



# *Negative Population Growth* **The NPG Forum**

## *Political Asylum: Achilles' Heel of Immigration Control*

by David Simcox

Immigration of 1.1 million persons a year perpetuates population growth and dims prospects for a smaller, environmentally sustainable U.S. population. Since the 1970s the vast majority of Americans have voted by their fertility rates to stabilize population. But immigration has nullified their choice. Humanitarian immigration -- refugees, asylees and temporarily protected persons-- has swollen to more than one-quarter of all immigration. Often driven by emotional impulse and perceived national obligations, and unlimited by law, humanitarian intake has escaped rational management.

Political asylum is the most idealistic, most uncontrollable, and most poorly managed of all features of the country's convoluted immigration rules. As envisioned in the 1980 Refugee Act, asylum offers safe haven to persons already in the United States or at a port of entry who can show a well-founded fear of persecution in their countries for reasons of race, ethnicity, religion, political opinion or associations.

The criterion of persecution is the same for asylum seekers here and refugees abroad. But a key practical distinction between refugees and asylees under present arrangements is that the United States chooses from abroad the refugees it will resettle; with political asylum, the United States passively allows itself to be chosen by hundreds of thousands of international migrants, many driven by motives other than refuge.

### **A World-Wide Lure**

As now applied, U.S. asylum laws proclaim to the globe's 5.5 billion non-Americans that if they can somehow enter the United States and claim persecution within their homelands, they will be able to live and work here for many months, if not years, during the slow paced adjudication of their claims. An attraction not lost on millions abroad is that even among those ultimately denied asylum, few are removed from the United States.

Compassion Gone Awry -- In 1992, 45 percent of asylum claimants failed to appear for their initial hearing;

they simply took the work authorization card granted by the Immigration Service (INS) and disappeared into U.S. society. Others go through the hearings process, but drop out of sight if asylum is denied. The government now has neither the means nor will to track them down. Other applicants acquire U.S. spouses and citizen children during the lengthy process, making their removal harder. Small wonder then that the system has become an enormous magnet for hundreds of thousands of would-be settlers who cannot qualify under regular immigration rules or are unwilling to wait in line for a visa.

The asylum system is subverted by interest groups' skillful manipulation, by often uninformed compassion among Americans, and by the extreme and unworkable definition of "due process" that asylum's advocates have fastened upon it. An article of faith among immigration advocates is that there can never be too much due process. An allied assumption is that better thousands of spurious claimants receive asylum than one bona fide claimant be denied it.

Thus the system sets itself up to be manipulated by hundreds of thousands. The asylum applicant enjoys far more due process than is required by international obligations or by the U.S. constitution. Prospective refugees abroad have far fewer rights. Court decisions, unchallenged by the executive branch, have expanded the definition of persecution and further reduced the evidentiary burden on the asylum claimant.<sup>1</sup> A history of inconsistent policies,

capitulations to interest group demands, and unfounded presumptions have created grounds for expansive rulings in the federal courts.

The scope of asylum's protection has been extended to new allegedly persecuted classes: homosexuals; women in male-dominated societies, or who are victims of spousal abuse, or who are from societies where female circumcision is practiced; and persons claiming to flee China's family limitation laws. Efforts to protect more and more victim classes are as often driven by domestic political wrangling over issues such as women's and gay rights, or right to life, as they are humanitarian reactions to events abroad. **An underlying fallacy that makes asylum open-ended is the assumption of its defenders that the Western yardstick on human rights must be applied to the entire crowded and impoverished world.**

### **Asylees and Asylum Abusers: A Substantial Population Factor**

Political asylum, as now legislated, is truly an "Achilles' Heel" -- an inherently vulnerable and unmanageable feature of U.S. immigration policy that is the antithesis of the discipline and rationality needed to manage immigration in accord with sound population goals.

