

# Humanitarian Immigration: Third World “Persecution” Swamps the West

by David Simcox

## *Executive Summary*

*Humanitarian-induced immigration, in its many diverse channels, has grown to account for an estimated 20 percent of the 1.3 million foreign born now settling in the U.S. each year. Other democratic industrial nations of the West face even greater flows relative to their smaller populations. The power of the refugee lobby, rising migration hunger overseas, and ever more generous readings of refugee law portend rapid future growth. For three decades the U.S. has compensated for the overtaxed formal refugee and asylee pipeline with a series of measures to allow in far more humanitarian claimants for ostensibly “temporary” forms of protection, such as Temporary Protected Status (TPS), or by disguised amnesties.*

*The U.S. asylum system has become the “hole in the fence” for millions of dubious claimants — and a major immigration magnet in itself. For patronage-hungry legislators in an age of ethnic identity politics, humanitarian admissions are choice pork. Vague legislation and aggressive litigation by the human rights bar, feminists and gays have persuaded the courts to open asylum to new victim groups. If the U.S. is to meet legitimate demands for protection without accepting population-swelling mass settlement, much tougher screening is needed, such as rigorously limited temporary stays; offshore protection of claimants; tight limits on appeals; and narrower definitions of persecution.*

Former Senator Alan Simpson called it “compassion fatigue.”

The one-time Chair of the Senate Immigration subcommittee was describing the American public’s weariness with the seemingly unending arrival of waves of refugees and asylees on our shores needing acceptance and public support. The term captures the fatigue many feel toward a demanding task one can never finish, one can’t quit, and one didn’t ask for — a task that seems to grow, not diminish, with each wave of new demands met.

## Has International Refugee Law Outgrown the West?

Arrivals of new immigrants and births to children of immigrants already here now account for about two-thirds of America's population growth. The U.S. added nearly 33 million people in the decade of the 90s and 20 million were immigrants or their U.S.-born children.

Formal admissions of refugees and asylees, which is only a fraction of overall humanitarian entries, came to about 105,000 in 2002, about 11 percent of all legal immigration. Between 1945 and 2001, 3.6 million refugees and asylees were formally settled in the U.S. These numbers, though an important force in postwar U.S. population growth, are probably about half of the actual influx of humanitarian or humanitarian-induced immigration since the 1980s. How did it get to be this way?

The U.S. signed the Universal Declaration of Human Rights of 1948, which ambitiously proclaims in Article 14 the right of every person in the world to "seek *and to enjoy* in other countries asylum from persecution."<sup>1</sup> Despite the wording of the article, the U.S. has consistently held that the "right" in question is to *apply* for asylum, not to receive it. The Universal Declaration is just that, a declaration, not a binding treaty.

Article 14 was a remarkably generous and innocent international undertaking in a world that was radically different from today's. In 1950, there were only a few more than 50 independent nations; today there are nearly 200. World population in 1950 was just 2.5 billion, compared to today's 6.4 billion. Most of that growth has, and will continue to come from the world's poorest areas where misery and restlessness are greatest. The less developed countries have increased in population from 1.7 billion in 1950 to 4.9 billion in 2000.

The region most prone to send migrants to the U.S., nearby Latin America, tripled its population in

that half century to 523 million. The era of mass, inexpensive international air travel did not dawn until 1952 with the use of the first commercial passenger jets. Now, some 70 million passengers from abroad arrive in the U.S. by air each year — two-thirds of them aliens. The United Nations High Commission on Refugees (UNHCR) estimates that almost 200 million of the globe's people are international migrants and now about 35 million of those would like to move from the places they are now. Those numbers grow briskly.

The spread of literacy in the third world and the view provided by mass media to hundreds of millions there of the blandishments of life in the industrialized world have spawned ubiquitous yearnings to emigrate. One striking measure of this wanderlust is the annual U.S. "visa lottery," which in 2003 saw almost 8 million apply for only 50,000 immigrant visas. And the visa lottery accepted no applications from citizens from Mexico, China or the other top exporter nations of immigrants to the U.S.. It is the studied blindness of Washington policy makers to this worldwide ravenous immigration demand that puts the nation's population and resource future at greatest risk.

The politics of densely populated Western Europe have been transformed by its massive surge of asylum seekers in the past two decades, as right-wing, anti-immigrant parties have burgeoned. Germany, once Europe's preferred target for asylum hopefuls, saw asylum applications rise nearly eleven-fold between 1982 and 1992, peaking then at 438,000. This population-asylum ratio for the United States would mean 1.5 million applicants for the U.S. Under intense political pressure, the German government in 1993 amended its laws and its constitution to restrict asylum. Applications now are back down to less than 100,000 a year.

