

Text of Jeremy McKinney's presentation to the League of Women Voters of the Piedmont Triad luncheon January 21, 2003

I want to thank the League of Women Voters for inviting me to speak to you today regarding current immigration issues affecting everyone here in the Triad region. Your organization is at the forefront of providing information to the voting public and I appreciate the opportunity to perhaps provide you with facts not extensively covered in the national media. As an immigration lawyer, it's also nice to speak to a group of folks who actually have the power to vote and register your feelings on current immigration policy. I would like to briefly comment on the state of the law, and provide information regarding bills which were introduced in the last session of Congress which are likely to be reintroduced this year.

Since September 11, 2002, the biggest piece of immigration legislation has been the USA PATRIOT Act. I saw from your website that Seth Jaffe from the ACLU made a presentation regarding the bill, so I won't re-cover that ground, but in a little publicized section of the act, PATRIOT added a section to the Change of Address statute giving the AG the power to require natives of any one or more foreign states, or any class or group, who are within the United States to notify the AG of their current address "and furnish additional information as the AG may require." Since November of 2002, AG Ashcroft has used this Change of Address statute to systematically haul men 16 and over from Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan, and Kuwait into INS to be photographed, fingerprinted and questioned. The INS has used special registration at this point to detain hundreds, if not thousands, of individuals on the smallest of immigration violations. For example, in Southern California, hundreds of men and boys from Middle Eastern countries were arrested by federal immigration officials in December when they complied with orders to appear at INS offices for a special registration program. Officials speaking anonymously said they would not dispute estimates by lawyers for detainees that the number across Southern California was 500 to 700. In Los Angeles, up to one-fourth of those who showed up to register were jailed. Many of the individuals detained had applications pending to legalize their status.

And that was only one INS office dealing with four of the countries on the list I just mentioned. AILA reports that INS has been distracted by going after easy targets that are not threats to national security. Of the more than 1200 people detained since September 11, not one has been charged with criminal or terrorism-related activities.

Now this may not sound like bad news to some Americans, but before viewing this as simply aggressive law enforcement, look at the facts. I would argue special registration is just bad public policy and hurts our effort to combat terrorism. First, the program only applies to individuals who were inspected by INS at a port of entry and admitted into the United States. Therefore, special registration does not apply to individuals who sneak into the United States or are paroled.

Second, if a person is a possible terrorist, why would they comply with the program. As a Washington Post editorial recently pointed out, special registration could have provided the government with a new means of gathering intelligence regarding terrorist activities in the United States. But the arrests also undermined the law enforcement goal that spawned them. The purpose of the registration requirement is to get more information about Middle Eastern visitors -- and from these visitors -- for the domestic fight against terrorism. What man who has not yet registered and who might know something about terrorist activity will come forward and share that information now, when he knows he will be promptly arrested and deported if he has overstayed his visa or committed some other minor infraction?

Third, the program creates unneeded strain with our potential allies in predominantly Muslim states. Our government is calling upon Saudi Arabia and Kuwait to provide support in a potential war against Iraq, but we haul their people into our INS offices to interrogate them regarding their potential terrorist ties. President Bush has publicly called upon people to not attack Islam or its followers, but his AG (with the exception of North Korea) only puts predominantly Muslim countries on the list.

And fourth, it diminishes our reputation on the world stage as a lover and protector of freedom. Already, Canada has issued a travel advisory to Muslim Canadian citizens warning them that travel to the United States could subject them to arbitrary arrest and detention. Indonesia issued a similar warning last week. Who would have ever imagined a time when where other countries would warn their citizens against traveling to the United States?

But special registration is only one of the issues that marks our government's war on immigrants. The AG announced late last year that INS would begin enforcing for the first time in 50 years the change of address statute which requires all aliens present in the United States to notify INS within 10 days of any change of address. AILA quickly reported cases of individuals being placed in deportation proceedings for failing to notify INS of their change of address. Several months after making that broad proclamation, the INS is sitting under mountains of change-of-address cards, to the tune of some 700,000 with more pouring in by the thousands daily. The cards are under storage in Washington D.C. with absolutely no foreseeable solution in sight.

INS enforcement officials are taking broad liberties with the mandatory detention statute, which authorized INS to take into custody without bail aliens with even minor criminal offenses. Just a few weeks ago, my office won a battle with INS in Georgia where INS was holding one of my clients who had only misdemeanors on his record. The federal magistrate judge in that case found the mandatory detention statute unconstitutional as applied to my client. But how many immigrants have the will or ability to sue INS in federal court?