A Half-Million Asylum Immigrants, and Growing — The current law's 10,000 ceiling on the number of asylees granted legal permanent residence each year far understates the program's much larger impact on population. Most asylum claimants manage to stay, with or without the blessing of the "green card," the talisman of legal permanent residence. Though the number actually granted formal asylum is far lower, nearly 500,000 aliens outside the legal immigration process now have gained legal or de facto permanent residence with the help of their access to the asylum channel. In 1993 and 1994 the pool of those admitted for asylum claims grew by nearly 100,000 each year. Uncounted others now living illegally in the United States, but who have not yet claimed asylum, were emboldened to remain here by the availability of the asylum defense if needed to ward off deportation.

The backlog of more than 500,000 asylum claims expected by the end of 1995 is unlikely to be cleaned up under present sluggish procedures. Meanwhile, the long waiting list and the numbers of rejected applicants who stay on are a standing invitation to another quick-fix government amnesty. Indeed, the Justice Department's reluctance so far to remove unsuccessful claimants or cancel their work authorizations amounts to a tacit amnesty.

### **Public Outrage over Asylum Abuse Spurs Some Government Action**

The Clinton administration unavailingly introduced legislation in 1993 providing for prompt removal of asy-

lum seekers whose claims were clearly frivolous. Using existing authority, the administration late in 1994 made changes it contends will reduce decision time on claims by 75 percent while withholding work authorizations for up to six months.<sup>2</sup>

The INS claims this speedier, no-frills treatment of claimants is sending a warning to prospective emulators, reducing new applications 15 to 50 percent from 1994 (depending on the INS source). It is too early to judge the administration's claims of progress.

But even a reduction of 33 percent (the mid-point of the INS estimates) would still mean nearly 100,000 new applications a year. Unless deportations increase -- and the current trend is toward fewer non-criminal deportations -- most of those applicants will remain in the country. **At best, these remedies will palliate but not cure a flawed premise of asylum -- namely that the United States is able and willing to provide full due process to all the millions that could now reach here and make a claim.**

### **The World's Persecuted -- A Class without Bounds**

The prudent assumption must be that the asylum system, without radical reforms, will become an even larger conduit for extra-legal immigration in the future. Rapid world population growth and deteriorating environments will produce millions of new candidates abroad for entry by any means.

The Trap of Definitions -- The current expansive definition of persecution opens up the prospect of vast new categories of claimants in a world increasingly given to ethnic and religious divisions. Some legislators would by law make China's mandatory abortion and sterilization policies a legal basis for asylum, opening the door to millions of Chinese of reproductive age and their children. Sponsors of the legislation themselves note that a "few million men, women and children" now suffer from China's policy.<sup>3</sup>

The spread of an intolerant Islamic fundamentalism bodes vast new asylum claims from liberal Moslems, non-believers, Christians and other religious minorities in the Moslem world. At the same time, the rise of militant fundamentalist Hinduism in overcrowded India carries the potential to convert that nation's 100 million Moslems into a persecuted class. The emphasis on human rights for women has the potential to make countless women in the third world eligible for asylum claims, since their home countries have gender-based customs that they -- and western societies -- find increasingly difficult to accept.

Current efforts in Congress to reduce legal immigration and end illegal immigration, even if partly suc-

cessful, will heighten the attractiveness of the asylum gateway for desperate would-be settlers. The recent experience of Germany, where asylum was a constitutional right, dramatizes the explosive growth potential of a lax system. There, asylum claims surged from about 50,000 a year in 1987 to over 400,000 a year in 1992 before the German government applied tough restrictions.

The abuse of the current asylum system mocks the good faith applicants for immigration who wait to enter the United States by the rules. Public support for the needs of genuine refugees suffers in the process. **This uncontrollable immigration valve confounds rational immigration planning, saps the credibility of U.S. immigration controls, and invites greater mass influxes in the future.**

### Three Steps to Demagnetize Asylum

If asylum is to cease being the wild card of immigration control, it must be reformed in three general aspects.

**First, asylum's value as an alternative route to permanent settlement must be ended by making all grants of asylum temporary only.** This would "demagnetize" asylum as an easy way to circumvent legal immigration limits while still helping those truly at risk.

