United States Asylum Procedures: Current Status and Proposals for Reform

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The United States has a long-standing tradition of being a haven for oppressed peoples of the world. In keeping with that tradition, U.S. immigration laws provide several methods that enable foreigners to gain admission into the country. Unfortunately, American officials charged with designing and implementing foreign policy have been selective in extending welcome to foreigners. Narrow judicial review of official immigration policy and procedure has usually allowed such discrimination to prevail.

1. When our nation was in its infancy, Ellis Island was a welcome sight to our European forefathers.

   Give me your tired, your poor,
   Your huddled masses yearning to breathe free,
   The wretched refuse of your teeming shore.
   Send these, the homeless, tempest-tost to me,
   I lift my lamp beside the golden door!

   From The New Colossus, an 1883 Emma Lazarus poem affixed to the Statue of Liberty.


2. See notes 19-21 infra and accompanying text.

3. This is apparent in the United States' asylum policies. While the U.S. has been receptive to refugees of communist countries seeking asylum, it has been less willing to accept refugees from noncommunist countries, particularly if those countries' dictatorships are friendly with the U.S. Government. For example, the U.S. government has not warmly welcomed refugees from Iran, Chile, the Philippines, Haiti, and other repressive noncommunist countries. See Note, Behind the Paper Curtain: Asylum Policy Versus Asylum Practice, 7 N.Y.U. Rev. L. & Soc. Change 107, 124-26 (1978).

   In a related development, there are unrebutted allegations that the Immigration and Naturalization Service (INS) is violating the immigration statutes as it processes the claims of El Salvadoran refugees who are fleeing the political turmoil now raging in that small Central American country. Those close to the situation charge that INS officials are purposefully failing to advise the El Salvadorans of their rights and opportunities under the immigration statutes, including the right to have a deportation hearing and to apply for political asylum. See N.Y. Times, Mar. 2, 1981, at Al col. 2.


   The courts have limited their review of discretionary administrative action to questions whether the applicant has been accorded procedural due process, whether the exercise of administrative discretion has been arbitrary and capricious, and whether the decision was reached in accordance with applicable rules of law. Henry v. Immigration & Naturalization Serv., 552 F.2d 130 (5th Cir. 1977); Paul v. Immigration & Naturalization Serv., 521 F.2d 194 (5th Cir. 1975); United States v. Shaughnessy, 218 F.2d 316 (2d
The plight of Haitian aliens who are unsuccessful in their attempts to obtain political asylum in the United States is capturing the media's attention. Immigration and Naturalization Service (INS) authorities, supported by Department of State officials, consistently choose to deny the Haitians' asylum requests. In the


5 An application for asylum is a form of administrative relief that has the effect, if granted, of permitting an alien to remain in the United States. Eligibility for political asylum precludes deportation or exclusion. 44 Fed. Reg. 21,255 (1979).

An alien is deportable if he has violated his immigration status or his period of admission has expired. Deportable aliens include aliens who enter the U.S. without inspection, become institutionalized at public expense, are convicted of a crime involving moral turpitude, or are in violation of the Immigration and Nationality Act. Immigration and Nationality Act of 1952, §§ 241(a)1-4, 8 U.S.C. § 1251(a)(1-4) (1976). An alien is excludable if he does not possess the proper documents necessary to enter this country. Excludable aliens include aliens who are insane, afflicted with any dangerous contagious disease, narcotic drug addicts, vagrants, polygamists, or likely at any time to become public charges. Id. §§ 212(a), 8 U.S.C. § 1182(a) (1976).

Asylum status is granted for one year from the date of approval, renewable annually. 45 Fed Reg 37,394 (1980)


This Note will discuss at length the details of a program that the INS instituted in 1978 to effect the mass deportation of Haitian refugees seeking political asylum in the United States. See notes 44-52 infra and accompanying text. That program formally ended several months later when the Haitians brought suit in district court. See notes 53-63 infra and accompanying text. However, very recently, the immigration authorities in Miami have again begun mass deportation proceedings against newly arrived Haitians, processing 35 cases a day in locked courtrooms from which private lawyers have been barred. See N.Y. Times, June 6, 1981, at 7, col. 1.

7 The Attorney General has delegated to the INS Commissioner the major responsibility for the administration of the immigration laws. 8 C.F.R. § 2.1 (1981). The INS's primary functions include enforcing the immigration laws (by preventing illegal migration into the United States and by expelling those who have entered and do not have a legal right to remain) and providing services relating to the benefits available to eligible immigrants. Immigration and Nationality Act of 1952. § 103(a), 8 U.S.C. § 1103(a) (1976).

8 The Department of State and its consular officers are officially charged with issuing or refusing visas to aliens wishing to come to the United States. The responsibilities of the Secretary of State and consular officers in the administration of the immigration laws are described in the Immigration and Nationality Act of 1952, §§ 104, 221(g), 8 U.S.C. §§ 1104, 1201(g) (1976).

The Department of State organized a mission to Haiti for the purpose of reviewing the treatment of Haitians upon their forced return to their homeland. The Department planned to use the gathered information when it reviewed Haitians' claims for political asylum. See Haitian Refugee Center v. Civiletti, No. 79-2086 (S.D. Fla.), appeal docketed No. 80-5683 (5th Cir. 1980), slip op. at 57-80.

9. The unconditional and absolute denials of Haitians' requests for asylum were based on the INS's and the Department of State's conviction that the Haitians are economic escapees rather than political refugees. See Dernis, Haitian Immigrants: Political Refugees or Economic Escapees?, 31 U. MIAMI L. REV. 27 (1976). See generally N.Y. Times, May 8, 1980, at A12, col. 3.
recently decided case Haitian Refugee Center v. Civiletti,\(^\text{10}\) the Southern District Court of Florida condemned the INS for implementing a program in 1978 that was designed to expedite the deportation of Haitian aliens.\(^\text{11}\) The court's extensive inquiry and findings corroborated allegations of INS abuse of its discretionary authority to grant or deny the aliens' asylum claims.\(^\text{12}\)

Under the terms of the Protocol Relating to the Status of Refugees, done Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 5677, 606 U.N.T.S. 2681 [hereinafter cited as Protocol] "refugees" are to be admitted into the United States. Id. art. 1(1). The United States acceded to the Protocol on Nov. 1, 1968. See note 21 infra and accompanying text. The Protocol's definition of a refugee (quoted in note 65 infra) does not address itself to "economic" refugees. An alien who flees due to extreme poverty who does not fall within the definition of refugee is not entitled to entry. In the past, the United States' administrative and judicial bodies have ruled disfavorably upon applications in which an alien's allegations of political persecution disguised an economic or other disqualifying motive. See, e.g., In re Janus and Janek, 12 I. & N. Dec. 866 (BIA 1968); In re Pierre, 15 I. & N. Dec. 461 (BIA 1975); Paul v. Immigration & Naturalization Serv., 531 F.2d 194 (5th Cir. 1975); Gena v. Immigration & Naturalization Serv., 424 F.2d 227 (5th Cir. 1970).

