1)(A)(i), §1324(a)(1)(B)(iv), and 18 USC §2.[69] They were held without bail, and if convicted, the four defendants could possibly receive the death penalty. As of this writing, the case is pending trial in the United States District Court for the District of Puerto Rico.

Chinese Migrant Interdiction Operations

Sometime after midnight on 6 June 1993, the M/V *Golden Venture* ran aground on a sandbar approximately 100 yards off Long Island. State and federal law enforcement agencies, including the Coast Guard, began arriving *en masse* soon thereafter. Some of the 286 Chinese migrants on board were observed running on the beach, with others attempting to swim ashore in the 53ºF water. About 100 remained on the ship awaiting rescue. About 30 made it into the surrounding community. The others were detained in the custody of the INS. Exclusion proceedings were brought against the detainees, many of whom applied for political asylum. The legal issue raised by those proceedings was whether the Chinese were entitled to a deportation hearing by virtue of having "entered" the United States. In resolving the claims of those on board the M/V *Golden Venture*, the Court of Appeals in *Yang v. Maugans*[70] held that despite the fact that some migrants were walking ashore though the surf when apprehended, a person does not make an "entry" into the United States for purposes of INA deportation hearing entitlements until they are physically present on "dry land."

Another case illustrates the problems involved in repatriating Chinese migrants interdicted on the high seas. Based on information obtained by an undercover agent for the INS during a complex sting operation, the Coast Guard cutter *Reliance* intercepted the M/V *Xing Da* on 2 October 1996. The vessel was approximately 130 miles northeast of Bermuda, and, in addition to 26 crew members, had 83 illegal Chinese migrants in the ship's cargo hold. The migrants had been in the cargo hold of the rusty, 220-foot freighter since it left China's Guang Zhou province more than three months previously on a voyage to a planned rendezvous in the Atlantic Ocean via Africa's Cape of Good Hope. A fishing vessel was then to embark the migrants and land them somewhere near Boston.[71]

When the M/V *Xing Da* was first hailed on the radio by the Coast Guard, a person purporting to be the master consented to a Coast Guard boarding. The vessel flew no flag but had markings on the hull indicating the home port of the vessel was in the People's Republic of China (PRC). The "master" also claimed to be a PRC citizen. Documents were found on board which, while inconclusive, gave indications that the vessel might be validly registered in the PRC. Therefore, the Coast Guard requested through diplomatic channels that the PRC government confirm the registry of the vessel and grant permission for United States authorities to take any action necessary to insure the safety of those onboard.

Some of the migrants were severely dehydrated and water had to be brought to the vessel. The decks were littered with debris and garbage. The vessel was also plagued with mechanical problems, had no electricity, and its bilge was filled with fuel that had leaked from the tanks. Soon after the Coast Guard boarding team came aboard, the migrants began setting fires and banging on the hull in an apparent attempt to sink the vessel. It was believed that the trouble was incited by enforcers called "snakeheads," who hoped to force the Coast Guard to bring them ashore in the United States.[72] These migrants frequently pay up to $30,000 for their transportation and, in return, must liquidate their debt by working for the organizers at rates often below minimum wage for as long as 10 years.[73]

The PRC government had some information about a vessel with the same name, but claimed they needed additional time to confirm the vessel's nationality as PRC. They did, however, give their consent for the United States to take whatever action was deemed necessary to ensure the safety of those on board in the interim. The government of Bermuda reluctantly permitted the Coast Guard to anchor the vessel temporarily as long as the migrants were removed from Bermuda as soon as possible. Consistent with the consent granted by the PRC to ensure the safety of those on board, they were transported to Guantanamo Bay for processing and eventually returned to the PRC by way of Wake Island.[74]

It soon became apparent that the PRC government did not intend to unequivocally confirm the vessel's registry. The United States then informed them that unless they objected within a certain time, the vessel would be declared stateless and seized under United States law.[75] Approximately two weeks after the initial interdiction, the vessel was assimilated to a stateless vessel and became subject to the full jurisdiction of the United States.