**Second, the flow of claimants through the asylum pipeline, now potentially unlimited, must be restricted by far more judicious screening of cases to be considered.**

While Congress is now considering major increases in the number of asylum officers,<sup>4</sup> huge backlogs, with the attendant danger of "rubber stamping," are likely as long as we pretend that everyone capable of reaching U.S. shores is entitled to his day(s) in court.

**Third, the United States must show the world that it will no longer allow its laws to be "gamed." Those applications for asylum that are accepted for adjudication must be decided quickly, followed by the prompt removal from the country of those rejected.** More convincing would be a decision deadline of no more than 60

days, rather than the 120 days the INS has adopted. The President was vague about when action would begin on the plan he announced in May, 1995, to triple deportations from the present 40,000 a year.

Sustained deportations of 120,000 a year, once the priority target of criminal aliens has been removed, would greatly reduce the pool of overstays, no-shows, and prospective abusers abroad by either timely removal or by the credible threat of it<sup>5</sup>.

Here are some specific actions for consideration by policy makers that would support the three general objectives outlined above. Most are drawn from proposals already made in the U.S. government or in other industrial nations:

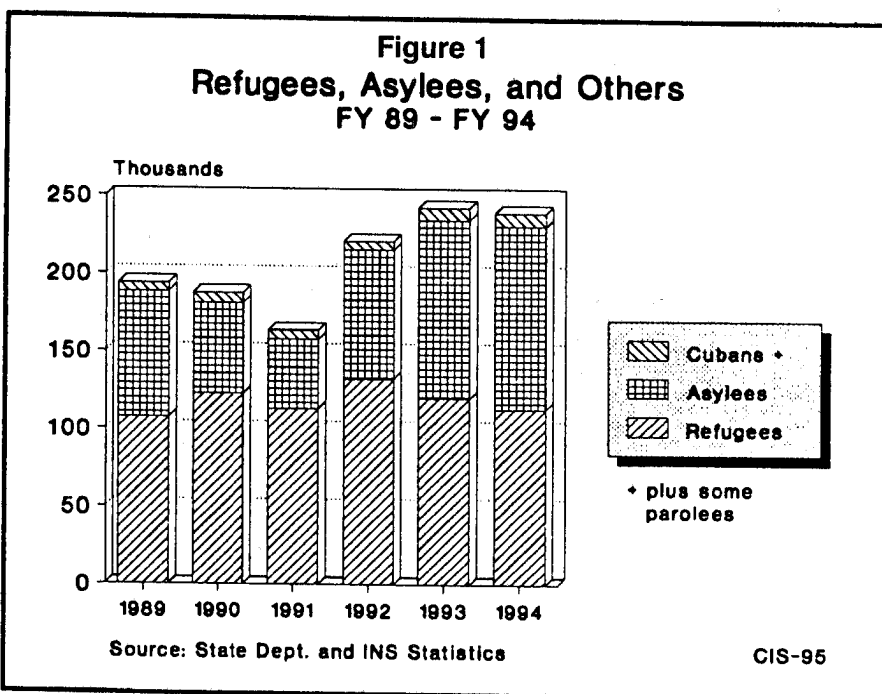
- Grant asylum for a temporary stay only, ending it when conditions are satisfactory in a country where the asylee has a right to reside. The present practice of granting successful asylum claimants "green cards" is a powerful attraction to economic migrants. Conflict and instability in such countries as Lebanon, Central America, Ethiopia,

Poland, and the former Soviet Union brought new waves of political asylees to the United States in the 1970s and 1980s. Most have remained as permanent residents, often joined by relatives from abroad, even though peace and stability have returned to their home countries.

**The purpose of asylum should be to protect the truly persecuted rather than to resettle them.** The United States should follow a practice of some

other western democratic countries in making grants of asylum only for the duration of the conditions abroad that motivated flight. Decisions of U.S. officials to extend or terminate asylum would be based on yearly reviews of conditions in asylees' home countries. Supporting this would be continuing U.S. diplomatic efforts to persuade sending countries to accept returnees, forswear persecution of them, and even accept international monitoring if necessary.