Our nation's Haitian policy is severely criticized as unrealistic, discriminatory, and inhumane. The Council on Hemispheric Affairs, after pointing out the difference in treatment accorded Cuban and Haitian aliens, has charged that the Haitians were "victims of a clear double standard." N.Y. Times, May 6, 1980, at A1, col. 1. The Congressional Black Caucus has charged "that the Administration had engaged in racism and 'deliberate deceit' in its treatment of [the Haitians]." Id., May 8, 1980, at A13, col. 1. It was reported that Lane Kirkland, president of the AFL-CIO, told a news conference that "the Haitians are to be used as a justification for not admitting them to the United States." Id.


10. No. 79-2086 (S.D. Fla.), appeal docketed, No. 80-5683 (5th Cir. 1980) [hereinafter cited as Opinion] (on file at the Cornell International Law Journal). The court conducted an unprecedented review of INS policy and procedure, providing a stunning exception to the widely recognized policy of narrow judicial review of immigration policy and procedure. See note 4 supra and accompanying text. The government's appeal has been "expedited" so that oral arguments will be scheduled promptly after the court receives all of the appellate briefs in April 1981. A decision should be forthcoming in the summer of 1981.

11. For a description of the "Haitian Program," see notes 43-51 infra and accompanying text.

Periodic revision of INS administrative regulations\(^{13}\) has served to curtail some potential for INS abuse of its discretionary authority. But the *Haitian Refugee Center* decision indicates the urgent need for additional structuring and checking of INS discretion.\(^{14}\) This Note will focus on the exercise of discretion in INS asylum procedures. It will begin with a brief description of the INS administrative organization and its asylum procedures.\(^{15}\) Then the Note will evaluate current asylum regulations in light of the evidence presented and the court’s holding in *Haitian Refugee Center*.\(^{16}\) The Note closes with four proposals for reform.\(^{17}\) It argues for a structural separation of the service and enforcement functions of the INS; revision of current asylum regulations; preparation of national reports that will accurately reflect the internal climate of each nation from which asylum applicants seek refuge; and the formation of a Permanent Task Force on Refugee Policy charged with monitoring INS activities.

I

**ASYLUM PROCEDURES**

A. **BACKGROUND**

The original version of the Immigration and Nationality Act of 1952\(^{18}\) recognized no right of asylum for persons seeking entry into the United States. However, immigration officials regularly used administrative and statutory dispensations to provide aliens with a haven from persecution, torture, or disaster in their homelands.\(^{19}\)
Moreover, Congress permitted aliens' deportation to be withheld if the aliens would be subject to persecution in their native countries when deported. There existed similar international support not to...
expel aliens who would be persecuted or penalized upon their forced return. 21

One of the first significant steps toward official recognition of an alien's right to asylum came in 1970. Public opposition to the U.S. government's forced return of a Lithuanian seaman 22 prompted the Department of State to issue a statement establishing a general policy for handling future asylum requests. 23 In 1974 the INS Commissioner promulgated the first set of asylum regulations. 24 Finally, in March 1980, Congress codified the right to asylum for refugees in the

threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

13 For a thorough discussion of the possible ramifications of the revised § 243(h) see Note, Section 243(h) of the Immigration and Nationality Act of 1952 as Amended by the Refugee Act of 1980: A Prognosis and a Proposal, 13 CORNELL INT'L L.J. 291 (1980) [hereinafter cited as Note]. See also note 26 infra.

21 In 1969, the United States acceded to a United Nations Protocol that prohibits the deportation of a refugee “to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Protocol. supra note 9, art. 33. At the time of passage, Congress and the Executive understood that the Protocol would not affect the existing United States policy or require an amendment to the statute. See Letter of Transmittal to the Senate, August 1, 1968, Exec. Doc. K, 90th Cong., 2d Sess. at III reprinted in The President's Message to the Senate Recommending its Advice and Consent to the Protocol, 4 WEEKLY COMP. OF PRES. DOC. 1187 (Aug. 1, 1968).


We do not suggest that the Protocol profoundly alters American refugee law. We do believe that our adherence to the Protocol reflects or even augments the seriousness of this country's commitment to humanitarian concerns, even in this stern field of law.


24. 8 C.F.R. § 108 (1975). These regulations have been periodically revised, most recently in June 1980. 45 Fed. Reg. 37,392 (1980). Congress has assigned the major immigration enforcement responsibilities to the Attorney General. Immigration and Nationality Act of 1952, § 103, 8 U.S.C. § 1103 (1976). Pursuant to congressional authorization, the Attorney General has, in turn, delegated most of the immediate supervisory responsibility to the INS Commissioner. Id. § 103(a), 8 U.S.C. § 1103(a) (1976). The Commissioner has no independent statutory authority. He exercises such duties and responsibilities in the administration of the INS and the statute as are assigned to him by

United States and at ports of entry. Asylum regulations have emerged as an administrative response to pressures from the public and the Executive who perceived the existing framework to be inadequate and inhumane. The regulations are promulgated by the Attorney General. The Commissioner also promulgates "Operating Instructions" that direct INS employees in the proper performance of their duties. Congress also codified the asylum provision in 1980 and formally requested the Attorney General to issue appropriate regulations. The two measures may be distinguished procedurally as well. Regulations prescribe that every alien who is the subject of a deportation hearing must be advised of his right to apply for the temporary withholding of deportation to a country that a special inquiry officer, i.e., the Immigration Judge, selects. The application consists of the alien's statement setting forth reasons in support of his request. The practical effect of the amendment on the alien's burden of proof is discussed in Note, supra note 20, at 298-301. The Board of Immigration Appeals and the courts of appeal may review the Immigration Judge's decision to withhold deportation. In the past, "the breadth of the Attorney General's discretion under prior law rendered judicial review deferential, if not ineffective."
tions continue to allow asylum decisionmakers much discretion in deciding asylum claims. Throughout its period of statutory and regulatory development, neither the INS, the Executive, nor the courts have seriously challenged the discretionary nature of the asylum grant.

