

WRITTEN TESTIMONY OF

KAREN K. NARASAKI
PRESIDENT AND EXECUTIVE DIRECTOR
NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM

ON

THE IMPACT OF ASIAN IMMIGRATION TO THE UNITED STATES

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
JUDICIARY COMMITTEE
U.S. SENATE

For April 4, 2001 Hearing

EXECUTIVE SUMMARY

Family-based immigration Over 90 percent of Asian immigration comes through the family categories. But the unreasonably long family backlogs continue to grow. The situation disproportionately impacts Asian-Americans, since 1.6 million of the 3.5 million people waiting, 45.7 percent, are Asian. The family backlog seriously undermines immigrant families and their communities. NAPALC urges the Subcommittee to hold hearings on the issue and develop a solution that will help reunite families.

Employment-based immigration. A recent Department of Labor interim rule frustrates Congressional intent in last year's H1-B legislation, which was to allow these workers ability to move to a new employer so long as the new employer applies for H1-B eligibility. NAPALC asks that the Subcommittee investigate the effects of this recent rule, and support efforts to ensure that Congressional intent is not thwarted.

Citizenship. Based on surveys NAPALC has collected from community-based organizations across the country that serve Asian Pacific American clients, INS has been failing in its function and mission to deliver adequate services to its customers. Long lines and inefficient processing times persist despite increases in fees. Also last year, Congress passed the Hmong Citizenship Act of 2000, allowing eligible individuals to waive the English fluency requirement and take a modified civics examination for their naturalization process. We anticipate that the sunset date will need to be extended and the quota raised. We urge the Subcommittee to request a report from the INS as to their progress and if appropriate take corrective steps.

Asylees and Refugees. The United States has a long tradition of taking in those persons who flee their country in the face of persecution. A law passed last session allows certain eligible Southeast-Asian "parolees" to adjust their status. The INS has yet to issue any field directions or regulations; instead instructing their district offices to return applications thus far received. In addition, the law allows only 5,000 persons to adjust although there are an estimated 15 to 20,000 parolees who are eligible. We urge the Subcommittee to review this issue and support legislation increasing the number of visas available under this adjustment as well as to press the INS to develop and implement regulations before the end of May.

Restoration of Fundamental Rights NAPALC is deeply concerned with the basic due process protections that were eroded by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA). The effects were devastating and far-reaching. While four percent of the nation's population, Asian-Americans are 25 percent of the nation's foreign-born and are particularly susceptible to the harsh provisions of the 1996 laws. We urge the Subcommittee to consider proposals that would alleviate the harshest effects of these laws.

Reorganization of the INS. We support the general premise around which all of the proposals are based, that INS is indeed an agency plagued by inefficiencies in desperate need of change to drastically improve its ability to fulfill its functions in both areas of services and enforcement. We feel however, that the ultimate proposal must recognize that adequate funding must be ensured to improve the overall delivery of services, particularly in the area of naturalization and green card processing, and that these services are not sacrificed in any reorganization proposals. We urge the Subcommittee to hold hearings, make a comprehensive study that includes a realistic assessment of the costs, and seeks input from a wide range of stakeholders.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me be able to offer the following testimony on behalf of The National Asian Pacific American Legal Consortium. The National Asian Pacific American Legal Consortium (“NAPALC”) is a nonprofit organization whose mission is to advance and protect the legal and civil rights of Asian Pacific Americans across the country. Immigration policy is particularly important to NAPALC because of the large percentage of immigrants in the Asian-American community and the long history of racially discriminatory treatment of Asian and Pacific Islanders by our country’s immigration laws.

NAPALC and its Affiliates, the Asian-American Legal Defense and Education Fund in New York, the Asian Law Caucus in San Francisco, and the Asian Pacific American legal Center of Southern California, collectively have over 75 years of experience in providing direct legal services, community education, and advocacy on immigration law and immigrant rights issues.

