
Volume 99
Issue 4 *Dickinson Law Review - Volume 99,*
1994-1995

6-1-1995

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David C. Marshall, *Political Asylum: Time for a Change-The Potential Effectiveness of Reforms to Prevent Terrorist Attacks in America*, 99 DICK. L. REV. 1017 (1995).

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Political Asylum: Time for a Change - The Potential Effectiveness of Reforms to Prevent Terrorist Attacks in America.

I. Introduction

The end of the Cold War between the United States and the former Soviet Union has radically changed the world political arena. Nations are no longer polarized between two superpowers. The demise of the Soviet Union has fostered the emergence of fledgling countries, but in the process, the global political stage has become unstable and unpredictable.¹ Terrorist attacks are now being planned and carried out on American soil against United States citizens and interests, rather than being confined mainly to extraterritorial operations. The development of different protective measures are required to ensure domestic safety and defend against new threats to America's national security. A prime target

1. After the breakup of the Soviet Union several questions were immediately asked: Which Republic or Republics would hold the former U.S.S.R.'s seat on the United Nation's Security Council? Who would be the other major player in the Middle East peace process? Which new state would gain control of the U.S.S.R.'s nuclear arsenal? Stanley W. Cloud, *East West Relations: After the War: Bush is Cautious as the Collapse of Moscow's Empire Offers New Challenges for the U.S.*, TIME, Sept. 9, 1991, at 16.

Today, many of those questions have been answered. Russia and the Ukraine have control of the former Soviet Union's nuclear arsenal. Steve Coll and R. Jeffrey Smith, *Ukraine Could Seize Control Over Nuclear Arms*, WASH. POST, June 3, 1993, at A1, A20. Russia has taken the USSR's seat on the United Nations Security Council. Rae Correlli, *Global Cops: With Its Peacekeepers Around the World Under Attack or Ignored, the United Nations Struggles to Police the Globe*, MACLEAN'S, Jan. 18, 1993, at 22. Yet the world's instability is plainly evident. The breakup has unleashed a new wave of self-determination among nation-states, particularly along ethnic lines. George J. Church, *Splinter, Splinter Little State*, TIME, July 6, 1992, at 36. The former Yugoslavia serves as a prominent example. Factions once controlled by the Soviet Union are now free to pursue their own goals, using whatever means they find at their disposal. This necessarily causes concern for established nations who are uncertain about their allies and who may face opposition from unexpected directions. *Id.* at 36-37.

of reform to ensure domestic safety is this nation's political asylum laws. The current ideologies and abilities of international terrorists pose a significant threat to U.S. security. Recent events such as an attack on the Central Intelligence Agency (CIA) headquarters in Virginia and the World Trade Center bombing in New York demonstrate the inadequacy of U.S. law to combat this threat. Reformation of the political asylum laws is necessary to help secure American borders and control the influx of potentially dangerous aliens into our nation.

This Comment will focus on: (1) the terrorist threat by discussing the structure, tactics, and successes of terrorist groups that are hostile to the United States; (2) the current state of political asylum law and the need for its reform; and (3) the reforms proposed by both the Clinton Administration and the 104th Republican-controlled Congress, and their potential effectiveness in combating terrorist attacks in America.

II. Assessing the Terrorist Threat

A. Historical Background

"Terrorism" has been a difficult term to clarify because of its evolving nature and goals.² Many different definitions have been proposed,³ but they all have a similar core focus. Whether the attacks are state-sponsored, ethnically or religiously motivated, or anarchistic in nature, terrorists use violence and fear aimed toward a nation's citizenry to achieve their objectives.⁴ The major terrorist goal is to undermine the

2. GRANT WARDLAW, *POLITICAL TERRORISM: THEORY, TACTICS, AND COUNTER-MEASURES* 3 (2d ed. 1989).

3. The following definitions are examples of those that have been proposed: "State sponsored terrorism is the deliberate employment of violence by states and associated subnational groups to attain strategic, political or religious objectives by criminal acts intended to create overwhelming fear in the target population." RAY E. CLINE, *INTRODUCTION TO COMBATING THE TERRORISTS: DEMOCRATIC RESPONSES TO POLITICAL VIOLENCE* ix (H. H. Tucker ed. 1988).

Political terrorism is the use, or threat of use, of violence by an individual or a group, whether acting for or in opposition to established authority, when such action is designed to create extreme anxiety and/or fear-inducing effects in a target group larger than the immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators.

Wardlaw, *supra* note 2, at 16.

4. Terrorist groups pursue the following diverse goals:

- a. To win new recruits to the movement to take over the state or create a new one;
- b. To destabilize nation-states by disrupting the economy;
- c. To disrupt the political structure;
- d. To break down the citizens' morale;
- e. To weaken opposition to the government; or

governability of the state.⁵ In order to achieve their objectives and focus their actions and resources, terrorists band together in tightly controlled structures.

The traditional and most effective organizational terrorist design is the paramilitary-style cell.⁶ Also known as a "firing group," a cell normally consists of four to five core members, one of whom is the "key man" and the cell's link to the overall group.⁷ Cells are usually sophisticated organizations and are generally comprised of professional terrorists rather than part-time amateurs. Each member of the cell has a special field of expertise and is responsible for that portion of each operation.⁸ Messengers, known as "cut outs," maintain exclusive contact with other cells, usually through a system of dropping notes at specified sites, with no personal contact.⁹ The reality is that captured terrorists rarely know or can identify other members of the group outside of their own cell.¹⁰ Cells have their own internal security units and maintain rigid military control.¹¹ Most of the major terrorist groups organize their cells into a column formation and assign each a specific function, with each cell reporting directly to an overseeing cell.¹²

While terrorists come in all shapes and sizes, several generalizations regarding membership exist. Terrorism is gender-blind, and in fact, some

f. To blackmail third countries into changing their policies.

BARRY RUBIN, *THE POLITICS OF COUNTER-TERRORISM: THE ORDEAL OF DEMOCRATIC STATES* vii (1990).

5. CLINE, *supra* note 3, at x. "The main goal of present-day state sponsored terrorism is to undermine the psychosocial stability and political governability of pluralist states with representative governments, particularly those cooperative with the United States."

6. Paul Wilkinson, *Real World Problems of Terrorist Organizations and the Problem of Proper gandum*, *ON TERRORISM AND COMBATING TERRORISM*, 69-75 (Ariel Merari ed. 1985). See also WARDLAW, *supra* note 2, at 134.

7. Wilkinson, *supra* note 6, at 75.

8. *Id.* Each terrorist cell normally has an expert bomb-maker; a quartermaster, who obtains all of the necessary materials and weapons; a communications expert, who is primarily responsible for dealing with the media; a transportation expert, responsible for moving the group to and from operations; and an intelligence expert, who gathers logistical and tactical information on potential targets. *Id.*

9. WARDLAW, *supra* note 2, at 134-35.

10. *Id.* at 135.

11. *Id.* at 134. Members who go against the organization's wishes are routinely executed or "kneecapped" (where a hole is drilled into the knees of traitors or non-supporters), in the case of the Irish Republican Army (IRA). In fact, a special orthopedic hospital has been established in Belfast to deal with these victims of the IRA. CLAIRE STERLING, *THE TERROR NETWORK: THE SECRET WAR OF INTERNATIONAL TERRORISM* 171 (1981).

12. The Euzkadi ta Askatasuna (ETA), or Basque Separatists in Spain, for example, are noted for being tightly organized into column formation. THE VICE PRESIDENT'S TASK FORCE ON COMBATTING TERRORISM, *TERRORIST GROUP PROFILES*, U.S. Gov't Printing Office, at 35-36 (1988) [hereinafter *Profiles*].

of the world's more infamous terrorists have been women.¹³ The typical terrorist is in his or her early twenties and has an above average educational background.¹⁴ Many terrorists have been recruited from university campuses,¹⁵ and they often come from affluent families.¹⁶ Regardless of background, each terrorist is thoroughly trained to carry out his or her mission.¹⁷

Today terrorism is an international problem because many of the world's terrorist groups maintain ties to one another. Palestinian groups¹⁸ often serve as conduits between various terror organizations.¹⁹

13. Several groups have a 40% female membership. See Wilkinson, *supra* note 6, at 75. Some of the more notable female terrorists include Gabriele Krocher-Tiedemann, who accompanied the infamous Carlos on the raid which kidnapped several Organization of Petroleum Exporting Countries (OPEC) leaders in Vienna. She was described as being "the most bestial" of the assault team. See Sterling, *supra* note 11, at 82. Ulrike Meinhof, one of the founders of the German Red Army Faction (RAF) was also a notorious female terrorist. *Id.* at 85. The Weathermen were led by Bernadine Dohm, among others. *Id.* at 23.