B. Pre-1979 Regulations

Asylum regulations that were in effect until April 1979 authorize

Eligibility and application for asylum are determined pursuant to a separate set of regulations. See 45 Fed. Reg. 37,395 (1980) (codified in 8 C.F.R. § 208.1 (1981)). The asylum regulations provide that an alien may submit an application for asylum at any time before, during, or after a deportation or exclusion hearing. Id. § 208.3. The right to apply for political asylum does not preclude an alien from requesting to have his deportation withheld in a subsequent exclusion or deportation hearing. 8 C.F.R. § 208.11 (1981). For a detailed analysis of the asylum regulations, past and present, see notes 29-42 & 64-85 infra and accompanying text.

Asylum and withholding of deportation are distinct benefits for which eligible aliens may apply. Conceptual distinctions between asylum and withholding of deportation blur when the application for asylum is submitted during a deportation hearing. Under the old regulations, the asylum request was merged into a request for withholding of deportation. (8 C.F.R. § 108.3 (1980)). In the newest regulations, an asylum request submitted during a deportation proceeding is not expressly transformed into a § 243(h) claim. Apparently the two claims remain distinct. See 45 Fed. Reg. 37,395 (1980) (codified in 8 C.F.R. § 208.10 (1981)).

For additional clarification of this confusing procedural scheme, see I. C. Gordon & H. Rosenfield, Immigration Law and Procedure § 2.24A(f). See 1 id. §§ 5.16b, 5.8(f)(2) (1980). See also In re McMullen, 17 I. & N. Dec. 213 (Int. Dec. No. 2831, BIA 1980), in which the Board applied the amended §§ 208 and 243(h) to a Northern Irishman's claim for political asylum and for withholding of deportation.

27. See notes 29-38, 67-80 infra.


In Fleurinor, when asked to review the denial of § 243(h) relief, the court deferred to the legislative branch's prerogative in the field:

The establishment of requirements for entry into the United States is a political decision which rests with Congress. Efforts being made to influence or change the laws relative to Haitians coming to our country are properly directed toward the legislative branch. The function of the judiciary is to rule in accordance with these legislative mandates.

585 F.2d at 134. See also Henry v. Immigration & Naturalization Serv., 552 F.2d 130 (5th Cir. 1977): "We by no means intend to belittle claims of political persecution, in Haiti or other lands. Our sadness at all circumscriptions of freedom, however, is no charter to disregard the procedural system created to determine the merit of such claims." Id. at 132.

29. A description of the pre-1979 regulations is intended to prepare the reader for the discussion of Haitian Refugee Center v. Civiletti that follows. Handed down in 1980, the court based its decision on the asylum regulations as they existed in 1978 when the INS implemented a specially designed program to expedite the deportation of Haitian aliens. See notes 43-51 infra and accompanying text.
ized the INS District Director\(^{30}\) to decide all asylum claims whether submitted before or during a deportation hearing.\(^{31}\) The District Director classified the claim as either clearly meritorious, clearly lacking in substance, or doubtful.\(^{32}\) Only if he labelled the claim doubtful did the District Director request the views of the Department of State.\(^{33}\) The District Director’s decision was not appealable.\(^{34}\)

Significantly, the regulations failed to provide any guidelines for the District Director. They did not indicate the burden of proof that an alien had to meet,\(^{35}\) the type of evidence the District Director should consider,\(^{36}\) or the information he was to provide applicants when he communicated his decision.\(^{37}\) The regulations were also conspicuously silent about the procedural requirements that would govern the application process.\(^{38}\)

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30. The regulations authorize District Directors to grant or deny any application or petition submitted to the INS, to initiate any authorized proceeding in their respective districts, to issue orders to show cause, and to terminate any authorized proceeding without regard to geographical limitations. 8 C.F.R. § 103.1(n) (1981).

31. 8 C.F.R. § 108.1 (1979). The regulations required the applicant to appear personally before an immigration officer before adjudication of his application. Id. § 108.2. For a description of the general stages of the deportation hearing, see E. HARPER, supra note 1, at 606-11.

32. Id. Operating Instructions 108.1 (1979) [hereinafter cited as O.I.].

33. 8 C.F.R. § 108.2 (1979). Where approval or denial was not clearly warranted, the District Director sent a copy of the alien’s written statement or a summary of his oral statement and supporting evidence to the Office of Refugee and Migration Affairs of the Department of State for its consideration. The Director took no further action until he received the Office's views. When the Office recommended the claim be granted and the District Director decided adversely, the claim was certified to the Regional Commissioner for final decision. Id.

34. Id. If the District Director denied asylum, the alien could still apply for withholding of deportation under § 243(h) of the Act (see note 23 supra) and for the benefits of Article 33 of the Protocol. See note 16 supra and accompanying text. 

35. The Operating Instructions merely indicated that if the District Director was “satisfied as to the validity of an alien’s contention that he would be subject to persecution if he returns to his home country,” then the Director could grant to the alien an extension of stay or an adjustment of status. O.I. 108.1f(1) (1979).

36. The District Director apparently relied upon information obtained in the personal interview, as well as answers to questions contained on the Form I-589 asylum claimants were required to complete. See note 48 infra. Besides general questions regarding the claimant’s name, country of origin, and the duration of his stay, the form contained space for the listing of any factors the alien wished the District Director to consider. Although the claimant was allowed to present “supporting evidence,” the regulations did not indicate what constituted supporting evidence or the weight to be attached to it.

37. In Haitian Refugee Center v. Civiletti, the court decided that the District Director’s use of form letter denials contributed to the violation of the plaintiff’s procedural due process rights. See Opinion, supra note 10, at 159.

38. The Haitian Refugee Center court also criticized the manner in which the asylum applications were actually processed. The court concluded that the cumulative effect of the procedures employed denied the aliens’ due process rights. See notes 52-62 infra and accompanying text.
If an alien submitted his claim for asylum after his deportation hearing had commenced, the regulations required the Immigration Judge\textsuperscript{39} to suspend the hearing and permit the District Director to consider the merit of the claim.\textsuperscript{40} If the District Director granted the request the Immigration Judge did not reconvene the deportation hearing.\textsuperscript{41} If the District Director denied the asylum claim, the hearing was reconvened.\textsuperscript{42}

\section*{C. The Program}

In the summer of 1978, INS officials viewed a backlog of Haitian asylum claims at the Miami District Office as a serious problem that merited immediate action.\textsuperscript{43} The INS therefore decided to assign more personnel to the Miami District Office and to accelerate the processing of Haitian asylum claims.