NAPALC pursues fair, generous and nondiscriminatory immigration policies. We believe that history has proven that the United States has thrived economically and socially because it is a nation of immigrants. We collect data and educate policy makers as to the impact of various proposals. We also monitor implementation of immigration laws by the Immigration and Naturalization Service and provide technical assistance and education materials about changes in the immigration laws of most relevance to the Asian Pacific American community.

I. The History of Asian Immigration in the United States

A. Historical Exclusion

The history of this country's immigration laws has been fraught with racial bias. The Chinese Exclusion Act of 1882 which prohibited the immigration of Chinese laborers, epitomizes the early record on immigration from Asia.¹ In 1907, anti-Asian sentiment culminated in the Gentleman's Agreement limiting Japanese immigration.² Asian immigration was further restricted by the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region³; the Quota Law of 1921 which limited the annual immigration of a given nationality to three percent of the number of such persons residing in the United States as of 1910⁴; and the National Origins Act of 1924, which banned immigration of persons who were ineligible for citizenship.⁵ A decade later, the Tydings-McDuffie Act of 1934 placed a quota of 50 Filipino immigrants per year.

It has been just over a generation since the Chinese Exclusion Act and its progeny were repealed in 1943.⁶ Yet after the repeal, discriminatory quotas were nevertheless set using formulas giving special preference to immigration from Europe. Until 1965, for example, the German annual quota was almost 26,000 and the Irish almost 18,000 while the annual quota from China was 105, for Japan was 185, the Philippines was 100 and the Pacific Islands was 100.⁷

The intensity of the discrimination against immigrants from Asia is reflected in the fact that they were ineligible to become naturalized citizens for over 160 years. A 1790 law allowed only “free white persons” to become citizens. Even after the law was changed to include African Americans, similar legislation to include Asian Americans was rejected.⁸ The Supreme Court upheld the laws making Asian immigrants ineligible for citizenship.⁹ The last of these laws were not repealed until 1952.¹⁰

B. Immigration Reforms

Congress sought to eliminate most of the racial barriers imbedded in the immigration system with the passage of the Immigration and Naturalization Act of 1965. Unfortunately the Act did not address the effect of earlier biases. In fact, the 20,000 per country limit, imposed without any connection to size of originating country or demand, resulted in extremely long waiting lists for Asian immigrants.¹¹

The Immigration Act of 1990 also failed to address the tremendous backlogs that already existed for countries like Mexico, India, the Philippines, South Korea, China and Hong Kong. Instead, the problem was exacerbated with the reduction in number of visas available for adult sons and daughters of United States citizens. At the time the backlog consisted primarily of children of Filipino veterans who are allowed to naturalize under the Act because of their service to this country in fighting as a part of United States Armed Forces in World War II. Despite this fact, the quota was cut in half and other family categories were reduced, causing the backlog to increase by close to 70 percent.¹²

As a result, although Asians have constituted over 30 percent of the country's immigration for the past two decades, the community still makes up less than 4 percent of the United States population. Most recent numbers indicate that well over 1.6 million Asian immigrants were still waiting in backlogs for entry visas to reunite with their families. Over 45.7 percent of immigrants waiting to join their loved ones in the United States are from Asian countries. Thus any additional restrictions or reduction in the overall numbers, particularly in the family preference categories, will have an inordinate impact on Asian Pacific American families.

II. Family Reunification as the Foundation of Our Immigration System

Family-based immigration has rightly been the cornerstone of United States Immigration policy for decades. Well over 90 percent of Asian immigration comes through the kinship categories.¹³ Families are the backbone of our country and their unity promotes the stability, health, and productivity of family members contributing to the economic and social welfare of the United States.

Immigrants who have entered the United States through the family reunification process as adult children, or brothers and sisters of United States citizens include countless individuals who have contributed to the productivity of our workforce, filled economic needs and served honorably in our Armed Forces. In addition, family reunification policies have direct impact on

the ability of American businesses to attract skilled international personnel to compete in the global market. In large part the success of recruitment efforts depends on the ability of employees to consolidate their family members in the United States. The ability of refugees and asylees to become emotionally and economically stable and socially integrated into society also increases when their family members are able to join them, decreasing emotional distress and expanding the pool of resources that can be shared.