To the chagrin of the careerists of UNHCR, many other western European nations have followed suit, some of the smaller countries (Denmark, Netherlands, Austria) imposing even more severe restrictions. Britain, having now replaced Germany as

Europe's most popular asylum target, with applications exceeding 100,000 in 2003, introduced further tough legislation in 2003 with the goal of reducing applications by half.

Faced with rising “on-shore” asylum applications, and a surge of boat people beginning in 1999, Australia enacted tough restrictions in 2001. But like the United States, many of these countries have temporary protection or other quasi-asylum laws that help keep overall humanitarian immigration high. In a number of western nations the rising sense of loss of control over entries has sparked serious debate about reinterpreting, amending, or even withdrawing from the 1951 Geneva Convention of Refugees and its 1967 Protocol.<sup>2</sup> But Europe's opponents of tighter asylum controls argue that these restrictions will only increase illegal immigration, which figures suggest is on the rise.<sup>3</sup>

### **U.S. Postwar Refugee Policy: From Cautious to Prodigal**

In the immediate postwar decades of the 40s, 50s, and 60s the U.S. was more selective than now about humanitarian immigration. The U.S. declined until 1968 to sign-on to the 1951 Geneva Convention, which bound states to a broader definition of refugees and asylees. U.S. refugee policy until then stressed its own national interest in stabilizing an impoverished and war-ravaged Europe by resettling displaced persons, combating the Soviet cold war threat, and affirming its anti-communism. Intake in this period was modest by today's standards.<sup>4</sup>

Refugee and asylum admissions subsequently began to mount in the 70s — to over a million in each of the last two decades. In the three decades since the end of the Vietnam war 1.5 million Indochinese received shelter in the U.S. — and they continue to come as refugees a generation after the end of the war. These are just the formal admission numbers. Off-the-books admissions through humanitarian parole or through loosely defined “special entrant”

categories or bureaucratic sleight of hand to avoid deportations such as “extended voluntary departure” or “cancellation of suspension of removal” have swelled the numbers.

The figures for 2002 are fairly typical. During that year the U.S. was host to some 527,000 entrants whose claims for asylum or other relief were pending before immigration officials or immigration judges. Another 21,000 were persons granted temporary protected status (TPS) in that year, joining the estimated 410,000 TPS holders already accumulated here. Still another 150,000 Colombians not included above were living in the U.S. in refugee-like circumstances, while Congressional action to grant them TPS too is under consideration.<sup>5</sup> In addition more than 40,000 persons were admitted provisionally to the U.S. under “humanitarian parole” — a broad discretionary authority of the Executive Branch. As many as 25,000 persons who were denied formal asylum were allowed to remain in the U.S. anyway under other forms of bureaucratic relief such as special “adjustments of status” that were disguised amnesties.

### **Higher Numbers of Humanitarian- Related Migrants Ahead**

Humanitarian-induced immigration is now a major U.S. population booster, implanting many new migration chains for future flows. It directly or indirectly brings the entry of all humanitarian-induced migrants to at least twice the 100,000 or so annually acknowledged in formal immigration statistics. A goodly share is persons who originally entered illegally and were allowed to remain without formal decisions on asylum, or who entered and sought asylum and, when denied it, went underground — “absconded,” in the jargon of immigration officials.

These high numbers are likely to go higher. Of all forms of humanitarian intake, only the flow of officially-selected overseas refugees is reasonably controllable. The U.S. has demonstrated its control by reducing the annual flow from 100 thousand yearly in

the 1990s to 70,000 a year in the late 90s. Fraud, however, is rife. Identities of presumptive refugees and their follow-on dependents are elusive. The Director of the State Department's refugee office estimated that 40 percent to 60 percent of claims for family reunification with settled refugees are fraudulent.<sup>6</sup>

Since September 11, 2001, Washington has further cut the projected inflow of refugees by sixty percent for security or workload reasons. A government-subsidized U.S. refugee lobby of churches and ethnic resettlement organizations is demanding a restoration of 100,000 refugees yearly as a minimum, regardless of human rights circumstances abroad.

**Not so “Temporary” Protected Status** — Washington legislated TPS in 1990, to provide a cheaper alternative to formal asylum and to provide a legal basis for questionable bureaucratic *ad hoc* arrangements then used to let people stay here. TPS expanded the intent of humanitarian immigration law by “temporarily” harboring those fleeing not the targeted persecution envisaged in the refugee convention, but generalized violence and natural disasters abroad. Most often the temporary relief becomes permanent. Washington lacks the political will or enforcement resources to ensure the departure of its hundreds of thousands of beneficiaries here when things improve in their host countries. Since 1990 some 430,000 aliens from 16 countries have been granted TPS. El Salvador alone has some 285,000 mostly illegal TPS aliens here. Illustrating the creeping permanence of TPS, Salvadorans have had their temporary stays repeatedly extended since 1990. Many of those once covered by TPS have become legal permanent residents.