In the name of fighting terrorism, INS wants to limit most tourist visits to the United States of 30 days or less. This proposal has already sounded alarms in the tourism and real estate industry. After all, thousands of foreigners maintain vacation homes in the United States. According to the U.S. Department of Commerce Office of Travel and Tourism Industries, in 2000, there were 7.0 million visitors to the U.S. from overseas non-visa waiver countries traveling on B-1 or B-2 visas, not including Canada and Mexico. The travelers spent on average \$46 per day, for a total expenditure of \$2.1 billion. The impact of the September 11 terrorist attacks and its aftermath left the travel and tourism industry with declines of more than 50 percent during the weeks and months immediately following. Domestic tourism is rebounding, however, international visitation remains depressed, and will be fatally wounded if this proposal becomes a reality.

OK, so that's an awful lot of bad news. But now the good news – Congress seems to be listening. With the exception of the USA PATRIOT Act, Congress has considered several reform bills last session, but simply ran out of time before completing business. This

year, I would expect to see a return to a couple of bills aimed at curbing the element of unfairness in our immigration laws.

Return of Due Process to Removal Proceedings: The Republican House Judiciary Committee passed a bill, H.R. 1452, the Family Reunification Act, that would restore some of the due process protections that were stripped from our immigration system by the 1996 immigration laws.

- **Cancellation of Removal for Legal Permanent Residents:** Current law bars anyone convicted of an “aggravated felony” from applying for cancellation of removal (i.e., a waiver of deportation)—no matter what. This term, however, is misleading: in immigration law, an “aggravated felony” includes many offenses that are neither “aggravated” nor even “felonies” under actual criminal law. Under the bill, an immigration judge (“IJ”) could decide to waive the deportation of a legal immigrant (“LPR”) who was sentenced to less than five years of imprisonment. Even if a legal permanent resident had been sentenced to five years or more for an offense (e.g., a drug possession offense subject to mandatory minimum sentencing), he could still apply for relief in some special circumstances.
- **Determining Eligibility:** Under current law, any part of a sentence that has been suspended (or even a term of probation) counts as part of a “term of imprisonment.” Under the bill, only a sentence to actual imprisonment would determine whether an LPR is eligible for a waiver.
- **Elimination Of The “Stop-Time Rule”:** Under current law, the time that counts towards the seven-year residency requirement “stops” upon either the commission of a deportable offense or upon the service of a “Notice to Appear” for proceedings. The bill will eliminate this rule, with one exception: the clock would stop on the day an immigrant fails to appear for a proceeding without a reasonable excuse.
- **Discretionary Release From Detention:** Current law requires the mandatory detention, with no chance for bail, of an immigrant who is deportable due to any criminal offense – often hundreds of miles or more from home. The bill allows, but doesn’t require,

an IJ to release an immigrant who is eligible for relief from deportation.

- **Elimination of Retroactivity From Standards For Relief:** The 1996 laws punished very old mistakes under the new harsh rules. People who would have been eligible for relief when they were convicted are now being barred from it. The bill will now allow an LPR to apply for the relief available under the law in effect at the time of the offense.
- **Reapplication for Relief:** Immigrants who are not eligible for any waiver under current law, and either were already deported or are still in proceedings, would be able to reapply for it if they become eligible under the new rules established in the bill. This means that fairness and common sense would now apply “retroactively.”

2. Return of INA § 245(i): Section 245(i) is a vital provision of U.S. immigration law that allows eligible immigrants on the brink of becoming permanent residents to apply for their green cards in the U.S., rather than being forced to journey to their home countries to apply and face bars to return of three and ten years. Section 245(i) is available to immigrants residing in the U.S. who are sponsored by close family members or by employers who cannot find necessary U.S. workers, and on whose behalf petitions were submitted prior to April 30, 2001. Immigrants applying for permanent residence under Section 245(i) are eligible for their green cards, but without Section 245(i), are unable to obtain them in the U.S. because they are not in a legal nonimmigrant status. People applying under Section 245(i) are screened for criminal offenses, health problems, the potential of becoming a public charge, fraud, misrepresentation, and all other grounds of inadmissibility. Each applicant has to pay a \$1,000 processing fee, thereby generating revenue for the INS, at no cost to taxpayers. The issue is not whether these individuals are eligible to become permanent residents—they already are. The issue is the location from which they are eligible to apply. Under current law, Last year, Senator Daschle (D-SD), the Senate Democratic leader, introduced recently the Uniting Families Act of 2002 that

extends Section 245(i). Senator Helms cosponsored a similar bill last year before leaving office. The House Republican leadership appeared to support a more restrictive extension of Section 245(i), but supported some return of the law. President Bush and a majority of Congress supports bringing back this law to help aspiring green card applicants stuck in a legal Catch 22.

Passage of these two bills could perhaps mark an end to the insanity that has gripped INS since the attack on our country. Thank you for listening.