Because of the distances involved, interdiction of Chinese migrant vessels are often resource intensive and come at a very high cost. The M/V *Jung Sheng*

#8 was first sighted on 27 June 1995, nearly 1,000 miles southeast of Hawaii. The interdiction operation involved three Coast Guard cutters, a C-130 aircraft, an H-65 helicopter, and numerous land-based support personnel. The operation took forty-five days and covered 6,000 miles. The 147 migrants were transported to Wake Island, where a Joint Task Force had to be established to facilitate the return of the migrants to the PRC. It is estimated that the total cost of the interdiction of these 147 migrants exceeded $11 million.[76]

On 12 August 1997, the 150-foot merchant vessel, *Lapas No. 3*, was intercepted 200 miles south of San Diego with sixty-nine illegal Chinese migrants on board. The vessel had weathered three typhoons and was nearly out of food and fuel. Coast Guard units stayed on scene for more than two weeks providing food, water, and medical assistance. The Mexican government eventually agreed to tow the vessel to Mexico, where the migrants were then repatriated to China.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996

On 30 September 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).[77] The entire system for deportation and exclusion of aliens was substantially modified. The concept of "entry" was replaced by "admission," which means the lawful entry of an alien into the United States after inspection by an immigration officer. IIRIRA §304 replaced both deportation and exclusion hearings with a single streamlined "removal proceeding."[78]

Section 302 establishes a summary screening program which permits an INS officer to determine an alien inadmissible and order him or her removed from the United States without further hearing or judicial review. If such an alien indicates an intention to apply for asylum, the case must be referred to an asylum officer to conduct a "credible fear of persecution" screening to determine whether there is a significant possibility that the alien could establish eligibility for asylum.

Under §302 an alien "present in the United States" is entitled to a removal proceeding which results in either admission, asylum, or removal.[79] But, determining whether an alien is "present in the United States" by using the "dry land" standard adopted by the court in *Yang* may not provide clear guidance to the Coast Guard in determining when an alien may be repatriated and when they have acquired a right to a removal proceeding. For example,

aliens on board a moored vessel, who disembark onto a pier, or who come ashore and then later return to their vessel, may not be on "dry land."

Certain provisions of the IIRIRA have the potential for significant impact on Coast Guard alien migrant interdiction operations. For example, 8 USC §1231(c) and (d) make the owner or commanding officer of a vessel or aircraft bringing an alien into the United States personally responsible for transporting an alien to the foreign country to which they are ordered removed. It also makes the owner or commanding officer financially responsible for the costs of both detaining and repatriating the alien. The statute does not explicitly provide for an exception to this requirement for public vessels. This mandate could place a large potential burden on the limited financial and operational resources of the Coast Guard. It could also discourage good Samaritans from complying with their legal obligations under both 46 USC §2304 and customary international law to render assistance to those in peril on the sea. Requiring a good Samaritan to bear the financial burden of detention and repatriation would unfairly penalize him or her for undertaking a rescue of anyone whose immigration status is uncertain. A direct result of this disincentive could be a greater demand on Coast Guard resources for search and rescue operations.

"Expedited removal" is another provision of IIRIRA, which could have the potential for significant impact on Coast Guard alien migrant interdiction operations. It was created by §302,[80] which amends 8 USC §1225 to provide for a streamlined removal procedure of "applicants for admission" who are deemed inadmissible by an immigration officer. This procedure took effect on 1 April 1997. Applicants for admission include aliens brought into the United States after having been interdicted at sea.[81] An applicant may be deemed inadmissible for attempting to enter the United States through misrepresentation, fraud, or without valid travel and/or visa documents. Such applicants for admission may be removed without further hearing, appeal, or judicial review unless they affirmatively indicate either an intention to apply for asylum, or a fear of persecution if returned.[82] Once ordered removed, removal must take place within ninety days.

The IIRIRA also includes mass migration provisions in §372 which provide:

> In the event the Attorney General determines that an actual or imminent influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate federal response, the Attorney General may authorize any State or local law enforcement officer . . . to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued hereunder upon officers or employees of the Service.[83]

Section 372 could help avoid backlogs in the removal process during mass migrations, such as those from Haiti and Cuba, by ensuring that sufficient resources are made available for making admissibility determinations when necessary.

From the Coast Guard's perspective, expedited removal could help reduce the resource burden during alien interdictions by obviating the need for cutters to be used as holding platforms. Once saturated with migrants, a cutter ceases to become an effective operational unit, and must focus all its efforts internally on the care, feeding, and security of the migrants. Using the expedited removal provisions, cutters could bring or transfer aliens into the United States for further return to their country of origin by another agency without implicating comprehensive and burdensome hearing entitlements. This would enable the cutters to perform their primary mission in their area of responsibility for longer periods of time, rather than merely acting as an inadequate holding facility with migrants on board for extended periods awaiting disposition and transportation.