For example, take the case of Ming Liu, a design engineer for a United States telephone and electronic equipment company from China. Liu was more than meeting his employer's expectations and his boss was pleased with his hard work. But he became a much better worker after his wife and child rejoined him in Fremont, California after a two-year immigration process. Liu's productivity skyrocketed and his boss noted that Liu not only was a better worker, but that he opened up at work socially as well. Liu ultimately came up with a new and innovative concept that helped the company change direction and increase sales. Liu's own words were that the arrival of his family allowed him to "breathe again."¹⁴

Even beyond the obvious psychological benefit of reuniting immigrants with their families, and the inherent value of close knit family in our own traditions, studies have shown that the policy has a marked impact on the country's entrepreneurship. A recent study found "indeed, the impressive figures on Asian Pacific entrepreneurs...have resulted from the current mostly family-based, immigration system."¹⁵

In Asian Pacific American families, adult children often work together to take care of aging parents and brother and sisters pool resources to send nieces and nephews to college, open family businesses, buy homes or take care of each other in times of distress.

Arguments by some anti-immigrant proponents have suggested that cuts in family immigration are justified by lower immigrant quality. But these propositions overlook the facts. According to a study by the Alexis de Tocqueville Institution, the education levels of immigrants have been improving not declining. Mean numbers of years of schooling have continuously increased; the proportion of new immigrants with less than an eighth-grade education has been steadily declining and the population with a college degree or more has actually risen.¹⁶ In terms of labor markets, analysts note that where immigrants have moved in, the unemployment rate has actually dropped.¹⁷

III. Contributions of Asian Immigrants

As mentioned earlier, over 90 percent of Asians immigrate to this country through the family categories. The people who come in as spouses, adult children, and siblings are generally in the prime of their working lives. The median age of a legal immigrant is 29 years old.¹⁸ And over 59 percent of new immigrants fall within the ages of 15 and 44 years of age.¹⁹ This youth translates into a strong incentive and ability to create and produce, and it manifests itself in our nation's economy and community.

A. Small Business Ownership

Asian immigrants have dramatically increased their presence in small business. Some academics suggest this is a means to overcoming language and other barriers to the mainstream economy, whereas others have focused on explaining why Asian-Americans might fare better in the changing economic environment of the United States. Regardless of the reasons, Asian Pacific Americans have increased their presence in this sector tremendously. Between 1982 and 1987 there was an 89.3 percent increase in Asian-owned businesses.²⁰ The number of Asian-owned businesses in the United States grew 180 percent between 1987 and 1997, and during the same period there was a 463 percent increase in Asian-American business sales and receipts.²¹ The importance of these numbers is in the understanding that the value of these undertakings is transferred to the communities, not simply to the immigrant entrepreneurs themselves:

Asian immigrant entrepreneurship, especially in ethnic enclave economies, has injected long-neglected inner-cities and sleepy suburban communities with much needed capital investment, neighborhood revitalization, and increased commercial activity...These sociologists point out that a substantial percentage of benefits, such as job creation, business services, linkages to international capital and markets, and generation of sales and property tax revenues, go beyond ethnic boundaries and enrich the broader public.²²

B. The Revitalization of the Los Angeles Toy Industry

Asian immigrants, like immigrants in general, have moved in to revive business in long-neglected urban areas. For instance when they moved in to transform the previously dilapidated area in Los Angeles and helped pick up a now thriving industry, Los Angeles became the main thoroughfare for the toy industry. More than 60 percent of the toys now sold in United States retail stores are distributed from the California city, making it the nation's top toy distribution center.²³ The district was developed by a handful of Asian immigrants who transformed a derelict downtown neighborhood into a successful business district that employs more than 6,000 people and generates estimated total revenues of \$500 million annually.²⁴