14. Wilkinson, *supra* note 6, at 75. For example, George Habash, leader of the Popular Front for the Liberation of Palestine (PFLP), is a medical doctor. *Profiles, supra* note 12, at 24. The exception to this rule tends to be in the national ethnic terrorist groups, such as the Basques in Spain and the Irish Republican Army, both of whom are comprised of a more working-class background. See Wilkinson, *supra* note 6, at 75.

15. The Patrice Lumumba University, for example, was founded in 1960 by Nikita Khrushchev to train future Third World communist terrorists. The University was staffed and directed by the KGB. Thousands of students arrived from all parts of the world and were indoctrinated in Marxist theology and terrorist tactics. They then returned to their homelands to carry out their agendas. See Sterling, *supra* note 11, at 136.

16. Wilkinson, *supra* note 6, at 75. Giangiacomo Feltrinelli, millionaire publisher of works such as *Dr. Zhivago*, was an underground terrorist himself. In the game, he was known as Osvaldo. He repeatedly traveled to Cuba where he met with Fidel Castro, and also spent a good deal of time in Czechoslovakia. Feltrinelli supported Italian terrorist groups such as the Red Brigades (who probably owed much of their success to his bankrolling). He was killed while attempting to destroy a high tension pylon outside of Milan when a faulty timer exploded the 43 sticks of dynamite he was carrying. STERLING, *supra* note 11, at 25-48.

17. Wilkinson, *supra* note 6, at 75. Surprise is the key to any successful terrorist operation. Terrorists focus on surprise to achieve the following aims:

- a. Create a situation for which police and security forces are unprepared;
- b. Force police into hurried or ill-considered actions;
- c. Dislocate or disperse security forces;
- d. Allow deployment of terrorist elements in unexpected strength and increase group size;
- e. Allow assault from unexpected directions;
- f. Facilitate exploitation of unexpected timings; and
- g. Capitalize on the use of unexpected tactics.

See WARDLAW, *supra* note 2, at 131-33.

18. Fatah, the military wing of the Palestine Liberation Organization (PLO), was once considered to be the major Palestinian terrorist group. Founded in 1957 and led by Yasir Arafat, Fatah carried out numerous assassinations, kidnappings, and bombings against Israeli targets. Fatah's most infamous attack was the September 1972 murder of eleven Israeli athletes seized from the Olympic Village in Munich, Germany. See *Profiles, supra* note 11, at 13.

The PFLP, led by Dr. George Habash has established strong ties to other Marxist revolutionary groups, particularly those in Western Europe. *Id.* at 24-25. The PFLP-GC (General Command), led

Weapons, tactics, and intelligence data have been exchanged at international meetings among terrorist groups.²⁰ The rise of state-sponsored terrorism has increased the capabilities of terrorists to act globally. Today the most active state sponsors include Libya, Iran, and Iraq.²¹ These nations not only fund specific operations,²² they support terrorist groups through the supply of weapons, information, and training facilities.²³

B. Terrorist Activity in the U.S.

The United States has suffered its share of terrorist attacks in the past, and groups continue to act within its borders.²⁴ Several of the world's most notorious groups have acted or are rumored to be operating within the United States. In October 1987, three members of the Syrian Social Nationalist Party (SSNP) were caught trying to enter the United States from Canada, armed with a bomb.²⁵ In 1990, a terrorist captured in Israel confessed that senior officials of the Palestinian group Hamas²⁶

by Ahmed Jibril, is a splinter of Habash's group. The PFLP-GC is known for its conventional military expertise attack style and has a large stock of Soviet made weapons. *Id.* at 26.

19. See *Wilkinson, supra* note 6, at 75.

20. See *WARDLAW, supra* note 2, at 29.

21. A 1992 State Department survey listed Iran as the most dangerous state sponsor of terrorism. Steven Emerson, *The Accidental Terrorist: Coping With the New, Freelance Breed of Anti-West Fanatic*, WASH. POST, June 13, 1993, at C5.

22. At one time, the PLO received \$150-200 million annually from Arab states. See *Wilkinson, supra* note 6, at 120. The United States has accused Libya of orchestrating the December 21, 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland and, along with the United Nations, has imposed economic sanctions on Libya for its refusal to hand over the prime suspects in the attack. Roy Rowan, *The Plot Against Pan Am Flight 103*, TIME, Apr. 27, 1992, at 26, 29. Libya is currently protecting the two terrorists charged with the bombing and refuses to release them to the United States. Reports also state that Libya has offered renewed hospitality to Ahmed Jibril and Abu Nidal. Richard Z. Chesnoff, *He Just Keeps On Ticking*, U.S. NEWS & WORLD REPORT, Feb. 21, 1994, at 55.

23. Weapons and intelligence are often smuggled into target nations through the use of diplomatic pouches which freely circulate in and out of Embassies within the host nation. See *Wilkinson, supra* note 6, at 121. International conventions prohibit nations from inspecting these diplomatic bags; consequently, anything can be placed in them. Iraq, for example, has been known to smuggle arms and explosives via its diplomatic bags. William Branigin, *Manila Bomb Said to Expose Iraqi Ring*, WASH. POST, Jan. 25, 1991, at A25, A30.

24. Recent statistics provide some positive encouragement. In 1994, acts of international terrorism reached their lowest point in 23 years, and anti-American attacks dropped from 142 in 1992 to 66 in 1994. Robin Wright, *U.S. Campaign Against Terrorism Begins to Show Results; Crime: Anti-American Attacks Have Dramatically Decreased Since 1992. Global Cooperation, Geopolitical Shifts Have Helped, Experts Say*, L.A. TIMES, Feb. 11, 1995, at A14.

25. See *RUBIN, supra* note 4, at 8.

26. Hamas (meaning "zeal") was formed seven years ago in the Gaza Strip and is considered the greatest threat to the recent Israeli-PLO Peace Accord. Hamas wants the total destruction of Israel followed by the creation of an Islamic Palestinian state, serving as a precursor to a greater pan-

had organized a workshop in Chicago to instruct followers in bomb-building techniques.²⁷ Hezbollah,²⁸ responsible for most of the American hostage taking in Lebanon and for killing 241 Marines in Beirut, maintains contact with the Islamic Center of America in Detroit, Michigan.²⁹ Cable Channel 23 in Dearborn, Michigan rebroadcasts programs from Hezbollah's Beirut station condemning America and highlighting recent Hezbollah attacks.³⁰ In April 1992, St. Louis police arrested four men claiming to belong to the Abu Nidal Organization³¹ and charged them with complicity in the death of a cell member's daughter.³² When arrested, the men were plotting an attack on the Israeli Embassy in Washington, D.C., and the Federal Bureau of Investigations (FBI) discovered a hit list containing the names of 3000 Americans.³³ The Irish Republican Army (IRA), while not undertaking

Arab union. It receives funding from Iran and private Arab contributors and runs clinics and kindergartens to shore up popular backing. Hamas claims support from a majority of Arabs in Gaza and 40% of those in the West Bank. The organization constantly attacks Israeli soldiers with stones, bullets, and bombs and has also carried out assaults on Israeli citizens. Recently, Israel retaliated by deporting 415 of Hamas' leaders to southern Lebanon, drawing the world's ire and making heroes out of the deportees to the Palestinians. Marguerite Michaels, *Hamas: Dying for Israel's Destruction*, TIME, Sept. 13, 1993, at 38.