Family members should be admitted to live with asylees in the United States only if they independently



established a well-founded fear of persecution in their own right. Although considered temporary admissions, asylee numbers should still be subject to an overall annual ceiling on all forms of immigration. Those granted asylum should be charged to the ceiling when their stay exceeds one year. Those numbers could be restored to the ceiling upon confirmation of the permanent departure of the asylees.

- Reject outright all applications for asylum from persons with the rights of residence or sojourn in a country classified by the U.S. government as having adequate human rights protections. The Justice Department now wastes immense resources in processing cases of persons from countries that have satisfactory human rights standards. Often these claimants are "asylum shoppers" seeking the best deal, economic migrants, or persons who have not exhausted their legal remedies in their home countries.

A list of countries with adequate human rights standards should be developed by the Justice and State Departments and updated periodically. Asylum claims from persons eligible to reside or sojourn in those countries would no longer be entertained. The absence of any country from the list, however, would in no way be considered a presumption that asylum is warranted. Strict standards of proof of individual persecution would continue to apply.

Many countries now grant passports without the stringent requirements of nationality applied by the United States. Aliens with a passport from a country other than the one they allege to be fleeing would be presumed to have accepted the protection of the issuing country and would be repatriated there.

These examples from asylum adjudication of the past ten years illustrate how such an approach would prevent unjustified claims from tying up the system:

- 1) The case of an asylum applicant from Northern Ireland claiming to fear IRA violence was under adjudication for several years. Under the proposed approach, her asylum claim would have been summarily rejected because she had the right to reside in the United Kingdom or the Republic of Ireland, both of which have adequate human rights protections.

- 2) A Somalian and his family claimed asylum at the airport during transit through New York after passing through at least two safe countries, the United Kingdom and Italy. To justify transiting the United States, the family had obtained a valid visas to enter Brazil. Under the proposal, the claimants would have been sent on to Brazil, a country with satisfactory human rights that they had permission to enter.

- 3) A migrant from apartheid-ruled South Africa flew to New York from Spain, where he had been granted po-

litical asylum. He applied for asylum in the U.S., was detained and entered the adjudication system. Under the proposed approach, after appropriate interviews he would have been returned immediately to Spain, a satisfactory human rights country.

- 4) Afghan asylum seekers in the 1980s often traveled on Pakistani passports to the United States to claim asylum. Under these proposals, no claims for asylum would have been accepted and the travelers would have been returned to Pakistan, whose protection they had accepted.

The prompt rejection of applicants from countries known to be safe would curb "asylum shopping," deter frivolous requests, and spare Justice Department resources for higher enforcement priorities.

- Stop illegal aliens and prospective visa overstayers before they can get to the United States and enter the asylum system.

Tighter border and visa controls are needed for a range of good reasons. This is one of them. Specific measures to curb illegal immigration and abuse of visitors' visas will be detailed in a separate NPG position paper. Worth special mention here is INS "pre-clearance" abroad of U.S.-bound passengers. Pre-clearance spares INS the legal and political complications that immediately come into play on U.S. soil.

- Quickly remove applicants who have used false documents or otherwise entered illegally.

Congress and the administration are now considering several variants of a process of immediate removal of claimants who have entered surreptitiously or are document abusers and who are determined in an interview with asylum officers not to have a "credible fear" of persecution. **The test of "credible fear" in these and all other cases should be more stringent than in the past, requiring the asylum officer's finding that "persecution would be more probable than not" if the claimant were sent home.**

Persons entering illegally often do not claim asylum until detected and faced with removal. Limiting applications for asylum to a short period after entry or after the presumably threatening political event in the home country would discourage use of the process as a stall. Article 31 of the Geneva Convention on Refugees states that aliens entering a country to claim refugee status must "present themselves without delay to the authorities and show good cause for their illegal entry or presence."

Deserving support is a congressional proposal that an alien must state his intent to seek asylum within thirty days after coming to the United States. Aliens who fail to appear for hearings without good cause -- a common occurrence-- should have their applications summarily dis-

missed and be subject to immediate removal.