C. Silicon Valley and the High-Tech Industry

The high tech industry in Silicon Valley is another good example of what Asian immigrants can bring the country. The Valley is home to the world's leading technology firms, and is a well-suited example since observers note that: "much of the industry's transformation into its contemporary form coincided with massive Asian Pacific immigration into the United States and California." Asian Pacific Americans provide nearly half the area's manufacturing labor force, and 25 percent of the total workforce. According to the Public Policy Institute of California, one out of every four Silicon Valley CEOs is Asian.²⁵ In individual firms they may range from 20 percent to 80 percent of the company's engineers. One computer industry analyst put it this way: "The United States would not be remotely dominant in high-technology industries without immigrants. We are now utterly dominant in all key information domains.

And at every high-tech company in America, the crucial players, half of them or more, are immigrants.”²⁶

IV. Policy Recommendations for the 107th Congress.

1. Family-Based Immigration: Clearing the Backlogs.

The unreasonably long family backlogs continue to obstruct the reunification of families. As of January 1997, the last period for which the Immigration and Naturalization Service (“INS”) released a report, over 3.5 million spouses, children, brothers and sisters were waiting to reunite with their relatives in the United States. Of this number, over 1 million are spouses and minor children waiting to reunite with legal permanent residents in the United States, more than 500,000 are adult children of legal permanent residents waiting to reunite with their legal permanent resident parents, and over 400,000 are adult children are waiting to be with their citizen parents. 1.5 million are the brothers and sisters waiting to reunite with their citizen siblings. The situation disproportionately impacts Asian Americans, since 1.6 million of the 3.5 million people waiting, 45.7 percent, are from Asian countries.

The system not only has implications for those families, but is beginning to break down the current system of family-based immigration. For Filipino Americans, the waiting time for citizens petitioning for adult unmarried children is longer than for that of legal permanent residents, which means that there is a disincentive for immigrants from the Philippines to naturalize and become citizens. The waiting time for citizens from the Philippines is now 12 years versus 2 years for other countries.

The waiting time is now so long that many children will become 21 years of age while their parents wait to unite with their parents or siblings. The families must then make the hard decision of leaving behind their adult children to be put at the end of an even longer line for adult children. That waiting time is now 4 years for spouses and minor children from most countries versus 7 years for adult children of legal permanent residents.

The adult children of many United States citizens face a cruel choice. If they want to marry before being able to immigrate to reunite with their parents, they will move to the back of an even longer line for adult married children. The waiting time is now 13 years for adult married children of citizens originally from the Philippines versus 5 years for unmarried adult children from most other countries. The waiting time for brothers and sisters ranges from 12 years for most countries to 21 years for siblings from the Philippines because of the per country immigration caps.

Last year Congress began to acknowledge the predicament of permanent legal residents in bringing their spouses and children to be with them. The “V” visa created by the “Legal Immigrant and Family Equity Act of 2000” is a new nonimmigrant visa category for spouses and children of permanent residents who have been waiting at least 3 years for their green card. The “V” visa allows them to enter the United States and obtain work authorization while waiting for their application determination.

While a good first step, the relief provided by this visa is limited, as it issues only temporary relief to a problem that is actually much more pervasive. The “V” visa program is valid for only 3 years. Further, the spouse is only eligible after they have waited three long years to be with their legal permanent resident husband or wife. Working out a thoughtful solution to the backlog problem is crucial to solving the challenges of the current immigration system. The family backlog seriously undermines the values and successes of immigrant families. NAPALC urges the Subcommittee to hold hearings on the issue and develop a solution that will help reunite families in a more timely and humane schedule.