27. See Emerson, *supra* note 21, at C5.

28. Formed in 1983, Hezbollah is headquartered in West Beirut and the Bekaa Valley in Lebanon. See *Profiles*, *supra* note 12, at 15-16. It is sponsored by Iran and often claims responsibility for attacks under the name Islamic Jihad. Hezbollah's objective is to establish a religious state, similar to Iran, in Lebanon and eliminate all non-Islamic influences in the process. In October 1983 suicide attackers drove two trucks loaded with bombs into the U.S. Marine and French military barracks, killing 241 Americans and 56 French soldiers. Persons kidnapped by Hezbollah include U.S. citizens Jeremy Levin (who escaped in 1983), Diplomat William Buckley (reportedly killed in October 1985), Father Lawrence Jenco (released in 1986), Joseph Cicippio, and Terry Anderson. Anglican Church envoy Terry Waite was also held. Most of the hostages have been released.

29. Richard Z. Chesnoff, *Between Bombers and Believers: A host of radical groups are at Work in America*, U.S. NEWS & WORLD REP., Sept. 20, 1993, at 34,35.

30. See Emerson, *supra* note 21, at C5.

31. The State Department has labeled the Abu Nidal Organization as the most dangerous terrorist group in the world. *Profiles*, *supra* note 12, at 5. This group was formed by Abu Nidal (true name: Sabri al-Banna) in 1974 and membership is estimated at 500 worldwide. The Abu Nidal Organization has been headquartered in Syria, Libya, and Iraq. Its objectives are to continue an armed struggle against Israel for a free Palestinian homeland and to undermine any peace attempts between Israel and the Palestinians. Moderate Palestinians and the PLO leadership are frequent targets. (Abu Nidal has in fact been sentenced to death in absentia by Yasir Arafat). Considered the wealthiest and most professional terrorist group, the Abu Nidal Organization has carried out numerous assassinations, bombings, shootings, and kidnappings. The December 1985 attacks on the Rome and Vienna airports alone left 16 dead and over 60 injured. See *Profiles*, *supra* note 12, at 5-7.

32. Chesnoff, *supra* note 29, at 35.

33. *Id.*

a terrorist campaign within the United States, nevertheless receives a substantial portion of its funding from American sympathizers.³⁴

Most recently, two attacks in America have brought the problem of international terrorism into the spotlight. An attack outside CIA headquarters in Virginia and the bombing of the World Trade Center in New York demonstrate the dangers of terrorist attacks within the United States.

The first major attack occurred on January 25, 1993 outside CIA headquarters in Langley, Virginia.³⁵ At 8:00 a.m., a man wielding an AK-47 assault rifle walked between stopped cars at a light near the CIA complex. He put the gun to the windows of several cars and opened fire, killing two and wounding three.³⁶ An FBI search revealed that the man was Mir Aimal Kansi, a native of Pakistan who was living in northern Virginia.³⁷ Kansi had been unhappy with the treatment of Muslims in Bosnia and wanted to make "a big statement" to coincide with the change in presidential administrations.³⁸ Kansi used his driver's license to purchase weapons from a gun shop in Chantilly, Virginia.³⁹ Eight hours after the attack, he bought a ticket on Pakistan International Airlines for a flight home.⁴⁰ The FBI recently recalled its four teams searching for Kansi in Pakistan, though it continues to believe he remains in that country.⁴¹

34. Formed in 1970, the IRA has vowed to "wash the British out of Ireland on a wave of blood." Favorite targets include the British Army, Ulster Security forces, and loyalists. The IRA is tightly organized; due to contacts with Palestinian groups and support from Libya, it maintains a large weapons arsenal and conducts extensive training in the Middle East. Other sources of funding come through robberies and various criminal enterprises. *See Profiles, supra* note 12, at 57.

Currently, a peace proposal is in progress for Northern Ireland. According to its terms, the peace plan would create a newly-elected legislative assembly for Northern Ireland with built-in mechanisms to prevent the Protestant majority from dominating the Catholic minority. The plan would allow the Republic of Ireland to become more involved in the Northern Ireland government, specifically in areas involving the environment, tourism and economic and cultural development. The plan would require approval by the people of Northern Ireland in a referendum and by a vote of the British Parliament. Protestant groups have already denounced the plan as an "eviction notice" and a blueprint for a United Ireland. British Prime Minister John Major has stressed that as long as the people of Northern Ireland wish to remain part of Great Britain, they will continue to do so. Fred Barbash, *British, Irish Set Peace Plan for N. Ireland*, WASH. POST, Feb. 23, 1995, at A1, A24.

35. Robert O'Harrow, Jr., *Kansi's Shadowy Stay in U.S. Leaves A Hazy Portrait*, WASH. POST, March 3, 1993, at A1, A25.

36. All but one of the victims were CIA employees. *Id.* at A25.

37. *Id.*

38. *Id.*

39. It was learned that Kansi purchased ammunition, two handguns and a Colt AR-15 assault rifle, which he exchanged for the AK-47 used in the attack from David Condon Guns in Chantilly. *Id.*

40. *See* O'Harrow, *supra* note 35, at A1.

41. *FBI Agents Looking For Kansi Are Pulled From Pakistan*, WASH. POST, Sept. 8, 1993, at

The second major attack occurred in New York City. On February 26, 1993, a rented Ryder van containing approximately 1200 pounds of explosives detonated in the parking garage of the World Trade Center.⁴² The explosion killed six people, and more than 1000 were injured.⁴³ After piecing together various bits of information, the FBI uncovered a large terrorist conspiracy intent on further attacks within the United States. This group, allegedly led by Sheik Omar Abdel Rahman,⁴⁴ is said to have not only planned and carried out the World Trade Center bombing, but was also reportedly involved in the 1992 murder of militant Zionist Rabbi Meir Kahane.⁴⁵ In addition, prosecutors have charged this group with plotting to kill Egyptian President Hosni Mubarek and U.S. Senator Alphonse D'Amato,⁴⁶ as well as planning to bomb the Lincoln and Holland Tunnels in New York City, the United Nations building, and other city landmarks.⁴⁷ On March 5, 1994, four of the conspirators, Ahmad Ajaj, Mahmud Abouhalima, Mohammed Salameh, and Nidal Ayyad were convicted on all counts.⁴⁸ Each defendant was sentenced to 240 years in prison.⁴⁹

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42. Richard Behar, *The Secret Life of Mahmud the Red*, TIME, October 4, 1993, at 55.

43. *Id.*

44. *Id.* Sheik Rahman obtained a visa in Khartoum, Sudan in May 1990 when officials there failed to notice his name on a list of undesirables. Jay Peterzell, *How the Sheik Got In*, TIME, May 24, 1993, at 44. In April 1991 he was given a green card, and once his troubles in the United States began to mount, the Sheik applied for political asylum. INS officials have been severely criticized for their actions.

45. Behar, *supra* note 42, at 56.

46. *Id.*

47. George J. Church, *Snared in the Terrorist Web*, TIME, Sept. 6, 1993, at 30.

48. Eleanor Randolph, *4 Guilty In Bombing of World Trade Center*, WASH. POST, March 5, 1994, at A1, A8. Other members in the conspiracy include Ibrahim El-Gabrownny, President of the Abu Bakr Mosque in Brooklyn, New York, who reportedly handled the fake passports for members and Ramzi Ahmed Yousef, who allegedly bought the explosives used in the blast. Mohammed Salameh rented the storage facility where the bomb was manufactured and the van used in the delivery. *See* Behar, *supra* note 42, at 56.

Mahmud Abouhalima escaped to Egypt, where he was captured and tortured until he confessed. The FBI describes Abouhalima as typical of the new breed of terrorist, who gets swept into a growing Islamic fervor until he is ready to commit acts of violence to further his faith. Behar, *supra* note 42, at 56.

49. Eleanor Randolph, *Trade Center Bombers Given 240 Years Each: Judge Calls Defendants Cowards*, WASH. POST, May 25, 1994, at A1.

III. Current Political Asylum Law

“Our asylum system is sick.”