To implement its Haitian Program,\textsuperscript{44} the INS authorized several significant changes in its regular operating procedure. It instructed the Immigration Judges immediately to issue orders to “show cause” for all Haitians, thus commencing the deportation process.\textsuperscript{45} Forgoing normal procedure,\textsuperscript{46} the Immigration Judges found the Haitians deportable and then ordered them to file asylum claims with

\textsuperscript{39} The term “immigration judge” is interchangeable with the term “special inquiry officer.” Immigration Judges are not judicial officers in the regular sense of the word; they function strictly within the purview of the office of the Commissioner of the INS. They are authorized to determine deportability or to order temporary withholding of deportation under § 243(h) of the 1952 Act. 8 C.F.R. § 242.8(a) (1981).

\textsuperscript{40} O.I. 108.1f(2) (1979).

\textsuperscript{41} The Immigration Judge was requested to terminate the proceedings and the alien was granted voluntary departure increments of a year with permission to work. \textit{Id.}

\textsuperscript{42} 8 C.F.R. § 108.3 (1979). Neither the statute nor the regulations indicate what effect denial of asylum had or should have had on an alien’s deportation hearing.

\textsuperscript{43} Opinion, supra note 10, at 124-26. By June of 1978 over six thousand Haitian asylum claims had not been processed. \textit{Id.} at 124.

\textsuperscript{44} “Haitian Program” (Program) was used to describe the system that the INS developed to dispose of the backlog of Haitian asylum claims. The Program is discussed in the Opinion, supra note 10, at 124-38.

\textsuperscript{45} An order to “show cause” normally begins a deportation process. 8 C.F.R. § 242.1(a) (1981) provides: “Every proceeding to determine the deportability of an alien in the United States is commenced by the issuance and service of an order to show cause by the Service.” An order to show cause includes a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of the law, and a designation of the charges against the respondent and of the statutory provisions alleged to have been violated. The order will require the respondent to show cause why he should not be deported. \textit{Id.} § 242.1(b).

\textsuperscript{46} The then current Operating Instructions required the Immigration Judges to suspend deportation hearings until asylum claims were decided. \textit{See} note 40 \textit{supra} and accompanying text.
the District Director within a specified period of time. The Haitians who filed timely claims for asylum were subject to additional burdensome requirements at the District Director's office. Asylum claims had to be made on a particular form and submitted personally to the District Director's office. Claimants then had to appear for a personal interview with a member of the District Director's staff. Under normal conditions interviews would last for several hours. During the Program, inexperienced hearing officers conducted the interviews in less than thirty minutes. After the interviews, the District Director denied each of the asylum claims and ordered the Haitians deported.

II

HAITIAN REFUGEE CENTER V. CIVILETTL THE INS UNDER FIRE

Haitian Refugee Center v. Civiletti was a class action suit filed on behalf of over four thousand Haitian refugees in the Miami, Florida area. The court's review of the INS's handling of the Haitian situation serves as a scathing attack on the INS administration and its operations.

47. Opinion, supra note 10, at 126-27. The period lasted anywhere from 10 to 30 days. If they missed this deadline, the Haitians had ten days to apply for withholding of deportation. This time limit accorded with time limits set by the regulations. See 8 C.F.R. § 242.17(c) (1979). If the Haitians missed the second deadline, the INS instructed the Immigration Judges to issue orders for immediate deportation.

48. The regulations and Operating Instructions required all aliens to file a Form 1-589 when seeking asylum. O.I. 108.1 (1979). A Form I-589 asks such questions as these: "If you return to your country for what specific reasons do you believe you will be persecuted?"; "If you base your claims for asylum on current conditions in your country, do these conditions affect your freedom more than the rest of that country's population?"; and "Has your request for asylum become known to the authorities of your home country?"

49. Completion of the Form I-589 and the personal interview were regularly required for all asylum claimants. O.I. 108.1 (1979).

50. Opinion, supra note 10, at 152.

51. Id. at 152-53.

52. See Opinion, note 10 supra. The named defendants were Benjamin Civiletti, Attorney General of the United States; Edmund Muskie, Secretary of State; David Croland, Acting Commissioner of the INS; Raymond Morris, District Director of the INS, District Office Number 6 (Miami).

The Haitians alleged sixteen causes of action. Cause of action 1 alleged that the Immigration Judges refused to suspend deportation hearings upon the filing of the Haitians' asylum claims in contravention of O.I. 108.1f(2). Causes of action 2 and 3 alleged that the plaintiffs' constitutional rights were violated by actions that the Immigration Judges had taken. The other 13 causes of action pertain to the District Director's individual role in the Haitian Program.

53. Before the court could reach the merits of the complaint, the defendants challenged the court's jurisdiction and the justiciability of the action. The Immigration and Nationality Act vests jurisdiction of appeals from final orders of deportation in the Courts of Appeal. Immigration and Nationality Act of 1952, § 106, 8 U.S.C. § 1105a(a)
The court first concluded that the Haitians were subject to persecution in Haiti and that the INS had violated their rights to procedural due process in the United States throughout the asylum claim process. It held that all aliens are entitled to a fair hearing, regardless of the merits of their individual claims. "Economic refugees do not have fewer procedural rights than political refugees, just as a criminal defendant's procedural rights are not altered by his guilt or innocence." (1976) The District Court exercised jurisdiction notwithstanding § 1105a(a), believing that the plaintiffs would be denied their substantive rights of review if the class action suit was broken down and the Haitians were left to pursue their appeals individually. See Opinion, supra note 10, at 14-20. The court also concluded that since it was not reviewing a "final order of deportation," jurisdiction in the district court would not violate the language of the statute. Id. at 17.

The defendants raised several justiciability issues. At the outset, the court indicated that the policy considerations that underlie the justiciability doctrine could not be advanced in the present case. The court explained that the doctrine was designed to prevent a court from prematurely exercising jurisdiction or making judgments in cases that were not properly before the court. In the instant case, however, "[the] allegations are so troubling that not to reach the merits of this case would be an exercise in judicial abdication rather than judicial restraint." Id. at 21.

The court then addressed each justiciability issue. The defendants first alleged that the action was moot since the Attorney General had issued new asylum regulations in April 1979. Noting that the new regulations were not retroactive to the time when the plaintiffs' cause of action arose, the court held that forcing the plaintiffs to proceed under the new regulations would deprive them of their right to have the District Director consider their application. Moreover, the new regulations could not change the fact that the plaintiffs then faced imminent deportation. Finally, the defendants failed to demonstrate that the new regulations could prevent a recurrence of the alleged abuse. Id. at 20-25.

The defendants next argued that the plaintiffs failed to exhaust their administrative remedies. The court characterized the exhaustion requirement as a discretionary judicial tool and concluded that it did not apply. Id. at 30-31. Finally, the defendants argued that the Haitian Refugee Center lacked standing to allege a denial of its first amendment right to free speech. The court termed the argument "frivolous." Id. at 38.