2. Employment-Based Immigration

NAPALC supports employment-based immigration if it meets a strongly articulated need by our economy, employers invest in increasing the ability of Americans to fulfill their needs in the long term, and the system provides a means of adjustment for the worker, so that if the visa holder so desires he or she may eventually adjust to permanent residency. Currently over half of all H1-B visas for high-tech workers are being issued to Asian immigrants.²⁷ The 106th Congress passed the American Competitiveness in the 21st Century Act (P.L. 106-313) in October 2000. NAPALC supported that legislation, and worked with members of Congress and the Clinton Administration to ensure that the system would function effectively for both companies and their recruits. The bill was signed into law and increased the cap on H-1B visas to 195,000 for the next three fiscal years. It also increased the ability of H-1B professionals to change employers once they are in the United States, increased the fee employers must pay to educate and train United States workers in technology occupations to \$1000, and made changes to prevent INS delays from hurting H-1B professionals who are applying for green cards. This option is critical to ensuring that those who invest their talents in this country are able to put down roots in their adopted country, if they so choose.

A recent United States Department of Labor (“DOL”) Interim Rule, however, has had the effect of frustrating Congressional intent of providing these workers with the ability to move quickly to a new employer when new employer files a Labor Condition Application to the INS and the INS then sends a notice of receipt. The DOL Rule prevents the H1-B visa holder from changing employers until the Department of Labor certifies the Labor Condition Application and returns it to the new employer. The intent was to allow H1-B employees to begin work for the new employer once the INS received copies of the filed application. The Department of Labor Rule now puts the visa holders in the same vulnerable position that the “portability” provision had been trying to avoid, and essentially usurps the intent of this provision. We ask that the Subcommittee investigate the effects of this recent rule, and support efforts to revise the regulation.

3. Asylee and Refugee Issues

The United States has a long tradition of taking in those persons who flee their country in the face of persecution based on race, religion, nationality, social group, political opinion, or

armed conflict. NAPALC believes that our nation is particularly obligated though, to the Southeast-Asian refugees who face persecution in their home countries for supporting the United States Armed Forces during the Vietnam War.

The Fiscal Year 2001 Foreign Operations, Export, Financing, and Related Programs Appropriations Act, signed by the President in November, included an amendment that will allow certain persons from Southeast Asia, who have been in the United States in a temporary status since the early 1990's, to become permanent residents. While many Southeast-Asians have been resettled here as refugees, some (most with family members already in the United States) were admitted as "Public Interest Parolees." Because parolees, unlike refugees, cannot adjust to permanent residence after a year in the United States these individuals are in limbo until an immigrant visa becomes available through a family sponsor. This is a process that can take many years depending on the category of family visa for which the person is eligible. The new law allows them to adjust their status without waiting for their family immigrant visa to become available.

There are, however, approximately 15,000 to 20,000 potential beneficiaries of this law. The provision passed last session mandates a ceiling of 5,000 persons who will be able to adjust to permanent residence under this provision of law. Congress appears to have contemplated revisiting this issue as the ceiling was applied in the last hours of passing the bill.

Regulations specifying the application procedure have not yet been published, and the INS issued instructions to their field office in January to return any paperwork thus far received. NAPALC is concerned both with the amount of time that it is taking the INS to issue regulations and with the restrictive cap that was placed at the last minute on this provision. We urge the Subcommittee to review this issue and support legislation increasing the number of visas available under this adjustment provision to match the number of individuals who would remain vulnerable and unable to adjust to permanent citizenship within a reasonable amount of time without this law. We also urge the Subcommittee to press the INS to develop regulations that fit the intent of Congress to favorably resolve this long outstanding issue as quickly as possible.

4. INS Services

The INS continues to be one of the most dysfunctional federal agencies. Problems at the agency, complex legislation and inadequate appropriations for INS services consistently result in poor service and unreasonable waiting periods for even consumer- paid services. NAPALC is very concerned about backlogs in INS processing of citizenship and other applications. The agency often is unable to produce regulation and set up produce regulations and procedures on a timely basis even where new legislation provides extremely short deadlines. Existing services fall behind as INS is forced to shift priorities to address outrageous backlogs in various programs or process new programs.

a. Citizenship

Given the changes in the immigration laws in 1996, the need for addressing the large numbers of legal immigrants waiting in line to be naturalized becomes all the more critical to address. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA) left these immigrants particularly vulnerable as their access to basic judicial review and certain government services was severely curtailed. It is thus all the more imperative that the INS's services be improved. Application fees have increased dramatically in recent years without a commensurate increase in the INS's ability to process and adjudicate these cases in an efficient manner.