- Rep. Ron Mazzoli (D-Ky.)⁵⁰

The Immigration and Naturalization Service (INS) of the Executive Branch of government controls immigration.⁵¹ The United States has a long history of immigration law, which reflects the various ways our nation views this subject.⁵² Current law is reflected in the Refugee Act of 1980,⁵³ which was passed to regulate the flow of immigration into this nation and to prevent the President from using asylum as a foreign policy tool.⁵⁴

All aliens, upon arrival at a United States port, are subject to inspection by an immigration officer.⁵⁵ An alien applying for entry must present “whatever documents are required and shall establish to the satisfaction of the immigration officer that he/she is not subject to exclusion.”⁵⁶ Any alien who does not appear to be clearly entitled beyond doubt to enter the United States shall be detained for further inquiry.⁵⁷

The United States Attorney General sets application procedures for asylum.⁵⁸ Under current law, any person who qualifies as a refugee⁵⁹

50. Patrick J. McDonnell and William J. Eaton, *Political Asylum System Under Fire*, L.A. TIMES, July 19, 1993, at A1.

51. Kevin R. Johnson, *A “Hard Look” at the Executive Branch’s Asylum Decisions*, 2 UTAH L. REV. 279, 282 (1991).

52. See Maureen O’Connor Hurley, Note, *The Asylum Process: Past, Present, and Future*, 26 NEW ENG. L. REV. 995 (1992). See also Davalene Cooper, Note, *Promised Land or Land of Broken Promises? Political Asylum in the United States*, 76 KY. L. J. 923 (1987/1988).

53. Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified at 8 U.S.C. § 1157-1159 (1970 & Supp. 1993)).

54. See generally Johnson, *supra* note 51.

55. 8 U.S.C. § 1225(a) (1970). This does not encompass physical or mental examinations. See 8 U.S.C. § 1222 (1970 & Supp. 1993) (dealing with medical inspections).

56. 8 C.F.R. § 235.1(d)(1) (1993).

57. 8 U.S.C. § 1225(b) (1970).

58. The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien’s status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

8 U.S.C. § 1158(a) (1993).

59. The term “refugee” means (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of

may apply for political asylum within the United States.⁶⁰ However, a finding that the alien qualifies as a refugee does no more than establish that the alien may be granted asylum at the Attorney General's discretion.⁶¹ An applicant may qualify as a refugee by showing that he has suffered actual past persecution in his native country or he has a well-founded fear of future persecution.⁶² If the applicant can show immigration officials that he has suffered past persecution in his native country (or last country of residence) and that he is unwilling or unable to return, then he will be presumed to have a well-founded fear of persecution.⁶³ An asylum officer may rebut this presumption by showing, by a preponderance of the evidence, that conditions in the country of origin have changed.⁶⁴

Absent a showing of past persecution or the presumption of future persecution, the alien must demonstrate a well-founded fear of future persecution. The applicant must establish that: (1) he has a fear of persecution in his country of origin on account of race, nationality, membership in a particular social group, or political opinion; (2) he faces a reasonable possibility of actually suffering such persecution if he were to return to that country; and (3) he is unable or unwilling to return or avail himself of the protection of that country because of such fear.⁶⁵ The applicant can satisfy his burden of proof if he shows a pattern or practice of persecution against similarly situated individuals in the alien's country and he establishes his own inclusion in such a group.⁶⁶ The

persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act [8 U.S.C. § 1157(E)]) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A) and (B) (1970 & Supp. 1993).

60. 8 U.S.C. § 1158(a) (1993).

61. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 427-428 (1987).

62. 8 C.F.R. § 208.13(b) (1993). This standard derives from the language defining "refugee" in 8 U.S.C. § 1101(a)(42) (1970 & Supp. 1993).

63. 8 C.F.R. § 208.13(b)(1) (1993).

64. 8 C.F.R. § 208.13(b)(1)(i) (1993).

65. 8 C.F.R. § 208.13(2) (1993).

66. 8 C.F.R. § 208.13(2)(i)(A) and (B) (1993).

POLITICAL ASYLUM

Supreme Court has held that to show a well-founded fear, the alien seeking asylum need not prove that it is more likely than not that he will be persecuted.⁶⁷

Once the grounds for asylum have been established, federal code provisions establish the application procedures. The applicant must file the requisite forms⁶⁸ with the proper authorities.⁶⁹ The applicant must then be interviewed by an asylum officer either at the time of application or at a later date,⁷⁰ "to elicit all relevant and useful information bearing on the applicant's eligibility for the form of relief sought."⁷¹ The applicant may be represented by counsel,⁷² may submit affidavits of witnesses,⁷³ and may comment on the evidence presented.⁷⁴ The asylum officer may give the applicant a period of up to thirty days after the interview to submit evidence in support of his application.⁷⁵ In the interim between application and decision, the asylum officer shall authorize employment for up to one year for aliens whose claims are not frivolous.⁷⁶ The asylum officer may renew the employment authorization in one year increments until the officer or immigration court makes a final decision.⁷⁷ An immigration judge or an asylum officer grants final approval or denial of an asylum application.⁷⁸ Asylum, if awarded, is granted for an indefinite period.⁷⁹ The Code also provides for mandatory denials of certain applications.⁸⁰

67. *Cardoza-Fonseca*, 480 U.S. at 430-31. For commentaries about this case, see Anthony Asuncion, Note, *INS v. Cardoza-Fonseca* [107 S. Ct. 1207] *Establishment of a More Liberal Asylum Standard*, 37 AM. U. L. REV. 915 (1988). See also Craig Sherman, *Immigration Law: Political Asylum for Deportable Aliens - Immigration and Naturalization Service v. Cardoza-Fonseca*, 107 S. Ct. 1207, 28 HARV. INT'L L.J. 482 (1987).

68. The application for asylum or withholding of deportation must be made in quadruplicate on Form I-589 (Request for Asylum in the United States). The application shall be accompanied by one completed Form G-325A (Biographical Information) and one completed Form FD-258 (Fingerprint Card). Any additional supporting information must also be submitted in quadruplicate. Each applicant must also submit two photographs. 8 C.F.R. § 208.3(A)(1993).

69. 8 C.F.R. § 208.4 (1993).

70. 8 C.F.R. § 208.9(a) (1993).

71. 8 C.F.R. § 208.9(b) (1993).

72. *Id.*

73. *Id.*

74. 8 C.F.R. § 208.9(d) (1993).

75. 8 C.F.R. § 208.9(e) (1993).

76. "Frivolous" is defined as manifestly unfounded or abusive. 8 C.F.R. § 208.7(A) (1993).

77. 8 C.F.R. § 208.7(b) (1993).

78. 8 C.F.R. § 208.14(a) (1993).

79. 8 C.F.R. § 208.20 (1993).

80. 8 C.F.R. § 208.14(C)(1993). An application for asylum shall be denied if:

(1) The alien, having been convicted by a final judgment of a particularly serious crime in the United States constitutes a danger to the community;

IV. Problems With Existing Law

"I would say the abuse [of the asylum system] is quite pervasive right now."

Rosemary Melville, Chief of the Los Angeles INS Asylum Office⁸¹

A multitude of problems currently overwhelm the political asylum process. First and foremost, applicants flood the system. "Asylum claims have jumped from about 26,000 in 1980 to a projected 120,000 for 1993."⁸² This nation's asylum officer corps consists of 150 officers, smaller than most western nations,⁸³ and is inundated with asylum claims.⁸⁴ The stark ratios in themselves make it nearly impossible for asylum officers to thoroughly review each and every case.

The crush of asylum-seekers has produced an enormous backlog of approximately 300,000 cases.⁸⁵ Because of this overload, it can take up to two years for a hearing to occur.⁸⁶ In southern California, for example, only about one-third of applicants are even scheduled for a hearing; the rest are "heaped onto the backlog."⁸⁷ An alien who applies

(2) The applicant has been firmly resettled within the meaning of § 208.15; or

(3) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

81. See McDonnell, *supra* note 50, at A14.

82. *Id.* Applications for U.S. political asylum filed with the Immigration and Naturalization Service:

Year:	Applications (in thousands)
1993	120 (projected)
1992	103.9
1991	56.3
1990	73.6
1989	101.7
1988	60.7
1987	26.1
1986	18.9
1985	16.6
1984	24.3
1983	26.1
1982	33.3
1981	61.6
1980	26.5

Id.