After discounting a Department of State report indicating Haitians were not mistreated, the court found that Haitians were subject to persecution upon their return to Haiti. The 180 page opinion includes numerous first-person accounts of terror and torture in the Haitian prison network and of brutality by the security forces of the Duvalier regime. The court concluded that repression of opposition, speech, and competitive economics was a dominant force in Haiti. Id. at 40-123.

Plaintiffs' attorneys asked the court to make the detailed findings available to other Haitians so they could utilize them to support subsequent asylum claims. Department of Justice attorneys argued that the studies constituted impermissible judicial review of agency action. See N.Y. Times, May 8, 1980, at A13, col. 1.

The court traced the Haitians' rights to the Constitution (U.S. Const. amend. V); statutes (Immigration and Nationality Act of 1952, § 202(a), 8 U.S.C. § 1152(a) (1976) (prohibits discrimination in the granting of visas on the basis of "race, sex, nationality, place of birth, or place of residence"); international agreements (Article 33 of the United Nations Protocol Relating to the Status of Refugees, note 9 supra); INS asylum regulations (8 C.F.R. § 108 (1978)); and Operating Instructions (O.I. 108.10(2)).

Regarding the procedural violations, the court concluded that "[t]he net result of these defects was that Haitians were unable to adequately present their claims for asylum, and were deprived of full and fair consideration of that [sic] which they did present." Id. at 139.
The court then criticized the fact that the INS disregarded its Operating Instructions by instructing the Immigration Judges to make findings of deportability before the aliens could claim asylum. The Immigration Judges' requirement that the Haitians submit their claims within a fixed period after the deportation hearing ended served to deprive aliens of their right to a fair hearing as well as to effective representation of counsel.

The court also noted that, while asylum interviews were conducted pursuant to INS regulations, the hearing officers were frequently inexperienced and unfamiliar with Haiti's culture, economy, and politics. The evidence showed that, in their ignorance, the hearing officers imposed an unreasonably high burden of proof on the Haitians. Because the Haitians could not comply with the officers' evidentiary demands, they were summarily denied asylum.

In sum, the court's investigation of the Haitians' experience revealed gross faults within the INS—some particular to the Haitian

57. Id. at 126-27. See O.I. 108.1f(2). A criminal defendant's due process rights would be clearly violated if he was presumed guilty until proven innocent. The court reasoned by analogy that the Haitians were denied due process when the INS decided to adjudge them deportable before they could appear before the District Director to submit their asylum applications. In this posture, the aliens' fate was entirely in the Immigration Judges' hands. If the asylum application was denied, the alien faced immediate deportation unless he applied for, and was granted, withholding of his deportation. See note 26 supra and accompanying text.

58. See note 47 supra and accompanying text.

59. Opinion, supra note 10, at 144. The accelerated proceedings, in which thousands of asylum claims were disposed of, created enormous scheduling conflicts for the Haitians' attorneys. The evidence showed that only a few attorneys in Miami represented most of the Haitians. The court could not conclude that the Haitians were denied the assistance of counsel, but it did conclude they were deprived of the effective representation of counsel. Id. at 150.

The evidence also showed, however, that the INS tried to contact local bar associations to recruit local counsel in Miami when the Service anticipated an increased volume of immigration work. As the INS reported, it would be cumbersome to tailor INS activity to the needs of a handful of attorneys. The bar must recognize this situation and work to develop its own solutions.

60. Id. at 153-57. The court recognized that the tone of the interviews and the attitudes of the interviewers were manifestations of a program that placed a premium on speed. The court faulted the INS for giving uninformed, inexperienced personnel the task of evaluating the merits of the asylum claims. In the court's judgment, a hearing officer should be completely familiar with the culture, economy, and politics of the countries from which aliens flee. Id.

61. The court suggested that considering the Haitians' circumstances, the INS should have lightened their burden of proof. The Haitians were expected to prove they were subject to persecution in Haiti in the course of a 30-minute interview conducted by persons unfamiliar with conditions in Haiti. The fact that nearly all of the asylum claims were classified as "clearly lacking in substance" indicates that only a few out of the thousands of Haitians who were processed through the Program were able to meet the INS's standards of evidentiary proof. Id. at 154-57.

62. Plaintiff's Exhibit 393 provides a copy of INS records indicating, on a weekly basis from September 1979 to May 1980, the disposition of asylum claims. Of the 1404 claims submitted the INS denied all but 15. Id. at 123.
Program and some inherent in any asylum procedure. The need for reform was clear.

III

1980 ASYLUM REGULATIONS: OUTLINE AND EVALUATION

Following the Haïtian Refugee Center decision and upon congressional request, the Attorney General issued asylum regulations in June 1980. Coupled with the 1979 regulations, the newest regulations curb some potential for discretionary abuse. The current regulatory scheme remains unsatisfactory, however, since it permits officials to exercise unchecked and unstructured discretionary powers.

63 See note 14 supra and accompanying text.
64 45 Fed. Reg. 37,392 (1980) (codified in 8 C.F.R. § 208 (1981)). As noted above, it was not until March 1980 that Congress statutorily acknowledged refugees’ rights to asylum in the United States. See note 14 supra and accompanying text.
65 In April 1979 the Attorney General issued asylum regulations that substantially altered the then current regulations. See notes 29-42 supra and accompanying text. 44 Fed. Reg. 21,253 (1979). Under the pre-1979 regulations, the District Director had exclusive jurisdiction over all asylum applications regardless of when the alien submitted the claim. Under the 1979 regulations, the District Director had exclusive jurisdiction only over asylum claims filed before an alien’s deportation hearing commenced. Thereafter, the Immigration Judge handled claims filed while the deportation or exclusion hearing was in progress. 8 C.F.R. § 108.3 (1980). The objective in revising the regulations in this way was to provide applicants for political asylum with a full evidentiary hearing. See 44 Fed. Reg. 21,254 (1980).

The 1979 regulations specified an alien’s burden of proof before the Immigration Judge: “The applicant for asylum has the burden of satisfying the immigration judge that he would be subject to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, as claimed.” 8 C.F.R. § 108.3(a) (1980) (emphasis added). The new 1980 regulations substantially lessen an alien’s burden.