Based on surveys NAPALC has collected from community-based organizations across the country that serve Asian Pacific American clients, our conclusion is that INS has clearly failed in its function and mission to deliver adequate services to its customers. For instance, a Denver, Colorado community group reported to us that processing green card and citizenship applications was taking INS about 2 years. A St. Paul, Minnesota community organization reported to us that it was taking an average of 1 and ½ for INS to process a naturalization application, which makes it difficult for many of their elderly clients to retain what they have learned for the civics test.

Finally, we applaud the efforts of the Congress in the 106th Session in addressing the barriers faced by the Hmong Community, who allied themselves with the United States Armed Forces during the Vietnam War. By passing Hmong Citizenship Act of 2000 in May of 2000, Congress allowed certain individuals to waive the English fluency requirement and take a modified Civics examination for their naturalization process. The Hmong population numbers in the 200,000 range, and the Hmong Citizenship Act waives the requirements for up to 45,000 individuals who meet the conditions of the law.

To be eligible, Hmong veterans must have served with a special guerrilla unit or irregular forces operating from Laos in support of the United States Armed Forces any time between February 28, 1961, and September 18, 1978. Applicants have a period of 18 months to file for citizenship. However, reports as late as September 2000 indicated that the INS was still turning eligible people away, claiming no knowledge of the law.²⁸ Thus we anticipate the period of time in which Hmong Veterans can apply for the waiver will probably need to be extended. We urge the Subcommittee to solicit a report from the INS as to their progress and the number of people that have been processed through the provisions of this law, and to hold a hearing where the subcommittee invites input from members of the Hmong community who can report directly on their experiences in applying for the waiver with the INS.

b. INS Reorganization

Customers experience INS as a large, confusing, inaccessible bureaucracy. It is difficult, if not impossible for them to gain access to workers and information. Communications between INS and clients are often one-way. Unless INS sends a letter or makes a phone call to the client, it is virtually impossible for the client to initiate communications with INS if they need

assistance or questions answered. There is an overall lack of responsiveness to applicants, particularly those who do not have community organizations or elected officials working on their behalf. Consistent reports have been received from all parts of the country that INS workers often treat customers with lack of respect and hostility, particularly those who do not speak English well, are elderly, have disabilities, or are low-income. Notices are generally not provided in Asian Languages and customers are expected to bring their own translations, when necessary. Feedback received from the community clearly indicates an overall lack of understanding and concern for the unique cultural and linguistic needs of clients by many INS workers.

National policies established at headquarters are often not adequately communicated to staff at the local level, which has resulted in inconsistent and erroneous implementation of laws and policies by local INS employees. Local workers also sometimes take the initiative in instituting extreme actions which have not come from any national directive and which clearly violate the law, particularly around enforcement. Also, there are problems with inconsistent and inaccurate information being given to clients.

In response to increased inefficiencies, problems and failings within INS, particularly around the processing of naturalization applications, several proposals have been introduced. How INS is ultimately reorganized will have a tremendous impact on the ability of immigrants to naturalize, as well as on their ability to seek out a range of services related to their applications for green cards, work authorization, and family sponsorship.

We support the general premise around which all of the proposals are based, that INS is indeed an agency plagued by inefficiencies, failings and problems, and is in desperate need of change to drastically improve its ability to fulfill its functions in both areas of services and enforcement. We feel however, that the ultimate proposal must recognize that adequate funding must be ensured to improve the overall delivery of services, particularly in the area of naturalization and green card processing, and that these services are not sacrificed in any reorganization proposals.

