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Mass Migration to America - A Modern Volkwanderung

Grant Lally

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While many people may favor or disfavor immigration into this country at levels that are consistent with this nation's tradition, and within its traditional immigration allowances, the issue at hand is much narrower and quite different. It is what to do with people who enter the United States under a claim of asylum or refugee status.

The underlying motives and principles for asylum are quite noble. They stretch back into the Middle Ages and are based upon the concept of sanctuary, which was awarded by churches to people who were fleeing from civil authorities. This concept of safe haven intersects with another historic phenomenon: that of mass migration. The mass migrations of today rival that of the Volkwanderung—the migration of Goths, Vandals, Huns, and other peoples which ultimately toppled the Roman Empire.

The refugee problem must be kept in perspective. There are millions and millions of refugees in the world and the United States simply cannot assimilate all of them into its territory. For example, the situation in Bosnia is truly horrible. Hotels, houses, and shelters have been set up to hold thousands and thousands of people who are refugees in the truest and most classic sense of the term. Unfortunately, these people are not likely to receive refugee status under United States laws. Our laws are focused in other directions. Often these laws are forged based on the power of domestic political groups, not toward needs of refugees abroad.

At present there are over 400,000 asylum applicants in the United States, and this asylum backlog grows by approximately 100,000 applicants every year. This backlog exists because of the procedural rights we have set up for asylum applicants that allow people to wait in the

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United States while the Immigration and Naturalization Service (INS) processes their asylum applications. The INS processing can often take up to four, five, or even six years. This procedural delay, coupled with the fact that a work permit is assigned to nearly everyone who files, encourages people to file asylum applications. As the backlog grows, the time to process applications increases. This increased processing time adds to the incentive for people to file asylum claims. In many ways, asylum is now the claim of choice for people whom the INS is seeking to deport from the United States. This application of asylum laws was clearly not the intention of Congress. These laws have a very noble intention, but they are clearly being abused. Presently, approximately ninety percent of the people who file asylum claims are ultimately rejected. This abuse of the current system is an outrage, and something must be done.

There have been a number of proposals for resolving this crisis and most everyone agrees that a crisis exists in asylum applications. The recently published *Harvard Report* made a number of recommendations. Many of the recommendations made in the report were very sound; such as increasing the number of INS officers assigned to review asylum cases. In most other respects, the *Harvard Report* got it exactly wrong. One recommendation was to grant mass permanent residency to those involved in the American Baptist Church case, about a quarter million illegal aliens in the United States. Another misguided recommendation was to lighten the standards for approval of permanent residency. Lightening the standards will do nothing to reduce the enormous backlog of applicants, rather it will only increase the number of applicants and thereby increase the already enormous backlog.

There are, on the other hand, a number of constructive proposals currently pending on how to deal legislatively with the current backlog. First, many countries have established "country of first refugee" rules, which require that asylum applicants may only apply for asylum in the country to which they first came.

Second, there have been proposals to require applicants to apply within a short term after their arrival. One way to create such a ban is with a *per se* rule. This rule states that a claimant is automatically excluded from applying for asylum if the applicant does not apply within a specified period of time. For example, if the claim is not made within three months after arriving in this country, there will be a presumption of invalidity. This presumption would impose an added burden on an applicant to prove a well-founded fear of persecution.

Third, an excellent proposal has been made to require inspection and

presentation at the border—failure to do so would bar claims of asylum. Fourth, asylum status should be automatically terminated upon voluntary repatriation—the return of an asylee to his or her home country. A return visit evidences the asylee's own subjective sense that the government persecution has lightened.

Finally, a number of questions have arisen as to how our asylum policy should be intertwined with our foreign policy. One of the motivations behind the 1980 act was to try to remove the foreign policy and political considerations from the asylum process. This approach has not worked because the INS still has enormous discretion. It has also failed because foreign policy considerations should not be entirely removed from immigration decisions. One way to accommodate these often conflicting tensions is to give mandatory deference to State Department classification of home country conditions. Another is to give the Justice Department a veto over grants of asylum. Foreign policy should be more explicitly included in our asylum application process. The United States does not need to grant "asylum" to those persons hostile to the American people. United States asylum policy ought to weave and mesh with United States foreign policy goals.

Streamlining the adjudication processes is also overdue. Currently, an asylum applicant, even before an asylum applicant reaches the judicial review process, has essentially four bites at the apple. There are four administrative levels, which can take five to six years. The process needs to be streamlined. The initial screening process should be compressed into the process before the immigration judge—much more like the American prosecutorial criminal process, to save time. In addition, when the immigration judge, and ultimately the Board of Immigration Appeals hears a case and decides against an applicant, judicial review ought to be denied, except in extreme situations.

In conclusion, I quote former Senator Paul Tsongas: "The government of the United States is not Santa Claus." The United States cannot give everyone in the world everything. The United States has to be careful in its allocation of our generosity and resources. We need to return "asylum" to its original concept—a noble gesture to those few political leaders fighting for human freedom who need a temporary refuge from their unjust government.