83. By comparison, Germany has 3000, and Sweden has 800 Asylum Officers. Ted Conover, *The United States of Asylum*, N.Y. TIMES, Sept. 19, 1993, § 6, at 56, 75.

84. See McDonnell, *supra* note 50, at A14.

85. *Id.*

86. Bill Turque, *Why Our Borders are Out of Control*, NEWSWEEK, Aug. 9, 1993, at 25.

87. McDonnell, *supra* note 50, at A14.

for political asylum is entitled to a withholding of deportation during the process,⁸⁸ which in essence allows the alien to remain in the country until the case is resolved. Once in this country, the alien is allowed to seek employment⁸⁹ and can apply for a Social Security card and a driver's license.⁹⁰

The potential terrorism problems arise because, as INS officials concede, only five percent of applicants actually appear for their hearings.⁹¹ If the alien does not seek employment or apply for any identification cards, it may be impossible to find him once he has been turned out into the country. Practically speaking, the asylum-seeker is here to stay whether or not he has gone through the legal steps.

A case study of New York's John F. Kennedy International Airport may be instructional. JFK Airport receives approximately 1300 political asylum claimants per month⁹² to be processed by 360 immigration officials.⁹³ In 1992, 14,688 aliens attempted to enter JFK and 9194, or sixty-three percent, requested political asylum.⁹⁴ Of those requesting asylum, all but 428 carried either fraudulent documents or none at all to support their claims.⁹⁵ The Wackenhut detention facility, which is a converted warehouse near the airport, has 125 beds⁹⁶ and only twelve to fifteen vacancies open up for those 1300 applicants per month.⁹⁷ The reality is that only seven percent of political asylum applicants can be detained at JFK; the rest are released into the city.⁹⁸ In New York, the system is so backed up that it takes a minimum of four months to bring a claimant before a judge for a preliminary hearing and an additional minimum of fourteen months before actual testimony is heard.⁹⁹ Given the realities of the process, a change is necessary.

88. 8 C.F.R. § 208.16 (1993).

89. 8 C.F.R. § 208.7 (1993). See *supra* notes 76 and 77, and accompanying text.

90. Ira H. Mehlman, *The New Jet Set*, NAT'L REVIEW, Mar. 15, 1993, at 40, 43.

91. *Id.* at 40.

92. *Id.*

93. *Id.* at 44. This figure includes asylum officers and other INS officials. *Id.*

94. *Id.* at 40.

95. Mehlman, *supra* note 90, at 40.

96. Conover, *supra* note 83, at 58, 74.

97. Mehlman, *supra* note 90, at 40.

98. *Id.*

99. *Id.* at 42.

V. The Need for Reform

“The system is sinfully gimmicked.”

- Senator Alan Simpson (R-Wyo.)¹⁰⁰

Public opinion and political pressures continue to mount on legislators to change the asylum process. It is estimated that there are two to four million illegal aliens currently in the United States, with approximately 500,000 entering annually.¹⁰¹ A recent *Newsweek* poll stated that sixty percent of Americans believe that immigration is bad for this country.¹⁰² Newspaper editorials have recently called for changes in asylum procedures,¹⁰³ in what seems to be a continuation of America's longstanding love/hate relationship with immigration.¹⁰⁴

The individuals participating in the World Trade Center bombing and the attack outside CIA headquarters dramatically demonstrate the need for reform. Ramzi Ahmed Yousef, under indictment for the World Trade Center bombing, entered JFK Airport on a flight from Pakistan by giving his name as Azan Muhammed.¹⁰⁵ Yousef had no valid visa, but claimed he was seeking asylum.¹⁰⁶ Claiming to belong to a Kuwaiti guerilla group, he stated that he would be tortured if returned to Iraq.¹⁰⁷ He was given a hearing date and released because the detention center was full.¹⁰⁸ He failed to appear for that hearing and two subsequently scheduled hearings.¹⁰⁹ Yousef fled the United States after the bombing and was captured in February of 1995 in Islamabad, Pakistan after a two

100. See McDonnell, *supra* note 50, at A14.

101. Tom Morganthan, *America Still A Melting Pot?*, NEWSWEEK, Aug. 9, 1993, at 20.

102. *Id.* at 19.

103. See *Immigration: Asylum and Refugee Policies are a Shambles*, THE DALLAS MORNING NEWS, Oct. 24, 1993, at 2J. See also Maria Puente, *Asylum System Snowed Under-Process is Long and Vulnerable to Fraud, Abuse*, USA TODAY, Oct. 20, 1993, at 2A.

104. Americans appear to regard immigration with a mix of pride and prejudice. While 40% of Americans can trace their family back to someone who passed through Ellis Island, immigrants have long been viewed in harsh, often racist terms. Tom Mathews, *America's Changing Face*, NEWSWEEK, Sept. 10, 1990 at 46, 47-49. See also, Peter H. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1 (1984). A poignant example would be California's Proposition 187, passed in November of 1994, which would deny many public services to illegal immigrants and their children. Lawsuits are currently blocking its implementation.

105. Pierre Thomas, *A New Strain of Terrorism: Groups are Fast, Loose, Hard to Find*, WASH. POST, Aug. 3, 1993, at A1.

106. *Id.*

107. Russell Watson, *Cracking the Conspiracy*, NEWSWEEK, Feb. 20, 1995, at 36, 37.

108. Thomas, *supra* note 105, at A1.

109. *Id.*

year international manhunt.¹¹⁰ Co-conspirator Ahmad Ajaj entered the United States from Pakistan with a fake passport, bomb-making materials, and instructional manuals.¹¹¹

Mir Aimal Kanshi, who attacked CIA Headquarters in Virginia, entered JFK in 1991 on a phony business visa and was issued a work permit.¹¹² He then applied for political asylum after the fraudulent visa expired in 1992.¹¹³ The FBI believes Kanshi paid \$2,000 to 5,000 for the phony documents.¹¹⁴ He was never even scheduled to have a hearing.¹¹⁵ Kanshi purchased the weapons used in the assault through his work permit and driver's license.¹¹⁶

The changing nature of international terrorism demands a modification of U.S. law.¹¹⁷ Most of the "old guard" terrorist organizations of the 70s and 80s have been forced out of business.¹¹⁸ The demise of the Soviet Union, once a strong supporter of terrorism, has severely crippled the abilities of Marxist groups and has also loosened its control over terrorist operations.¹¹⁹ Groups are now being quickly organized on an ad hoc basis, with a few professionals linking up with local amateurs.¹²⁰ In essence, these groups are a loose collection of radicals, operating independently.¹²¹ Because their structures are in a permanent state of flux, hard data regarding the leaders and bases of operation is lacking.¹²² Consequently, security forces are unable to develop profiles and interdict planned attacks.

Groups have changed not only in form but also in substance. The new style of terrorism, particularly from the Middle East, is religiously-inspired, rather than politically driven.¹²³ These groups desire the establishment of Islamic states, similar to Iran, and violently oppose any

110. Watson, *supra* note 107, at 36.

111. *Id.*

112. Mehlman, *supra* note 90, at 44.

113. *Id.*

114. O'Harrow, *supra* note 35, at A25.

115. Mehlman, *supra* note 90, at 44.

116. *Id.* See also *supra* note 39 and accompanying text.

117. Overall, terrorist incidents in the United States have decreased since 1989. According to FBI estimates, there were nine incidents in 1988; seven incidents in 1990; and two incidents in 1992. *Caught By Surprise*, NEWSWEEK, Aug. 9, 1993, at 28.

118. *Id.*

119. STERLING, *supra* note 11, at 286-97 (discussing Soviet influence on international terrorism).

120. Thomas, *supra* note 105, at A14.

121. *Id.*

122. See Emerson, *supra* note 21, at C5.

123. *Id.*

Western influences. Most of these groups see America as the epitome of the evil Western world that must be destroyed.