A dismaying lesson of TPS is that most of the world's poor and troubled states do not want their citizens to come home, but work aggressively for more of them to find a foothold in the U.S.. With overseas remittances of immigrants in the U.S. reaching \$44 billion in 2003, this is not surprising. A central foreign policy goal of El Salvador, Honduras, Guatemala and

Nicaragua, which have sent the vast majority of the temporarily protected, is to pressure Washington for amnesties or, failing that, repeated extensions of stay for their TPS clients and expansion of the privilege to cover later arrivals.

**The Asylum System: An Entitlement for the Restless** — Unlike refugee selection, the asylum process has virtually no safeguards against masses of “spontaneous arrivals.” Asylum claims are unilateral choices of aliens in the U.S. or at the ports of entry who are impelled at times by genuine fear of persecution, but more often by the hope of evading U.S. immigration limits and partaking of state subsidies to asylees. Estimates of the portion of individual claims that are meritless run as high as 90%. Denial of those asylum claims is often academic in the U.S. and other receiving nations since there is little capability or willingness to find and remove those refused.

The asylum adjudication system itself in the U.S. and western countries is stacked in favor of the frivolous applicant. The asylum seeker makes claims of persecution or mistreatment at home by government officials (often local officials) or, increasingly, by their own family members. On-site verification of those claims by asylum officials here is out of the question. Indeed, asylum advocates oppose any inquiry to the applicants' home governments as a violation of “privacy.” Short-staffing and heavy case loads of adjudicators encourage rubber-stamping. Credibility determinations are largely intuitive. Pro-asylum advocacies and most of the U.S. press routinely presume that all claims are valid and denounce efforts to get at reality as “heartless” or contrary to the Refugee convention. Increasingly, professional people-smugglers have mastered using national asylum systems to get their client migrants in.

Receiving governments are expected by refugee legalists to disregard questions of numbers entering when judging asylum claims.<sup>7</sup> They argue that the commitment of states under refugee treaties to protect endangered individuals is an obligation that trumps states' need to control immigration numbers.

The prospect of asylum or some other form of humanitarian admission to the U.S. is a powerful invitation to the world's troubled, ambitious or opportunistic. A claim for asylum is a ticket to either, in the best case, legal residence, or at worst a foothold here among the country's teeming irregular population. U.S. immigration officials have estimated that eighty percent of all those applying for asylum end up remaining in the U.S., whatever the outcome of their claims.

***Big Numbers Through a Tattered Asylum Screen*** — Those numbers add up. Between 1973 and 2002 the U.S. had received some 1.53 million applications for asylum, representing nearly two million persons, if applicants' dependents are factored in. Applying the 80 percent rule of thumb, some 1.6 million have stayed on here. Even though rarely more than 30 percent of those applicants received formal asylum, many others have remained illegally, or with some other temporary form of relief, or by winning legal resident status through family connections or amnesties, overt or disguised.

A large number of those two million applicants are persons who, aware of the weakness of their cases, used the application process to gain work authorization and then "absconded" before their claims could be heard. Many others advanced asylum claims to delay deportation until something would turn up, like an amnesty.

With those odds it does not surprise that the number of asylum claimants has surged. In 1980 when Congress enacted the present asylum system in the Refugee Act (PL 96-212), government witnesses testified there would be a maximum of 5000 applicants annually. Instead, applications soared to nearly a 150,000 a year by the mid-nineties.<sup>8</sup> This cascade led to changed INS procedures and restrictive measures such as "expedited removal" in 1996 (Public Law 104-208) that by 2002 had brought annual applications back down to 66,000.

Despite optimistic projections of slowing global population growth, the worldwide pool of candidates

to immigrate to the U.S. will keep growing for the foreseeable future — through natural population increase, through the bulge in third world working-age populations, and because of rising education levels, inadequate job creation, and rejection of traditional societies abroad. Immigration begets more immigration. As America's foreign-born population grows, so does its power to influence immigration policy and its propensity to lure more immigrants of the same kinship group, nationality or ethnicity.

### **Humanitarian Admissions as Off-Budget Patronage**

For many Washington leaders immigration is a particularly useful form of patronage at a time when tight budgets limit other giveaways. The legal immigration system is severely overcommitted, with years of waiting the norm in many family reunification categories (viz. the Philippine's waiting list for admission of siblings of U.S. citizens is 22 years; India's is 13 years). The public has become more resistant to higher ceilings or legislative legerdemain to "clear backlogs." Immigration is most salable politically when clothed in humanitarian garb.

Congress is increasingly prone to legislate special humanitarian admissions programs for particular ethnic or gender constituencies. The spread of identity politics in the U.S. has reinforced this tendency. Also still at work is Congress' penchant to use refugee policy to somehow fight unpopular ideologies, "embarrass" authoritarian regimes, and otherwise influence events abroad. Still other special legislative concessions are forced on Congress and the Executive by court decisions which overrule executive branch refusals of some categories of asylum seekers.