The burden is on the asylum applicant to establish that he/she is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of the country of such person’s nationality . . . because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

45 Fed. Reg. 37,394 (1980) (codified in 8 C.F.R. § 208.5 (1981)) (emphasis added). The new burden of proof language incorporates the United Nations’ expansive definition of “refugee” as “[a]ny person who . . . owing to well-founded fear of being persecuted . . . is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” Convention Relating to the Status of Refugees, done July 28, 1951, 19 U.S.T. 6260, T.I.A.S. No. 6577, 189 U.N.T.S. 150 as amended by Protocol, supra note 9, art. 1, ¶ A(2). In 1979, the INS took the position that there is no fundamental difference between the two formulations. See 44 Fed. Reg. 21,257 (1979). The alien’s burden is the same whether the District Director or the Immigration Judge receives the claim.

66 At this juncture the author commends to the reader K. Davis, Discretionary Justice, A Preliminary Inquiry (1969). Davis examines the growing phenomenon of widescale administrative discretionary power by describing its structure and confines. Davis recognizes that some administrative discretion is necessary:
A. District Director's Role

Although the new regulations alter the District Director's role in the asylum procedures, he continues to enjoy broad discretionary powers. The regulations still lack necessary guidelines regarding matters of procedural form as well as substantive decisionmaking.

1. Personal Interview

If an alien submits his application for asylum before his deportation or exclusion hearing has commenced, he must appear before the District Director for a personal interview. This directive is silent about such administrative guidelines as the length of the interview, nature of the questions asked, or qualifications of the hearing officer. The evidence brought out in Haitian Refugee Center demonstrated how discretion afforded the INS at this stage of the procedure could be misused. Recognizing that it would be inappropriate for the Attorney General to attempt to exercise too much control over the daily operation of the INS, alternatives short of total abandonment of control are certainly feasible.

Discretion is a tool, indispensable for individualization of justice. All governments in history have been governments of laws and of men. Rules alone, untempered by discretion, cannot cope with the complexities of modern government and of modern justice. Discretion is our principal source of creativeness in government and in law.

Id. at 25.

Davis's thesis is that only unnecessary discretionary power should be eliminated. But the necessary discretionary power should be properly confined, structured, and checked.

67. The regulations provide in part: "The district director may approve or deny the asylum application in the exercise of discretion." 45 Fed. Reg. 37,394 (1980) (codified in 8 C.F.R. § 208.8(a) (1981)). Further, the director's decision is not appealable. Id. § 208.8(c).

68. In a deportation hearing, the burden of establishing deportability is on the INS, while in exclusion proceedings the burden of proving admissibility is upon the applicant for admission. For a comparison of deportation proceedings with exclusion proceedings, see E. Harper, supra note 1, at 622. See also note 5 supra.

69. 45 Fed. Reg. 37,394 (1980) (codified in 8 C.F.R. § 208.6 (1981)). This section simply provides: "The applicant shall be examined in person by an immigration officer or judge prior to adjudication of the asylum application."

70. Guidelines governing such details should not be so stringent as to hamper officials in efficiently performing their functions. See note 66 supra. Some guidelines are nevertheless necessary. See notes 92-99 infra and accompanying text.

71. See notes 50-51 supra and accompanying text.

72. For example, the Attorney General could require each District Director to obtain clearance from senior INS officials before changing any aspect of the normal procedure. He could also require directors to put aliens on notice of any impending changes. Each District Office could notify aliens by informing the local immigration bar and by publishing the information in local newspapers.
2. BHRHA Opinion

Upon receipt of an asylum application, the District Director must request an advisory opinion from the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State. The regulations do not specify the weight to be attached to the opinion or how the decisionmakers should evaluate it. Because the Department of State is necessarily sensitive to different priorities and pressures, INS decisionmakers should not blindly adopt the Department of State’s views; the District Director must be prepared closely to scrutinize such recommendations for reliability. Regulations that allow opinions of questionable merit to be admitted and relied upon do not further an alien’s interests.

3. Form of Denial

The District Director has the power to deny any asylum application in the exercise of his discretion. The Attorney General has never formulated guidelines governing the form or content of a denial. The 1980 regulations still lack such guidelines: they do, however, enumerate bases upon which the District Director must
deny asylum. Although the regulations attempt to introduce some certainty into the decisionmaking process, they do not prevent the District Director from abusing his discretion in denying asylum on other grounds.

B. IMMIGRATION JUDGE'S ROLE

The same infirmities that invite abuses on the part of the District Directors are inherent in the regulations that pertain to the Immigration Judges. The 1980 regulations grant Immigration Judges exclusive jurisdiction over the asylum claims that aliens file during a deportation or exclusion hearing. The regulations do not specify criteria to guide Immigration Judges' decisions. The regulations impose requirements upon an Immigration Judge's review of an asylum claim (mandating a personal interview with the applicant and the solicitation of a BHRHA advisory opinion) that are similar to those that the District Director follows.

With regard to denials of claims, the regulations provide Immigration Judges with even fewer guidelines than are provided to Dis-

79 The regulation provides:

1. General. The district director shall deny a request for asylum or extension of asylum status if it is determined that the alien:
   (i) Is not a refugee within the meaning of section 101(a)(42) of the Act;
   (ii) Has been firmly resettled in a foreign country;
   (iii) That the alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion;
   (iv) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;
   (v) There are serious reasons for considering that the alien has committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States.
   (vi) There are reasonable grounds for regarding the alien as a danger to the security of the United States.


80 The list basically parallels grounds for deportation or exclusion in the Immigration and Nationality Act of 1952, §§ 212, 241, 8 U.S.C. §§ 1182(a), 1251(a). See note 5 supra.

81. See notes 69-76 supra and accompanying text.

82. 45 Fed. Reg. 37,394-95 (1980) (codified in 8 C.F.R. § 208.1 (1981)). The current regulations retained this significant change that the 1979 regulations had incorporated. Under the pre-1979 regulations, the District Director had exclusive jurisdiction over all asylum applications regardless of when an alien submitted his claim. See note 31 supra and accompanying text.

83. Id. § 208.6.

84. Id. § 208.10(b). When an asylum request is filed with an Immigration Judge, he adjourns the exclusion or deportation hearing until he receives the BHRHA opinion. The opinion becomes part of the record, and the applicant has an opportunity to inspect and rebut it. If the District Director had received a BHRHA opinion pursuant to asylum regulation § 208.7, the Immigration Judge shall not request another opinion, unless he determines in his discretion that a second referral would "naturally aid in adjudication of the asylum request." Id.
strict Directors. The Attorney General has not, for example, provided Immigration Judges with a comparable list of bases for mandatory denial of asylum requests. Also lacking is guidance as to what forms of evidence the Immigration Judge should consider, and importantly, what weight he should attach to each.85

It is apparent that underlying the organization, control, and judicial character of the process, opportunities for abuse of discretion persist. Answers to the following questions are apparently left to the unfettered discretion of the appropriate officials: what factors should be considered in deciding the merits of an asylum application; what weight should be accorded different kinds of evidence, such as the BHRHA opinion; and what circumstances should require a mandatory grant of asylum.