VI. Proposed Changes in Immigration Law

Responding to political and public pressures, lawmakers of both political parties have proposed several changes to current immigration law. The Clinton Administration's reforms center on the Immigration Stabilization Act of 1993, (hereinafter "the Clinton Reforms").¹²⁴ Sponsored by Senator Reid (D-Nev.), these reforms propose *inter alia* "[t]o curb criminal activity by aliens," and "to defend against acts of international terrorism."¹²⁵ The Clinton Reforms seek to improve the asylum system by giving more discretion to asylum officers in determining real versus fraudulent claims and curbing the judicial review process. The newly-elected, Republican-controlled 104th Congress has responded by proposing The Immigration Moratorium Act of 1995¹²⁶ and The Immigration Accountability Act of 1995¹²⁷ (hereinafter "the Republican Reforms"), which contain similar approaches and objectives. This Comment will examine both the substantive and procedural changes the Reforms will initiate.

A. Substantive changes of the Reforms

As an initial step, both reforms reduce the overall level of worldwide immigration by limiting family-sponsored immigration, employment-based immigration, and diversity levels of immigration. Family-sponsored immigration involves immigrants who are: (1) unmarried sons and daughters of citizens; (2) spouses and unmarried sons and unmarried daughters of permanent resident aliens; (3) married sons and daughters of citizens; or (4) brothers and sisters of citizens.¹²⁸ Employment-based immigration sets priorities for the kinds of workers allowed into the United States, with preference given to aliens with extraordinary abilities,¹²⁹ outstanding professors and researchers,¹³⁰ and certain multinational executives and managers.¹³¹ Provisions also accommodate

124. Immigration Stabilization Act of 1993, S.1351, 103rd Cong., 1st Sess. (1993) [hereinafter I.S.A.].

125. *Id.* at 1.

126. H.R. 373, 104th Cong., 1st Sess. (1995) and S. 160, 104th Cong., 1st Sess. (1995).

127. H.R. 375, 104th Cong., 1st Sess. (1995).

128. 8 U.S.C. § 1153(a)(1), (2), (3), (4) (1970 & Supp. 1993).

129. 8 U.S.C. § 1153(b)(1)(A) (1970 and Supp. 1993).

130. 8 U.S.C. § 1153(b)(1)(B) (1970 & Supp. 1993).

131. 8 U.S.C. § 1153(b)(1)(C) (1970 & Supp. 1993).

aliens holding advanced degrees,¹³² and skilled or professional workers.¹³³ Diversity immigration levels are established according to regions of the world.¹³⁴ The Attorney General may then set levels of immigration based on the populations and immigration levels from each of these regions.¹³⁵

Under the Clinton Reforms, family-sponsored immigration would be set at "300,000 minus the sum of (1) the number of refugees admitted under [the law] in the preceding fiscal year and (2) the number of aliens who were issued immigrant visas or who were otherwise lawfully admitted into the United States for permanent residence in the previous fiscal year."¹³⁶ This would be a reduction from the current level of 480,000 (minus certain other calculations).¹³⁷ The reforms would also reduce the worldwide level of employment-based immigration from 140,000¹³⁸ to 40,000,¹³⁹ and the worldwide level of diversity immigration would be eliminated.¹⁴⁰

Under the Republican Reforms, the House bill would set family-sponsored immigration at 10,000, employment-based immigration at 5,000, and would eliminate diversity immigration.¹⁴¹ Conversely, the Senate bill would set family-sponsored immigration at 325,000 minus the sum of (A) the number of refugees admitted; (B) the number of spouses and children of a citizen of the United States admitted; and (C) the number of employment-based immigrants who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence. Employment-based immigration

132. 8 U.S.C. § 1153(b)(2) (1970 & Supp. 1993).

133. 8 U.S.C. § 1153(b)(3) (1970 & Supp. 1993).

134. The regions are divided as follows:

- a. Africa
- b. Asia
- c. Europe
- d. North America (other than Mexico)
- e. Oceania
- f. South America, Mexico, Central America and the Caribbean.

8 U.S.C. § 1153(c)(1)(F) (1970 & Supp. 1993).

135. 8 U.S.C. § 1153(c) (1970 & Supp. 1993).

136. I.S.A., *supra* note 124, at 2-3.

137. See 8 U.S.C. § 1151(c)(1)(A) (i), (ii) & (iii) (1970 & Supp. 1993) (for the figures used in calculation).

138. 8 U.S.C. § 1151(d)(1)(A) and (B) (1970 & Supp. 1993).

139. I.S.A., *supra* note 124, at 3. 8 U.S.C. § 1151(d)(1) (1970 & Supp. 1993) (setting the worldwide employment-based immigration levels).

140. 8 U.S.C. § 1151(e) (1970 & Supp. 1993) (setting the old level of diversity immigration at 55,000).

141. H.R. 373, 104th Cong., 1st Sess. § 3 (1995).

would be set at 50,000, and diversity immigration would be eliminated.¹⁴²

Next, the Reforms confront the problems with asylum. Under the Clinton Reforms, asylum-procedure reform begins by reducing the number of refugees¹⁴³ allowed into the United States. No more than 50,000 refugees would be admitted during any fiscal year.¹⁴⁴ Under the Republican Reforms, the level of refugees would be either 50,000 (under the Senate bill)¹⁴⁵ or 25,000 (under the House bill).¹⁴⁶ Both reforms require that upon arriving at any American border, an immigration officer shall inspect each alien seeking entry into the country.¹⁴⁷ Under both reforms, the officer may exclude, without further hearing or review, any alien seeking entry if (1) the alien does not present documentation to obtain legal entry and (2) does not indicate either an intention to apply for asylum or a fear of persecution.¹⁴⁸ Prior law governing asylum did not require the alien to immediately state a desire to apply for asylum.¹⁴⁹

Asylum officers would be given broad discretionary powers under both reforms. Asylum officers would be specially designated by the Immigration and Naturalization Service "as having special training and knowledge of international conditions and human rights records of foreign countries"¹⁵⁰ and "in the application of the provisions of this act."¹⁵¹ Under the Clinton Reforms, if an alien is not entitled to enter "clearly and beyond a doubt," the alien shall be detained for a hearing before a special inquiry officer.¹⁵² Under both reforms, if the officer determines that the alien does not have a "credible fear of persecution . . . the officer shall order the alien excluded from the United States without further hearing or review."¹⁵³ Any alien, under both reforms, who presents "forged, counterfeit, altered, falsely made, stolen or inapplicable" documentation

142. S. 160, 104th Cong., 1st Sess. § 3 (1995).

143. *See supra* note 59.

144. I.S.A., *supra* note 124, at 8.

145. S.160, 104th Cong., 1st Sess. § 6 (1995)

146. H.R. 373, 104th Cong., 1st Sess. § 6 (1995).

147. I.S.A., *supra* note 124, at 9 and H.R. 375, 104th Cong., 1st Sess. § 101 (1995) (both amending 8 U.S.C. § 1225(b) (1970)).

148. I.S.A, *supra* note 124, at 9-10. Similar language is found in H.R. 375, 104th Cong., 1st Sess. § 101 (1995). This provision would immediately eliminate aliens who don't have a "plan of attack" for entering the country and dispense with further legal consequences and backlog.

149. *See* 8 U.S.C. § 1225(b) (1970).

150. I.S.A., *supra* note 124, at 20. Until those officers are designated, persons currently acting in a similar capacity are to be deemed qualified as asylum officers. *Id.*

151. H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

152. I.S.A., *supra* note 124, at 10.

153. *Id.* *See also* H.R. 375, 104th Cong., 1st Sess. § 101 (1995).

would also be excluded.¹⁵⁴ Further, as permitted by current law, decisions favorable to an alien's admission may nevertheless be subject to challenge by any other immigration officer.¹⁵⁵

Alternatively, the Attorney General would have the discretion to grant asylum,¹⁵⁶ if the alien applies in accordance with the law. Under the proposed reforms, the alien would have to establish that it is "more probable than not" that he would be arrested and incarcerated or his life would be threatened if he were returned to his country.¹⁵⁷ This would heighten the current burden of proof. The Supreme Court held in *Cardoza-Fonseca*¹⁵⁸ that to prove a "well-founded fear," an alien need not show that it is more likely than not that he will suffer future persecution if returned.¹⁵⁹ The proposed reforms will statutorily overrule this decision. This more difficult standard is aimed at reducing the ability of aliens to satisfy the requirements of asylum claims, thus reducing the number of successful asylum-seekers.