Whether or not these new procedures are expeditious in practice remains to be seen. If an interview is required to determine whether an applicant for admission has a credible fear of persecution, the applicant may request review by an immigration judge. This review must occur within seven days. While the immigration judge's decision is intended to be final, such administrative decisions have generally been held to be subject to judicial review. Litigation may be required to resolve this issue and could delay or prevent full implementation of the expedited removal procedures. In addition, another mass migration by sea could create a backlog of applicants burdening the system. This might make it impossible to meet the established timelines in the regulations and create political pressure from adversely affected communities. Except where the time and distance involved in direct repatriation is extraordinary, transportation of migrants interdicted at sea back to the United States for expedited removal by forward deployed Coast Guard cutters may be more resource intensive, logistically burdensome, and result in no net tactical advantage. As a result, expedited removal appears best suited for those migrants who manage to elude at-sea interdiction but for some reason arrive at a port of entry. It does not appear likely to replace the need for continuing Coast Guard operations to interdict and repatriate illegal alien migrants at sea.

Notes

An earlier version of this article appeared at 29 Connecticut Law Review 1565 (1997). The author gratefully acknowledges the assistance of Lieutenant Rachel Canty, U.S. Coast Guard Reserve and Lieutenant Commander Anthony Gentillela, U.S. Coast

Guard. The views expressed herein are those of the author and do not necessarily express those of the United States Coast Guard.

1. 63 Stat. 495 (1949).

2. Despite the broad nature of the authority conferred by this statute, courts have consistently upheld its constitutionality. *See, e.g.*: United States v. Freeman, 660 F. 2d 1030 (5th Cir.), *cert. denied* 459 U.S. 823 (1981); United States v. One (1) 43 Foot Sailing Vessel "Winds Will," License O.N. 531317/US, 538 F. 2d 694 (5th Cir. 1976); United States v. Erwin, 602 F. 2d 1183 (5th Cir.), *rehearing denied* 602 F. 2d 992, *cert. denied* 444 U.S. 1071, *rehearing denied* 445 U.S. 972 (1979).

3. *See* "An Act to Define the Jurisdiction of the Coast Guard," Pub. L. No. 74–755, 49 Stat. 1820 (1936).

4. 274 U.S. 501 (1927).

5. Murray v. The Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 2 L. Ed. 208 (1804).

6. 13 U.S.T. 2312, T.I.A.S. 5200 (entered into force September 30, 1962).

7. U.N. Doc. A/CONF. 62/122 (1982) [hereinafter LOS Convention].

8. Presidential Proclamation No. 5030 of March 10, 1983, 48 Fed. Reg. 10605 (1983). The United States did not sign the 1982 LOS Convention because of its view that there were major problems in the deep seabed mining provisions that were contrary to the interests and principles of industrialized nations.

9. Geneva Convention on the High Seas, Apr. 29, 1958, art. 22; [hereinafter High Seas Convention]; 1982 LOS Convention *supra* note 7, art. 110.

10. Other exceptions to exclusive flag state jurisdiction on the high seas include hot pursuit and the related concept of constructive presence (High Seas Convention, art. 23; 1982 LOS CONVENTION, art. 111), as well as additional exceptions during armed conflict regarding rights and duties of neutrals and belligerents. *See also* RESTATEMENT (THIRD) OF FOREIGN RELATIONS §522 (1987).

11. While the master of a vessel may consent to a boarding and other actions once on board (such as the search of various compartments), the master does not have the authority to waive the exclusive jurisdiction of the flag state or to consent to the exercise of complete criminal jurisdiction by the United States.

12. S. TREATY DOC. NO. 103-39 (1994). On July 29, 1994, the United States signed the Agreement Relating to the Implementation of Part IX of the United Nations Convention on the Law of the Sea. This agreement fundamentally changed the deep seabed mining provisions of the LOS Convention, and removed or amended the provisions to which the United States was most opposed. *See also* Marian Nash (Leich), *U.S. Practice: Contemporary Practice of the United States Relating to International Law*, 89 AM. J. INT'L L. 96, 112 (1995).

13. *See also* United States v. Hensel, 699 F. 2d 18 (1st Cir.), *cert. denied* 464 U.S. 824 (1983); United States v. Marsh, 747 F. 2d 7, 9 (1st Cir. 1984); United States v. Crews, 605 F. Supp. 730, 736 (S.D. Fla. 1985), *aff'd* United States v. McGill, 800 F. 2d 264 (11th Cir. 1986).

14. Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973).

15. Pub. L. No. 104–208, 110 Stat. 3009 (1996).

16. 8 U.S.C. §§1101–1525 (1994).