- Make the system credible: adopt effective procedures for finding and removing ineligible aliens. All other proposed changes would be useless in the absence of such procedures. Success here would demand elimination of open-ended deportation processes, such as provisions for multiple appeals. Also essential would be the commitment of more time and money by Justice and other U.S. law enforcement agencies, and improved systems, to identify and find illegal aliens.

Another needed element is better cooperation with the receiving countries of deportees to bring about prompt issuance of travel documents and admission of those removed from the United States. One congressional proposal calls for denying visas to those countries that will not take back their citizens. **Credible deportation machinery will strengthen not just asylum processing but the entire system of immigration controls.**

- Charge a fee for asylum applications. The sure way to bring about overuse of a product is to give it away. INS was on the right track in 1994 in proposing, unsuccessfully, a fee of \$130 per person to apply for political asylum. The fees would have recovered some of the cost of processing and matched the cost of entering through asylum to the cost of legal immigration. A non-refundable application fee of \$300 per person would be reasonable, with an additional fee of \$600 payable on the approval of an application.

### Mass Flight to the United States

So called "mass asylum" situations, such as the arrival of 140,000 Cuban and Haitian boat people in Florida in 1980, can overwhelm the most rational methods for screening would-be asylees and lead to rubber-stamping approvals. The most troubling, but least discussed scenario of mass asylum involves grave political turmoil in Mexico that could send millions of Mexicans to the U.S. border in search of safety.

In its handling of more recent Cuban and Haitian immigration emergencies, and in its multilateral responses to mass asylum situations elsewhere (Iraq, Rwanda, South-

east Asia and Hong Kong), the United States has learned that there are alternatives to passive acceptance of Mariel-type mass population transfers. Interdiction of U.S.-bound migrants, their return to the source country or to a safe haven outside the United States, and diplomatic pressure on the sending countries have been shown to be effective.

The Mexican Apocalypse -- The United States, in preparing for possible future mass humanitarian migration from Mexico or elsewhere, must further examine the

options for developing internationally protected areas within those countries that generate mass flight or in nearby countries. The zones created within Iraq to protect Kurdish and Shiite minorities are precedents, as is France's protected enclave within Rwanda.

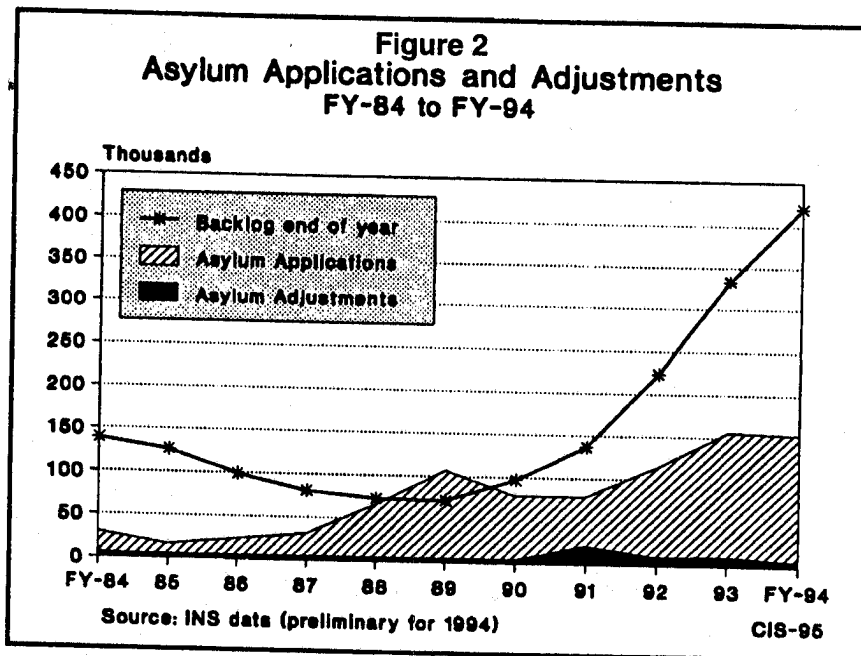
In the case of mass flight from Cuba and Haiti, The United States effectively used Guantanamo in Cuba and areas in Panama to house asylum seekers and had successfully

negotiated similar access to Turks and Caicos islands in the British West Indies. Additional sites, controlled either by third countries or international organizations, or by the United States, should be identified as internationally protected safe havens where U.S. asylum procedures unsuitable to mass applications would not apply.