This Note demonstrates how the Haitians' experience exemplifies problems inherent in past INS procedures. It suggests that the current regulatory scheme is also beset with weaknesses. The task is great. The Haitian crisis demands immediate remedy: the INS asylum procedures and structure must be revised on a broader scale to prevent further abuse.

IV
PROPOSALS

A. STRUCTURAL REORGANIZATION OF THE INS

The first proposal calls for a complete structural reorganization of the INS.86 Under the present organizational format, the INS fulfills dual roles: enforcing the immigration laws and providing services relating to the benefits available to eligible immigrants.87 Studies of INS operations conclude that combining enforcement and service responsibilities in one body is undesirable.88 If a separate,
independent body were created to enforce immigration laws, the INS could concentrate on fulfilling its service functions.\textsuperscript{89}

The Immigration Judges would also be insulated from the strong influence of the INS and the Department of State.\textsuperscript{90} They would not be subject to INS or Department of State control in the event decisions similar to those involved in the Haitian Program were again made.\textsuperscript{91} Ideally, if the INS were restructured to provide services rather than to enforce, it would have no need to initiate other Haitian Programs. Even if the INS were to separate its service and enforcement functions, however, it would still be necessary to establish guidelines aimed at curbing the decisionmakers’ ability to abuse their discretion.

\textsuperscript{43} (1980) [hereinafter cited as Commission]. The Commission found that the presence of competing aims of enforcement and service within the INS results in a disproportionate emphasis on enforcement and a corresponding denial of services to eligible persons. It endorses a restructuring proposal. \textit{Id.}

\textsuperscript{89}. Under present conditions, aliens may be loath to seek information on services to which they are entitled, because they are afraid of being deported: The result is that many people are afraid to go to the Immigration and Naturalization Service, will not go for assistance, will not go to file applications or to find out what's happened to applications, because they are then subject to expulsion proceedings. Commission, \textit{supra} note 88, at 42.

\textsuperscript{90}. The \textit{Haitian Refugee Center} case evidences Immigration Judges’ susceptibility to manipulation. The chief Immigration Judge was involved from the earliest planning stages of the program. Opinion, \textit{supra} note 10, at 124-38. \textit{See also} notes 37-38 & 57-58 \textit{supra} and accompanying text.

The bureaucratic hierarchy of the INS helps to explain the strong influence the District Director may exercise over Immigration Judges. Although the Immigration Judge is theoretically responsible only to the INS Commissioner, he is subject to the budgetary and administrative control of the District Director. \textit{See} E. HARPER, \textit{supra} note 1, at 62-64. It is the District Director’s responsibility to supply the Immigration Judge with office supplies and support staff. \textit{Id.}

The District Director’s present role in asylum claim processes would conceivably be unaffected by a restructuring of the INS. The INS considers petitions and claims regarding benefits available to aliens, including asylum, and claims submitted before deportation as part of its service function. \textit{See} note 87 \textit{supra}. That function would remain with the INS.

\textsuperscript{91}. The question arises whether Immigration Judges should hear \textit{all} asylum claims. The purpose behind revising the regulations to permit Immigration Judges the authority to determine asylum claims filed after deportation or exclusion hearings had commenced was to provide aliens full evidentiary hearings. \textit{See} 44 Fed. Reg. 21,254 (1979). Under the current scheme, District Directors do not conduct comparable inquiries. Advantages of eliminating the District Director’s role and granting the Immigration Judge jurisdiction to hear all claims include the expectation that such an arrangement would accord aliens full evidentiary hearings, eliminate duplication, and prevent situations like the Haitian Program from recurring. The advantage of retaining two-tiered decisionmaking lies in the idea that two opportunities to present asylum claims are better than one. Also, many commentators generally object to the removal of the District Director from the asylum claim process. \textit{See} \textit{id}. A new two-tier procedure that would combine the District Director’s present role with the new role of the Immigration Judge could incorporate advantages of each alternative: providing full evidentiary hearings for all asylum claims; retaining the District Director and his support staff as the primary decisionmaker; and separating the decisionmakers from influences that could lead to abuses of discretion.
B. Revision of Current Regulations

The independent second proposal calls for an expeditious revision of current asylum regulations. Effective asylum regulations must structure and check INS officials' discretionary powers. Specifically, the regulations should clearly set out administrative guidelines that will identify factors the decisionmaker should consider when passing on the merits of each asylum application.

The guidelines should not be so restrictive as to hamper decisionmakers' discretionary authority, yet they must impose minimal standards to ensure sufficient uniformity in the processing of claims. The Attorney General should determine what weight decisionmakers may give to the BHRHA advisory opinions to ensure that the District Directors and the Immigration Judges do not accord them undue weight or treat them as conclusive. Further, an enumeration of mandatory bases for the grant of asylum should complement the list of mandatory bases for denial of asylum. To complete his task, the Attorney General should address the need for structuring Immigration Judges' powers. Reform in this area is particularly crucial if the Note's first proposal, calling for a structural reorganization of the INS, is not implemented.

Finally, the regulations should give aliens some indication of what they are expected to present in support of their applications. Presently, aliens are simply told they must establish that they will be subject to persecution if forced to return to their native country.

92. See notes 66-85 supra and accompanying text.
93. For example, minimal requirements concerning an applicant's personal interview could be formulated to provide each applicant with a hearing before a qualified examiner, as well as to provide the examining officer adequate time in which to obtain sufficient information. A requisite minimal length of an interview could be established, based upon the average time present decisionmakers consider appropriate. Qualifications of the examining officer could also be set forth to ensure a minimal level of expertise or competence in evaluating the merit of applicants' claims. Such qualifications could similarly be based on decisionmakers' past experiences regarding what qualifications they consider most desirable.
94. See notes 73-76 supra and accompanying text.
95. Sections 208.7 and 208.10(b) of the regulations could be revised to indicate that the opinion is strictly advisory and that in no case may it be considered conclusive. The regulations already require the Immigration Judges to give applicants the opportunity to inspect, explain, and rebut BHRHA opinions. 45 Fed. Reg. 37,395 (1980) (codified in 8 C.F.R. § 208.10(b) (1981)).
96. See note 79 supra.
97. Under the current regulations, the list of bases for denial applies only to the District Director; a similar-list does not bind the Immigration Judge. See text accompanying note 85 supra. A list of such bases for mandatory denial, supplemented by a list of bases for mandatory grants of asylum, should be set forth for the Immigration Judge as well.
98. See notes 82-85 supra and accompanying text.
99. See note 65 supra and accompanying text.
The third proposal addresses this concern.