17. 8 U.S.C. §1252 (1994).

18. 8 U.S.C. §§1225, 1226 (1994).

19. 8 U.S.C. §1101(a)(13) (1994). Nothing in the statutory scheme accords any procedural rights to aliens before reaching a port. Therefore, for purposes of the INA the ports of the United States function as the border, rather than the limits of the territorial sea.

20. Haitian Refugee Center v. Gracey, 600 F. Supp. *1396 (D.D.C. 1985), aff'd on other grounds,* 809 F. 2d 794 (D.C. Cir 1987).

21. 8 U.S.C. §§1157, 1158 (1994).

22. 8. U.S.C. § 1253(h)(1) as amended by §203(e) of the Refugee Act of 1980, Pub. L. 96-212, 94 Stat. 107.

23. 17 S. REP. NO. 256, 96th Cong., 1st Sess. (1979)

24. Jul. 28, 1951, 19 U.S.T. 6259.

25. Jan. 31, 1967, 19 U.S.T. 6223.

26. Sale v. Haitian Centers Council, Inc., 509 U.S. 155 (1993).

27. This exodus only temporarily subsided with the overthrow of Duvalier in the mid-1980s, and the eventual popular democratic election of President Jean-Bertrand Aristide.

28. 46 Fed. Reg. 48109 (1981).

29. *See also* Presidential Proclamation No. 4865, 3 C.F.R. §50, 51 (1981–1983 Comp.).

30. Haitian Refugee Center v. Gracey, *supra,* note 20.

31. *Supra,* note 28.

32. *Id.*

33. 33 U.S.T. 3559, T.I.A.S. No. 10241. The 1981 Agreement with Haiti was terminated by President Aristide in 1994 according to its terms.

34. "Entry" was defined as "any coming of an alien onto the United States from a foreign port or place or from an outlying possession, whether voluntarily or otherwise. . . ." 8 U.S.C. §1101(a)(13) (1994).

35. *Id.*

36. 8 U.S.C. §1253(h) (1988).

37. For a more complete discussion of the specific entitlements under both exclusion and deportation proceedings, *see* Landon v. Plasencia, 459 U.S. 21, 26–27 (1982).

38. The following descriptions of Haitian migrant vessels and conditions on board are based on the author's firsthand observations while conducting extensive alien migrant interdiction operations off the coasts of Haiti and Cuba as Executive Officer, USCGC *Vigorous* (WMEC 626) from 1985–1987, and as Commanding Officer, USCGC *Dependable* (WMEC 626), from 1990–1992.

39. A refugee as defined in 8 U.S.C. §1101(a)(42)(A) includes a person unwilling or unable to return to a country because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

40. The cutters interdicting these aliens ranged in size from 110 feet to 378 feet in length. They did not have either the facilities, training, or cargo capacity to provide food, shelter, security, sanitation facilities, and otherwise meet the basic human needs of hundreds of people for indefinite periods.

41. On January 13-14, 1991, the author interdicted three migrant vessels with a total of 240 Haitians. While on board USCGC *Dependable* (WMEC-626) awaiting repatriation, the migrants went on a brief hunger strike and engaged in several organized protests which included loud, rhythmic chanting. Fighting broke out among several factions of migrants. One migrant with a knife had to be disarmed by security personnel. Several migrants had to be physically restrained with leg irons for assaulting other migrants and security personnel. These observations were recorded in the author's personal journal.

42. Similar to Mace, CURB 60 came in a small, hand-held spray applicator and had an effective range of about twenty feet. It is no longer used by the Coast Guard. Reports of these disturbances were noted in the After Action Reports of other cutters, which the author reviewed

as part of his official duties as Commanding Officer, USCGC *Dependable* (WMEC 626), from June 1990 through January 1992.

43. 57 Fed. Reg. 12133 (1992).

44. Sale, *supra*, note 26. In upholding the legality of the Order, the Court held that neither §243(h) of the INA nor Article 33 of the United Nations Convention Relating to the Status of Refugees limited the President's power to order the Coast Guard to repatriate undocumented aliens intercepted on the high seas.

45. The French word "refouler" is not an exact synonym for the English word "return," but has been interpreted to mean, among other things, "expel." *See* Sale, *id.* at 24–25.

46. 19 U.S.T. 6259, T.I.A.S. No. 6577 (1992).