### Warning: U.S. Rhetoric Animates Millions Abroad

Since George Washington's time, U.S. political leaders' rhetoric has regularly proclaimed the United States as a haven for the world's downtrodden. It is high time to realize that these self-congratulatory incantations are taken very seriously abroad. A related complication has been the notion in the cold war years that huge inflows of people of an adversary nation somehow represent a diplomatic victory.

President Jimmy Carter greeted the initial waves of Mariel boat people in the 1980 with the words, "We'll continue to provide an open heart and open arms to refugees seeking freedom from communist domination," even as U.S. agencies were struggling to slow the flow of boat people.<sup>6</sup> The 1966 Cuban Adjustment Act had helped create a magnet, offering blanket refugee status to Cubans



reaching the United States. That cold war measure remains on the books: it stands as a threat to rational control of the Cuban influx that must be expected when travel controls end on the island, and as an incentive to other emigre groups to seek similar preferential treatment.

Congress in the 1970s and 1980s applied pressure on the Soviet Union through such devices as the 1974 Jackson-Vanek trade sanctions act to allow freer emigration. The Clinton administration even now continues to press China to allow more emigration<sup>7</sup>, echoing a similar appeal of President Carter during Chinese Vice Premier Deng Xiaoping's 1979 visit to the United States. (Deng's response: "Are you prepared to accept ten million?")

Even faint and confused signals about immigration from U.S. leaders spur movement abroad. In June 1995, a House of Representatives bill to deter the UN-planned voluntary repatriation of 40,000 refugees in Hong Kong set off riots, caused thousands of refugees to try to renege, and risked sparking a new exodus from Vietnam.<sup>8</sup> Similarly, Presidential candidate Bill Clinton's 1991 pledge to end the Bush administration's interdiction of Haitian boat people sparked a major surge of boat building within Haiti.

The National Interest in Less Immigration -- Taming the familiar political rituals of more than two centuries must come as part of a new American appreciation of

the limits of U.S. society and resources and the dangers of leaving migration choices to the migrants themselves. Every question of how many to admit is at heart a question about how many Americans there will be in the future.

An America already overpopulated in relation to its resources must make these choices within the limits set by an overall population policy -- a careful balancing of fertility, mortality and immigration that will permit the U.S. population to recede toward a sustainable level in the next century.

The message America must now send abroad is not an open invitation to scores of millions more, but an affirmation of its commitment to bring its own population size down to the limits of the nation's and the planet's life supports. Limitation of political asylum is central in that message.

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Notes:

<sup>1</sup> Testimony of Dan Stein, Executive Director, Federation for American Immigration Reform on Senate Bill S.269, The Immigration Control and Financial Responsibility Act. U.S. Senate Subcommittee on Immigration. March 14, 1995.

<sup>2</sup> "Immigration Agency Revises Rules on Political Asylum." New York Times, December 3, 1994

<sup>3</sup> Chris Smith and Henry Hyde. "The Mortal Dangers of Parenthood in China." Washington Times, June 7, 1995.

<sup>4</sup> Report of the House of Representatives Task Force on Illegal Immigration, 104th Congress, June, 1995. P. 41.

<sup>5</sup> President's Press Conference of May 6, 1995.

<sup>6</sup> Gil Loescher and John Scanlan. Calculated Kindness. New York: The Free Press, 1986. p. 184-185.

<sup>7</sup> Report to the Congress on Most Favored Nation Trade Status for China, May 28, 1993. Weekly Compilation of Presidential Documents. May 31, 1993. p. 987.

<sup>8</sup> Doug Bereuter. "Trouble in the Camps of Hong Kong." New York Times. June 19, 1995.

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