Additionally, both reforms list several exceptions to the grant of asylum.¹⁶⁰ One exception of particular relevance is that if "there are

154. I.S.A., *supra* note 124, at 12. See also H.R. 375, 104th Cong., 1st Sess. § 101 (1995).

155. I.S.A., *supra* note 124, at 11. See also H.R. 375, 104th Cong., 1st Sess. § 101 (1995). This is similar in language to 8 U.S.C. § 1225(b) (1970).

156. 8 U.S.C. § 1158(a) (1993).

157. I.S.A., *supra* note 124, at 14-15 and H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

158. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

159. *Id.* at 431.

160. The Clinton Reforms exceptions are as follows:

(i) the alien ordered, incited, assisted or participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States.

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.

(iiii) a country willing to accept the alien has been identified

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

I.S.A., *supra* note 124, at 15.

The Republican Reforms exceptions are as follows:

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, or political opinion;

(ii) the alien was convicted of a felony in the United States or of an equivalent non political crime outside the United States

(iii) the alien poses a danger to the security of the United States; or

(iv) there is a country to which the alien can be deported or returned and the alien does not establish that it is more probable than not that the government of that country would persecute the alien on account of the

reasonable grounds for regarding the alien as a danger to the security of the United States," the Attorney General may not grant asylum to the alien.¹⁶¹ Accordingly, this exception would codify a previous administrative regulation,¹⁶² giving it the greater force of law.

If the Attorney General grants asylum, those aliens would not be deportable and would be provided "employment authorization."¹⁶³ In addition to enumerated exceptions, termination of asylum may occur when, due to a change in circumstances in the alien's country of nationality or place of habitual residence, the alien no longer is qualified for asylum.¹⁶⁴ The Attorney General would make this determination¹⁶⁵ and the alien would be notified thirty days prior to the termination hearing by the asylum officer.¹⁶⁶

B. Procedural changes of the Reforms

Both reforms specify several procedural changes in the asylum process. Under the Clinton Reforms, if the alien has not given notice of an intention to file an application for asylum within thirty days to an asylum officer and has not filed an actual application within forty days of entering the United States, the application shall not be considered.¹⁶⁷ Under the Republican Reforms, immigrants must apply for asylum before entering into the United States (if the conditions upon which the application is based exist when the alien enters the United States), or within sixty days after the condition arises, or before the alien's authorized stay is ended.¹⁶⁸ Once the application has been filed, the asylum officer shall set a date for a hearing as soon as possible,¹⁶⁹ which will commence no later than forty-five days after the date of

alien's race, religion, nationality, or political opinion if the alien came into that government's custody.

H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

161. I.S.A., *supra* note 124, at 15. See also H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

162. 8 C.F.R. § 208.14. (1993).

163. I.S.A., *supra* note 124, at 16-17. See also H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

164. I.S.A., *supra* note 124, at 17. See also H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

This provision may become particularly relevant in the future if a Palestinian state is created.

165. I.S.A., *supra* note 124, at 17.

166. 8 C.F.R. § 208.24(c) (1993).

167. I.S.A., *supra* note 124 at 18-19. An exception does exist for an application for temporary asylum. The application may be considered if the alien demonstrates by clear and convincing evidence, that circumstances have changed in the alien's country of nationality which affect asylum eligibility. *Id.* at 19. In addition, the alien applying for temporary asylum is required to submit to the taking of fingerprints and a photograph. *Id.*

168. H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

169. I.S.A., *supra* note 124, at 21. See also H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

application.¹⁷⁰ Such a proposal runs contrary to the current Federal Code procedures, which do not set specific cut-off dates for asylum applications or hearing dates.¹⁷¹

Under both Reforms, the hearing would be conducted in a non-adversarial manner, with the alien having the rights to counsel, to present evidence and witnesses, to examine and object to evidence, and to cross-examine all witnesses.¹⁷² The hearing officer would render determinations on the application no later than thirty days after the hearing.¹⁷³ Those aliens who fail to appear for their hearing would have their applications dismissed absent a showing of exceptional circumstances.¹⁷⁴ Additionally, the Republican Reforms would prohibit an alien, who failed to appear at a hearing, from filing any new applications.¹⁷⁵

The proposed changes severely curtail judicial review of applications. In general the "decision of the asylum officer shall be the final administrative determination of a claim for asylum."¹⁷⁶ "Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable" under Titles I or II of the Clinton Reforms.¹⁷⁷ Habeas corpus would be limited to examination of whether the petitioner (1) is an alien and (2) was ordered excluded from the United States pursuant to this Act.¹⁷⁸ This provision would only cover those aliens imprisoned, rather than those aliens whose claims have simply been rejected. Regardless, no court would have jurisdiction to consider "the validity of any adjudication or determination of exclusion, to certify a class in an action challenging the exclusion provisions of this Act or any portion or implementation thereof, or to provide declaratory or injunctive relief with respect to the exclusion of any alien."¹⁷⁹

170. I.S.A., *supra* note 124, at 21.

171. 8 C.F.R. § 208.9 (1993).

172. I.S.A., *supra* note 124, at 21-22. *See also* H.R. 375, 104th Cong., 1st Sess. § 102 (1995). Enacting this provision would codify 8 C.F.R. § 208.9(b) and (d) (1993).

173. *See* I.S.A., *supra* note 124, at 22-23. *See also* H.R. 375, 104th Cong., 1st Sess. § 102 (1995). Unlike the proposed reforms, no time limit for decisions exists under current law.

174. I.S.A., *supra* note 124, at 23. *See also* H.R. 375, 104th Cong., 1st Sess. § 102 (1995). 8 C.F.R. § 208.10 (1993) does not currently give an automatic dismissal.

175. H.R. 375, 104th Cong., 1st Sess. § 102 (1995)

176. I.S.A., *supra* note 124, at 24. *See also* H.R. 375, 104th Cong., 1st Sess. § 102 (1995).

177. I.S.A., *supra* note 124, at 27. Title I deals with admission of Immigrants; Title II concerns admission of refugees. H.R. 375, 104th Cong., 1st Sess. § 104 (1995) contains similar language..

178. I.S.A., *supra* note 124, at 27. *See also* H.R. 375, 104th Cong., 1st Sess. § 104 (1995).

179. I.S.A., *supra* note 124, at 27. *See also* H.R. 375, 104th Cong., 1st Sess. § 104 (1995).

VII. Potential Effectiveness of the Proposed Changes

The proposed reforms center on three important aspects. First, the overall levels of immigration are greatly decreased. A reduction in immigration levels is imperative to effect better system management. Second, the reforms allow the immediate interdiction and denial of access to fraudulent and potentially dangerous asylum-seekers. Those applicants whose claims are spurious at best would be quickly eliminated. Finally, limitations on judicial review seek to lessen the caseload of the courts and asylum officers. Gaining a handle on the backlog of cases would unburden and benefit the overall asylum system. When considered in light of the current status of international terrorism, the reforms have the potential to eliminate a significant portion of the terrorist threat, but the reforms do not address all matters of concern.

The reduction in total worldwide immigration will ease the asylum officers' workload. By limiting the number of refugees, the number of those aliens able to apply for asylum will automatically be reduced. Assuming that all "refugees" are granted asylum, at most, only 50,000 will receive that benefit, which is certainly a large reduction from the current levels.¹⁸⁰ With only a limited number of slots available, the asylum officer can more readily deny those borderline claims and can "pick and choose" those to whom to grant asylum. In essence, the officers would be able to identify potentially dangerous aliens and deny them access. Thus, only the obviously or determinably safe immigrants will be able to apply for asylum, and those with whom the asylum officer has any doubt can be excluded.