47. Exec. Order No. 12,807, §2(c)(3) (emphasis added).

48. Haitian Refugee Center, Inc. v. Gracey, *supra*, note 20.

49. Haitian Refugee Center, Inc. v. Baker, 949 F. 2d 1109 (11th Cir. 1991), *cert. denied* 502 U.S. 1122 (1992).

50. Sale, *supra* note 26.

51. *See also* Haitian Refugee Center, Inc. v. Christopher, 43 F. 3d 1431, 1433 (11th Cir. 1995).

52. http:www.dot.gov/dotinfo/uscg/cgnews.html>, November 30, 1997.

53. Michelle Faul, *U.N. Peacekeepers Ending Their Three-Year Mission in Haiti Today with Mixed Results*, THE NEW LONDON DAY, Nov. 30, 1997.

54. Michael Lind, *Cuban Refugees at Sea: A Legal Twilight Zone* 24 CAP. U. L. REV. 789, 793 (1995).

55. Pub. L. No. 89-732, 80 Stat. 1161 (1966).

56. Lind, *supra*, note 54, at 809.

57. Lind, *supra*, note 54, at n.155.

58. Data obtained from Commandant, U. S. Coast Guard, Office of Law Enforcement, Migrant Interdiction Division, Washington, D.C.

59. DoS: 95-126 (May 2, 1995).

60. Data obtained from Commandant, U. S. Coast Guard, Office of Law Enforcement, Migrant Interdiction Division, Washington, D.C.

61. INS agents generally interview the migrants on the cutter to determine whether they might be eligible for asylum. Those that meet the threshold requirements are taken to Guantanamo Bay to gather additional evidence. Some of these migrants may eventually enter the United States, willingly return to Cuba, or be granted safe haven in a third country.

62. *See, supra*, note 51, at 1418, n. 2.

63. Data obtained from Commandant, U. S. Coast Guard, Office of Law Enforcement, Migrant Interdiction Division, Washington, D.C.

64. Haitian Refugee Center, Inc. v. Christopher, *supra* note 51, at 1425.

65. *Id.* at 1432.

66. Another indication of the magnitude of these organized alien smuggling ventures is that the Dominican Republic is now the largest importer of outboard engines in Latin America. *See Changing Tactics in the Mona Pass*, COMMANDANTS BULLETIN, COMDT PUB P5720.2, Issue #2 (Feb. 1996), at 4.

67. *Id.* at 5.

68. Operation Frontier Shield is a large-scale, multiagency counternarcotics operation in the Greater and Lesser Antilles, which commenced on October 1, 1996. In the first 30 days of the operation, Coast Guard assets seized more than 4,500 pounds of cocaine and interdicted 124 illegal migrants. The large number of assets dedicated to this operation have reduced migrant

activity in the Mona Passage to its lowest level in nearly 3 years. *See Frontier Shield*, COAST GUARD, COMDT PUB P5720.2, Issue #1 (Jan. 1997), at 2-7.

69. These provisions prohibit any attempt to knowingly land an alien at other than a designated port of entry without prior official authorization. Capital punishment is authorized for such an attempt which results in the death of any person.

70. 68 F. 3d 1540 (3rd Cir. 1995).

71. Patricia Nealon, *US Says it Halted Smugglers Bringing Chinese to Mass.*, BOSTON GLOBE, Oct. 9, 1996.

72. Jules Critten, *Slave Ship*, BOSTON HERALD, Oct. 9, 1996. Illegal Chinese migration is often linked to extremely violent criminal organizations in PRC and Taiwan.

73. *Id.*

74. The INA does not apply in Wake Island. Also, the PRC has generally been unwilling to agree to repatriation of PRC migrants from third party countries.

75. Bermuda had expressed interest in sinking the vessel as an artificial reef. Seizing the vessel under United States law helped to facilitate the transfer of title to Bermuda and finance the cleanup of the vessel.

76. Data obtained from Commandant, U. S. Coast Guard, Office of Law Enforcement, Migrant Interdiction Division, Washington, D.C.

77. Pub. L. 104-208, 110 Stat. 3009 (1996).

78. 8 U.S.C. §1229a (1996).

79. 8 U.S.C. §1225 (1996).

80. Pub. L. No. 104–208

81. Cuban citizens arriving by aircraft at a port of entry are exempt from expedited removal. 8 U.S.C. §1225(b)(1)(F) (1996). This exemption also technically applies to other countries in the Western Hemisphere with which the United States does not have normal diplomatic relations.

82. This limitation on judicial review may be subject to challenge on due process grounds.

83. 8 U.S.C. §1103(a)(8)(1996).