1994

Reinventing Asylum: A Challenge to America

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REINVENTING ASYLUM: A CHALLENGE
TO AMERICA

The Honorable Xavier Becerra*

Since the inception of the United States, it has always been the most generous nation vis-à-vis people who are trying to flee their own country and seek asylum in the United States. Some estimates show that at least twenty million people world-wide are currently on the verge of becoming political asylum requesters. That is, of course, if they could reach a country which would admit them. Most of these individuals end up going to neighboring countries of the country in which they live. They rarely make it to U.S. borders; nonetheless, the United States does end up taking in a number of people. In fact, the United States takes more people into its borders than any other country in the world. Thus, it is very generous with regard to those seeking political asylum. Unfortunately, a retrenchment of many people is presently occurring, especially among some politicians, as a result of the World Trade Center bombing. This essay briefly explains the retrenchment.

The United States has a significant number of people seeking asylum. This is not, however, due to a natural flaw in its system. An assesment of the undergirding of the U.S. asylum system reveals too few asylum officers, very limited detention space, and a system clogged by its procedures. Additionally, "reformers" are proposing varied solutions because they see the existing asylum system as encouraging individuals to stay in this country. These "reformers" talk about raising the standard of proof required for conditions to qualify for political asylum. They speak of establishing summary exclusion proceedings as soon as someone steps onto U.S. soil. They envision sending people back to a country they are fleeing (or plan to flee) because of the possibility of death. Revamping the system in such ways should be thoroughly reconsidered. The United States has people who try to flee persecutions. Thus, the United States

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should bear in mind the importance of continuing to provide asylum, as it is possible that U.S. citizens will need to flee persecution from their own land.

Let me go into a few things that trouble me about the asylum issue in Congress. I co-authored, with Congressman Nadler from New York, an asylum law because we were very distressed about several policies we saw coming out of the Administration and from other members of Congress. Certain specifics disturbed us. For example, there has been speculation of changing asylum case standards. At this time, the threshold of standards for an asylum seeker first entering the country is fairly low. Under these newly proposed procedures, an asylum seeker would appear only before an Immigration and Naturalization Service (INS) officer trained in asylum proceedings. Their appeal would be with another asylum officer from the INS, who would then make the determination if their colleague had made the proper decision. This process could last anywhere from an hour to a month's time, depending on how quickly an INS officer processes the paperwork, and whether there is an appeal.

This proposal presents several problems. For example, a woman fleeing Bosnia will unlikely possess documents saying that she is a Bosnian fleeing persecution because she happens to be Muslim and Serbs have been able to overtake where she lives. If the woman has been abused sexually or physically in any way she will unlikely be prepared to tell an unfamiliar male INS officer the details of her suffering. Furthermore, the language barrier will compound the difficulty of expressing herself. Moreover, the INS officer will unlikely be able to understand and ingest all the information that she is providing to him.

This proposal would give this INS officer carte blanche. The officer, not a tribunal, is sole trier of this individual. No judicial review of the proceedings is available. The INS officer has sole discretion in the initial decision. The written findings by this particular officer are forwarded to another INS officer who reviews the paper work and considers the appeal. Never does the appeals officer talk to the person seeking asylum. The system is problem-ridden to a frightening extent for the following reasons: (1) the current number of INS officers, (2) the general sentiment of the American public when it comes to anyone who is foreign-born or an immigrant, (3) the lack of understanding of what an asylum seeker should expect from our asylum process, and (4) the likelihood that individuals seeking asylum are not necessarily thinking of preparing their case as they are fleeing or being transported over to the United States, in spite of their being required to present their case immediately upon arrival.

What are some of the solutions to the U.S. asylum problem? First, we should afford judicial review of asylum requests. If the United States provides the option of a hearing before a judge to an individual who has received a parking ticket, why don't we give that same opportunity to individuals who claim that they are suffering persecution and need to flee because of threat of harm or death?

A second major problem is that the political asylum system suffers from a lack of personnel. The United States currently has 270 adjudicators and staff handling the over 140,000 asylum cases that come in each year. It is evident that the United States does not have the resources and personnel it takes to handle these cases. The INS also has a backlog of close to 400,000 cases and they cannot expeditiously and fairly address the concerns of people who have valid asylum claims. Furthermore, the issue of too few detention facilities for asylum applicants complicates the situation.

Third, public perception adds to the problems of the U.S. asylum system. The perception prevails that anyone coming to the United States for asylum can get out of the system, get a work permit, go out and make a living, and ultimately someday plant a bomb. This perception is wrong. Most people are not terrorists. Approximately 144,000 people requested political asylum last year. Among those 144,000 people are undoubtedly those who are poorly intentioned, and the United States should have no qualms about keeping those few individuals out. Not only is the United States trying to raise the standard of review and proof required for asylum seekers, but at the same time it is trying to shortchange the process to get rid of as many of these people as quickly as possible.

One option which has been discussed is to send people requesting asylum back to the country from whence they "leapfrogged" so as to get to the United States after leaving their home country. This is problematic. The previous example of the woman fleeing from Bosnia will also illustrate this point. In her case, escape is possible only if she first travels to Turkey before finding a country in which to apply for asylum. She may still face persecution there, but she cannot be granted asylum in the United States or the United Kingdom because she could not get a direct flight to John F. Kennedy or Heathrow Airport. It is unfair that the U.S. system sends people back just because they made a stopover in another country. Obviously, if someone has permanently resettled in a country before coming to the United States, they should not be allowed to seek political asylum in the United States.

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The proposals for asylum reform that are coming to light are mostly designed to crunch the processing time and raise the burden of proof. One very offensive proposal, however, would restrict habeas corpus for asylum requesters. Habeas corpus is the last resort to the public courts to show that an asylum seeker may not have had a fair trial in the lower levels of review. New proposals provide that an individual seeking asylum can file a claim of habeas corpus in a federal court, but the court will only consider two things: (1) is the asylum seeker a foreign-born individual filing asylum status, and (2) did the asylum seeker come in without documentation? If both questions are answered affirmatively, then the asylum seeker is automatically denied asylum. If an asylum seeker does not have documentation, then that individual has no right to stay in the country. In such a habeas corpus case presented by an asylum requester, there is no review of the substantive claim for political asylum and no review of the due process provided by the asylum system. It is merely a procedural review. That is not habeas corpus.

Many different countries have used the U.S. asylum system as a model. The system does have its problems, including the lack of adequate detention facilities, properly trained personnel, financial resources, and proper procedural regulations. The United States is going to have to spend money and effort to maintain and improve its system. The system should weed out those claims for asylum that are frivolous or unsubstantiated. It is wrong, however, to assume that the current system should be totally overhauled because a few asylum requesters are abusive. Many people with valid claims for asylum would be sent back to countries where they will suffer great oppression if the United States were not to give this issue the attention and funding it deserves.