The expanded discretionary power of the asylum officers is the most effective tool the proposed legislation provides in the fight against future terrorism. An alien who does not establish a credible fear of persecution can be immediately rejected. In the past, terrorists relied on sponsor states and vast international networks to obtain visas and valid "background information" in order to gain access to target nations. The current crop of terrorists are more fortunate because they can manipulate current asylum law to get into the United States. Because of the backlog of cases and the inability of immigration officers to immediately exclude them, the current terrorists simply arrive at the border or port and patiently wait to be told that no spaces are available in the detention

180. I.S.A., *supra* note 124, at 8. The Republican Senate bill states a similar number; however, under the House bill a maximum of 25,000 refugees could be admitted. See S.160, 104th Cong., 1st Sess., § 6 (1995) and H.R. 373, 104th Cong., 1st Sess., § 6 (1995).

facility. They then receive a hearing date, for which they will not appear, and are turned loose into the street, free to pursue their destructive goals.

The new changes would end this pattern of abuse. The asylum officer faced with an alien who has no papers, but is requesting political asylum, would be authorized to reject the alien's claim outright. The new, specially trained officer would know the status of the alien's country of origin and would be able to intelligently decide the truthfulness of the claim. Under the new changes, persons like Ramzi Ahmed Yousef,¹⁸¹ who arrive in the United States with no documentation, would be rejected immediately. The proposed reforms prevent undocumented aliens with insubstantial claims from entering the United States solely by requesting asylum.

However, the proposed reforms do not cure all of the problems associated with current asylum law. While the Clinton Reforms require detention of those aliens who are not clearly and beyond a doubt able to enter,¹⁸² they do not propose a solution to the overcrowding problems that currently exist in the nation's detention facilities.¹⁸³ Therefore, any reform is ineffective unless the government finds a means to address the overwhelming number of applications. Thus the Clinton Reforms do little to immediately confront the backlog of immigrants requesting asylum, and, in fact, this provision may exaggerate the problem. The reforms suggested by the Republicans fail to even address the back log problem. Possible solutions to this problem, however, include excluding all aliens not clearly able to enter or allocating more resources to expand the detention centers. The choice would depend on Congress' philosophy toward immigration and the availability of funding.

Also, aliens may still be able to enter on undetectable fake visas, or exploit legitimate visas issued by unknowing states. Thus, it may continue to be difficult to exclude persons like Sheik Rahman¹⁸⁴ or Mir Aimal Kansi,¹⁸⁵ who enter through seemingly legitimate methods. This result is an international law problem dealing with issuance of visas. More sophisticated visas, involving bar codes or computer generated holographs, may be useful in preventing forgery.¹⁸⁶

181. See *supra* text page 12.

182. See I.S.A., *supra* note 124, at 10.

183. See *supra* text page 11.

184. See *supra* note 44 and accompanying text.

185. See *supra* text pages 5-6.

186. The State Department is reportedly completing a new computerized lookout network it hopes will prevent the issuing of visas to undesirables. Pierre Thomas and Thomas W. Lippman, *U.S. Steps Up Efforts To Combat Terrorists*, WASH. POST, Nov. 7, 1993, at A1.

The lasting impact of the changes are also questionable. Initially, asylum officers may exclude loosely collected, unorganized terrorist groups. Problems could arise, however, when those groups begin to adapt to the new regulations. Terrorists seeking entry to the United States may find that state help, in the form of valid visas and diplomatic connections, is required. Thus, the new, unorganized terrorist groups will probably turn to state sponsors for help. In return for such assistance, the sponsors may demand that these groups become more centrally organized and act as agents for the sponsor state. This may herald a return to the "old style" of terrorism, similar to that of the 1970s and 80s. The new law may provide the incentive for these loose radical cells to tightly organize to beat the system. The length of time it would take for these groups to adapt is undeterminable at this point. However, it will depend on factors such as the willingness of outlaw states to fund the groups, the desire of the organizations to operate in America, and the risks involved in being subjected to U.S. Anti-Terrorist legislation.¹⁸⁷ Nevertheless, the asylum officers' discretionary authority may effectively adapt to this concern and resolve it.

The drastic change in judicial philosophy is designed to support the decision-making process of the asylum officers. Disallowing judicial review of asylum officers' determinations accomplishes several functions. First, immigration decisions are firmly shifted to the Executive Branch of government. Judicial relaxation of immigration standards would be halted, and courts would have to resume their traditional deference to the Executive Branch in the areas of immigration and asylum.¹⁸⁸ This provision, in part, reacted to *Cardoza-Fonseca*,¹⁸⁹ which imposed a lower threshold in allowing asylum claims. The lack of reviewability would both enhance the discretionary powers of the INS and would ensure faster processing of applications.

Second, the judicial reforms would greatly reduce the backlog of cases in the system and help keep immigration cases to a manageable level. Challenges to asylum officers' decisions would be practically non-existent, outside of those brought from within their own agency, where one officer challenges another's decision. The other exception would be those few aliens who qualify under habeas corpus review. Coupled with

187. See Jennifer A. Rosenfeld, *The Anti-Terrorism Act of 1990: Bringing International Terrorists to Justice the American Way*, 15 SUFFOLK TRANSNAT'L L.J. 726 (1992). See also Robert Alfert Jr., *Hostes Humani Generis: An Expanded Notion of U.S. Counterterrorist Legislation*, 6 EMORY INT'L L. REV. 171 (1992).

188. See Mary Scott Miller, *Aliens' Right to Seek Asylum: The Attorney General's Power to Exclude "Security Threats" and the Role of the Courts*, 22 VAND.J. TRANSNAT'L LAW 187 (1989).

189. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

the overall reduction in immigration, the judicial changes would limit asylum cases to those with substantial claims, rather than those individuals whose claims serve only to prolong their protected status.

The problem with the judicial changes is that very few terrorists who enter the United States ever go through the full judicial process, at least with regard to asylum. The denial of judicial remedies is of little relevance to terrorists entering the United States who are interested only in access for a limited period of time. A quick entry into and a quick exit out of the United States are their paramount concerns. Consequently, any potential terrorist must be stopped at the border if this preventative philosophy is to work. Thus, while the judicial reforms may benefit the immigration system overall, they are of little help with regards to interdiction. These provisions may, however, prevent permanent cell organizers from entering America legally in order to set up shop.

To be fair, the potential for abuse of this system by the asylum officers is present. There is no way to tell whether the asylum corps will become more hostile to certain persons whom they presume to be entering illegally. Charges of prejudice against certain nationalities may arise. However, when faced with the current state of the law, which is manipulated daily by both genuine and phony asylum-seekers, a change is necessary. Obstacles such as these may be dealt with as they arise, but fear of these problems should not foreclose reform.

Opponents of reform may suggest that the proposed changes are contrary to the American tradition of immigration and exaggerate the actual terrorist threat. They point out that some of the World Trade Center bombing suspects entered the United States legally on valid visas¹⁹⁰ and that a number of legitimate refugees may be sacrificed due to the acts of a few officers.¹⁹¹ In a broader sense, immigration advocates continue to view America as a melting pot and a refuge for the world's downtrodden.

While it is admirable to view America in this way, reality does not support this philosophy. At a time when a large percentage of Americans view immigration skeptically,¹⁹² and at a time when the system is overwhelmed, arguments against change seem naive and overly idealistic. The reality is that the system is in desperate need of reform. The actual number of terrorists who enter through the asylum process is unknown. Nevertheless, Mir Aimal Kansi and Ramzi Ahmed Yousef have shown that it happens, and the effects can be devastating. Failure to

190. See McDonnell, *supra* note 50, at A1.

191. *Id.*

192. See *supra*, note 101 and accompanying text.

acknowledge this threat could cost many more lives. The United States cannot allow itself to become an unwitting haven for international terrorists.

VIII. Conclusion

The asylum process is clearly lacking in its ability to serve the needs of both legitimate applicants seeking refuge, and the nation in having secure borders. The changes in the world political scene have allowed new, radical terrorist groups to flourish. Many have their guns aimed directly at America. Now that the United States is free from the old Soviet threat, it can face the new challenges to national security. Reforming the political asylum process is a necessary first step toward protecting our nation. The proposed reforms will provide the initial means with which to combat the terrorist threat. Interdiction at the border is the most effective anti-terrorist measure possible. The proposed changes represent a serious effort to prevent future assaults, like the World Trade Center bombing, on United States soil. These changes in asylum law should be adopted as an introductory measure to combat the realities of the new world order.

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