A complete separation of services and enforcement into two separate and distinct agencies could leave services without adequate funding, accountability and comprehensive and consistent policy development. However, the two functions might be clearly separated into divisions if they remain under the roof of one agency. Clear separation of functions between services and enforcement will lead to greater improvements in both areas by strengthening chains of command, improving communications and accountability, enhancing training and skill development, and streamlining procedures. Any plan to reorganize INS must be the result of a well thought-out process. Legislation should not be supported if it does not include adequate appropriations. We are thus opposed to a proposal, H.R. 2528 (“Immigration Reorganization and Improvement Act”), introduced last session in the United States House of Representatives by Representatives Rogers, Reyes and Smith. This proposal separated the enforcement and service aspects, but failed to provide the reorganized agency with an agency head that would have significant authority. The bill neglected to provide a coordinating mechanism and similarly included no means to resolving conflicting policy between the two service and enforcement

branches. The bill also failed to cover the costs of reorganization and did not provide any means to assuring that the current state of inadequate service levels, would at all improve. In contrast, the Senate Bill on the same subject, S.1563, (“INS Reform and Border Security Act”) addressed many of these questions. We urge the Subcommittee to hold hearings, make a comprehensive study that includes a realistic assessment of the costs, and seeks input from a wide range of stakeholders.

5. Restoration of Basic Due Process Rights of Legal Permanent Residents

NAPALC also remains deeply concerned with the basic due process rights that were eroded in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA). The effects of the 1996 laws are devastating and far-reaching. AEDPA and IIRAIRA were enacted to curtail illegal immigration and to keep criminal aliens from entering and remaining in the United States. Their enactment however, has had tremendous impact on the lives and families of those detained. Often times, the detained immigrants are the primary income-earners for their households, causing families to suffer both emotional trauma and financial hardship. 75 percent of children in the United States are from families with at least one non-citizen parent, and thus could be gravely impacted by the 1996 laws if their non-citizen parent were ever found deportable.

With its large non-citizen immigrant population, the Asian-American community is particularly susceptible to the harsh provisions of the 1996 laws. Over 40 percent of Korean, Asian-Indian, and Vietnamese communities are not yet citizens. And well over half of Cambodian, Laotian, Hmong, and Thai communities are not yet-naturalized immigrants.

Some of the laws’ more extreme provisions mandate the detention and deportation of legal immigrants who may have committed crimes in their past, however minor and however long ago. The far-reaching effects of these laws have been to tear longtime legal permanent residents away from their jobs, businesses, families, and United States citizen children for minor offenses they committed decades prior to the enactment of the 1996 laws. Legal immigrants have been stripped of their ability to demonstrate to a judge the changed circumstances of their lives, and the hardship that deportation would create for themselves and their families. Ironically, some of the very individuals and their children who were admitted to the United States as refugees from Southeast Asia are now being threatened with return to the very regimes that persecuted them. For immigrants that cannot be repatriated to home countries such as Laos and Vietnam for political reasons, the laws have effectively resulted in life sentences behind bars, unable to provide for their families or contribute to their community.

The 1996 laws changed the standards for what makes a legal permanent resident deportable. It expanded the definition of an aggravated felony, a deportable offense, to over 30 crimes including some which are considered only misdemeanors under state law. The new definition also includes crimes where the conviction was expunged or the sentence was completely suspended. The INS applied this new definition retroactively to crimes committed even before the 1996 law, regardless of how far back the crime was committed.

In addition, the 1996 laws took away the right of legal immigrants to prove to the immigration judge that they have been rehabilitated, that they have lived in the United States for a long time, and that their departure would create hardship for themselves or their family members. Individuals no longer have the ability to demonstrate to a judge the circumstances of their home country that might place them in jeopardy if they were to go back. This is particularly problematic for those individuals who fled repressive regimes and entered the United States as refugees. Immigration judges no longer have the discretion to grant immigrants relief from deportation.