C. PREPARATION OF NATIONAL REPORTS

In order to be granted asylum, an alien must prove that he would be subject to persecution or that he has a well-founded fear of persecution if he were forcibly returned to his native country. In *Haitian Refugee Center v. Civiletti*, the court was disturbed by evidence that INS officials placed an onerous burden of production on Haitian asylum applicants to prove that persecution exists in Haiti.101

That burden could be substantially lessened if aliens had access to reports that would comprehensively and accurately detail conditions in the countries from which they seek refuge. Such reports could be prepared and updated annually and made available to an alien upon his application for asylum. While the report would not be conclusive on the issue whether aliens from a particular country are subject to persecution, it would serve as a formal statement on general conditions within particular countries.102

Not only would annual reports lessen an applicant’s burden of production of important “background” information, they would permit him additional time to collect evidence of personal persecution experiences.103 Use of a national report would also prevent unfair dispositions of claims that might occur when one individual has access to more complete evidence of his country’s internal conditions than does another alien. The availability of a national report would thereby facilitate individualized consideration of each asylum claim.

An act of Congress would not be necessary to implement this proposal. The Attorney General can amend the asylum regulations to provide for presentation of the appropriate report to the decisionmaker and to each alien who submits an asylum application. The Attorney General may delegate the task of preparing national reports to presently employed INS personnel or to a permanent task force charged with the responsibility.

100. *Id.*
102. Such reports would be current assessments of the country’s political, economic, and social conditions and would supplement the advisory opinions that the decisionmaker must request from the Department of State. 45 Fed. Reg. 37,394-95 (1980) (codified in 8 C.F.R. §§ 208.7, 208.10(b) (1981)). *See notes 73-76 supra* and accompanying text. Aliens from countries like Haiti, where persecution may not be readily apparent either because it occurs privately or because it involves emotional rather than physical abuse, will particularly benefit from the reports.
103. The current Operating Instructions permit asylum claimants to present any evidence they feel tends to substantiate their claims or fears of persecution. O.I. 208.8(c) (1980).
D. Permanent Task Force on Refugee Policy

Congress has often recognized the need for in-depth, widescale studies of the immigration field.104 The formation of a permanent task force to perform such studies would fulfill functions that become more critical with each influx of refugees. The Task Force can provide the national reports105 and recommend how asylum claims from each nation should be handled.106 It can also serve as an ombudsman107 in monitoring the enforcement procedures of the INS. A leading authority on administrative law has strongly encouraged the use of ombudsman systems as a technique to check administrative discretionary power and to protect against arbitrariness.108

A Permanent Task Force on Refugee Policy should ideally be composed of individuals representing politics, religious groups, labor organizations, immigration law practitioners, and academics.109 In the interests of stability and continuity the President and Congress should jointly appoint the Task Force members for a fixed term of three-to-five years.110 The terms should begin at staggered times to


105 See notes 100-03 supra and accompanying text.

106 Being a neutral, objective body, tangential considerations of foreign policy or prejudice would not blind the Task Force; it could scale national barriers to detect violations of human, religious, or political rights.

107 An ombudsman is a high-level officer whose main functions are to receive complaints from citizens, investigate and evaluate the complaints, and publicize his findings. Being independent of the agency or service an administrative ombudsman is investigating, he has the advantage of distance from the source of the agency or service’s power. See generally K. Davis, Discretionary Justice, A Preliminary Inquiry 150 (1969).

108 See id. at 150-51. Davis emphasizes that an ombudsman system should be used as a supplement to, and not a substitute for, competent administration and fair judicial review of administrative action. Davis shows that the ombudsman system has worked well in several foreign countries. For example, his research reveals that the mere existence of ombudsmen in Britain gives administrators added incentive to avoid injustice and to correct maladministration. Id.

109 The variety of views that could thereby be represented would render the INS a more responsive and humanitarian organization. The recent public outrage over the official handling of the Haitian crisis bespeaks the wide gulf that must be bridged between public sentiment and expectations on the one hand and official policy and action on the other.

110 The term should be long enough to enable the member thoroughly to familiarize himself with the field, but not so long that he becomes bored, stale, or loses his perspective as an objective observer.
avoid the inefficiency that would result if the Task Force were completely restaffed periodically.

Congress should grant the Task Force the power to issue subpoenas so witnesses and documents are available at public hearings it may conduct. The Task Force should be required to appear annually before Congress to report on its activities and to receive legislative directives and suggestions.

Disadvantages of this proposal include the facts that the Task Force members may still be constrained as government representatives from harshly criticizing other governments' policies and that formation of a Permanent Task Force would require congressional authorization.

CONCLUSION

Our nation has had a sterling reputation for welcoming foreigners. We must not let that reputation become tarnished. Our immigration service is under severe attack, both at home and abroad, for pursuing ends that conflict with the well-settled traditions and the widely held sentiments of the American public. Today, the Immigration and Naturalization Service is under pressure to account for its policies, methods, and tactics. The pressure comes from American citizens, aliens, courts, and finally the Congress.

The Haitian Refugee Center case revealed fundamental weaknesses in INS asylum procedures. The court's scathing attack renewed criticism of the INS for permitting and encouraging abuses of its administrative discretionary powers.

At this time, interested groups, agencies, the judiciary, and Congress should unite in a spirit of cooperation to work towards common goals of reform in asylum procedures. Congress should

111. The Task Force should also be authorized to commission studies and conduct tours of foreign countries. Because it would be an entity independent of the INS and the Department of State, its budget would not be dependent upon those organizations.
112. Task Force members could interject opinions and observations free of the constraints imposed on other government employees, such as those in the Department of State. But because the Task Force would be operating under the auspices of the U.S. Government, it should be sensitive to possible ramifications should its studies prove to be highly critical of another government.
113. Congressional authorization is a time-consuming process, even when the legislature is favorably disposed to a piece of legislation. The November 4, 1980 elections swept into power a conservative Republican President and turned the leadership of powerful Senate Committees over to Republicans. Chairmanship of the Senate Judiciary Committee passed from Senator Edward M. Kennedy (D.-Mass.), a vigorous advocate of immigration law reform, to conservative Republican Strom Thurmond (R.-S.C.). The election results indicate that proposals for immigration reform and the final report of the Select Commission on Immigration and Refugee Policy (see note 104 supra) will be considered by a more conservative, economy-minded Congress.
particularly seize the moment and institute the recommended reforms. Such an initiative will make the INS a more responsive agency at home and will help the country regain its international reputation as a leading advocate and protector of human rights.

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