The 1996 laws require the INS to detain certain immigrants while they await their deportation hearing, stripping immigrants of their right to a bond hearing. In the past, an individual who could show that she or he was not a flight risk or threat to public safety was released on bond.

As the 5th anniversary of these laws approaches, the 1996 laws toll on the immigrant communities continues. NAPALC urges the committee to restore the constitutional guarantee of judicial review, restore basic fairness by repealing the retroactive application of the 1996 laws and establish a fair definition of crimes that lead to detention deportation. A limited bill, supported by Representative Lamar Smith that would have just begun to ameliorate the harsh injustices upon permanent legal residents passed unanimously in the United States House of Representatives last year (H.R. 5062). Senator Kennedy and Senator Graham introduced a more comprehensive proposal (S.3120). We urge the Subcommittee to hold hearings on this issue and to act on legislation that would ameliorate the provisions that are overly harsh and violate our country's sense of fairness and commitment to due process.

6. INS Enforcement

NAPALC supports both the business and labor coalitions which have called for the repeal of employer sanctions. We believe the sanctions should be repealed as a failed policy, which has resulted in the discriminatory practices by employers against minority employees.

Reports indicate that in certain districts the INS has been targeting minority business owners for enforcement actions.²⁹ Last year the INS targeted Asian-Indian computer software engineers working at an Air Force base in San Antonio Texas. Forty computer software engineers were arrested and detained along with their family members for alleged violations of their visas, but were later all released without further action. In Dallas, Texas, a report emerged that INS officers had targeted Asian business-owners by photocopying yellow pages listings of Indian and Pakistani restaurants. NAPALC and its affiliates find such practices raise concerns of grave violations of the civil rights of these businessmen. We urge the Subcommittee to review the issue of enforcement by the INS and consider legislation that would repeal employer sanctions.

7. Finding a Means of Adjustment for the Growing Undocumented Immigrants

NAPALC remains concerned with the need to find a broad-based means of adjustment, particularly in light of the initial numbers emerging from Census 2000 which indicate a higher

than anticipated level of undocumented immigrants. The INS has tried many means and approaches to block the flow of immigrants who enter the country without legal documents, or overstay their permission to reside here. But it is apparent that the people who have wanted desperately to enter this country, have been able to continue to enter and remain. It is in the nation's own interest to provide them with a means to adjust, so that they can step out of the shadows and become contributing members of our communities and participating in the welfare of the nation as a whole.

We believe that an increase in the number of adjustment of status opportunities and a reform of the employment-based categories, combined with a reduction in the family backlog, will produce a wide distribution of available workers and will present an immediate infusion of labor which economists such as Federal Reserve Board Chairman Alan Greenspan has indicated we need. One potential means of addressing the issue would be to adopt a rolling registry date, which would act as a statute of limitations. Such a provision would acknowledge the contributions these individuals have made to our economy as well as the roots that they have grounded with their years in the United States. We urge the Subcommittee to explore solutions to this problem by holding hearings and closely examining proposals that are currently being introduced in Congress.

Mr. Chairman and Members of the Subcommittee, thank you for giving NAPALC the opportunity to make these recommendations. We look forward to working with you.

Endnotes

1. Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 7 (1992).
2. U.S. Dept. of State, *Paper Relating to the Foreign Relations of the United States 1924* (1939), Vol.2, p. 339. See Higham, *American Immigration Policy in Historical Perspective*, 21 Law and Contemp. Probs. 213, 227 (1956).

3. Act of Feb. 5, 1917, 39 Stat. 874.
4. This quota limited non-European immigration. For example, Great Britain with two percent of the world's population had 43% of the quota. National Lawyers Guild, *Immigration Law and Defense*, p.2-4.
5. At the time, only immigrants from Asia were ineligible for citizenship solely on the basis of race. See *Ozawa v. U.S.*, 260 U.S. 178 (1922).
6. Ch. 344, 57 Stat. 600 (1943).
7. *Id.*
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