The lobby for humanitarian immigration is strong and well armored by the righteousness of its cause. It's hard for legislators to say no to admitting the ostensibly afflicted. Churches and synagogues, bar associations, and human rights and ethnic protective groups loom large in keeping the refugee and asylum valves open and in ensuring ample Federal and local

government funds for their clients — often channeled through nonprofit bureaucracies operated by the major refugee/asylee lobbies themselves. Full involvement of *pro bono* lawyer groups has sparked heavy litigation, which successfully has expanded the definitions of persecution and persecuted groups.

Congress's production of *ad hoc* refugee and asylum programs in recent decades for ethnic special interests are remarkably profuse and diverse. With pressures from so many interest groups, the legislative record of humanitarian immigration in the 80s and 90s is the specter of a Christmas tree for persistent constituencies. Consider just a few of them:

- The ***Cuban Adjustment Act of 1966 (PL 89-732)*** granted parole to all Cubans, probably the most coddled constituency of all, who can reach the U.S. and permanent resident status after one year. In 1986 and 1996 laws Washington further eased Cuban resettlement rules. An egregious example of exile grievances driving refugee policy, the Cuban Adjustment Act manifests Congress's need to affirm anti-communism, appease a demanding ethnic lobby, and to use refugee admissions to somehow "weaken" Cuba's Marxist Castro regime, still solidly in power after 44 years. The executive branch does not escape this illusion. As recently as October 10, President Bush marked a Cuban-American holiday at the White House by promising increases in Cuban immigration numbers and renewed efforts to inform would-be Cuban refugees of the "many routes to safe and legal immigration into the U.S." Meanwhile, Washington's pandering to the Cuban lobby has triggered "me too" demands from Haitians and other ethnic advocacies.
- The ***Lautenberg Amendment*** to refugee enabling legislation since 1989 has granted virtual automatic refugee status to some 400,000 Jews, Evangelicals and a few other

religious minorities in former Soviet nations. Showing membership in these religious groups is enough to qualify; applicants are not required to show a well-founded fear of persecution required by the Geneva Convention. Lautenberg keeps being quietly reenacted year after year, even as the Russian Republic has become more open and democratic.

- The ***International Religious Freedom Act (HR 2431 and PL 106-55)***, passed in 1998 under intense lobbying by conservative Christian groups, is designed to produce higher refugee and asylum admissions for overseas believers. It mandates special indoctrination of adjudicators on the nature and extent of religious persecution abroad and on making refugee guidelines more sensitive.
  - The ***Nicaraguan Adjustment and Central American Relief Act (NACARA — PL 105-100 of 1997)*** and the ***Haitian Refugee Immigrant Fairness Act (HRIFA — PL 105-277 of 1998)*** were enacted to comply with a court decision reversing the executive branch's denial of humanitarian relief to certain asylum seekers from those nations. NACARA became a Christmas tree— a *de facto* amnesty, granting ultimate permanent residence status to nearly one million Nicaraguans, Salvadorans, Guatemalans, Cubans, and citizens of former Soviet bloc countries in irregular status.
- HRIFA offered similar benefits to certain Haitians here by 1995. Some 125,000 Haitians gained permanent residence. Predictably, Congress is under heavy pressure to extend the benefit to Haitians now specifically excluded.<sup>9</sup>
- The ***Torture Victims Relief Act (PL 105-320) of 1998*** implemented the U.S. ratification of the United Nations Convention

against Torture, which bars the deportation of anyone to a country where he is likely to face torture. The Act is now commonly invoked as a delaying tactic among failed Asylum seekers. Nearly 800 aliens have avoided deportation under this policy — more than a third of them hardened criminals. In what seems like a contradiction, others protected by the act are themselves former torturers in their homelands.<sup>10</sup> Inexplicably, the U.S. has at times dealt with human rights-deficient countries (such as Haiti and El Salvador, Guatemala, Somalia and Ethiopia ) by sheltering both the persecuted and their persecutors.

- The *Chinese Student Protection Act of 1992 (PL 102-404)* In response to the Tianamen Square massacre in Beijing, the act granted permanent legal residence to Chinese temporarily in the U.S. between June 1989 and April 1990. An estimated 80,000 Chinese earlier given temporary protection under a 1990 executive order were made permanent residents.<sup>11</sup>
- 1996 legislation on *Persecution for Resistance to Coercive Population Control (PL 104-208)*. This law mandated that forced abortion or sterilization (principally in China) or a well-founded fear of such coercive population control measures were grounds for asylum.

Domestic repugnance toward China's population control measures illustrates the difficulty of consistent asylum standards when overseas conditions become enmeshed with such volatile domestic issues as "right to life." From 1989 to 1994 the Board of Immigration Appeals regarded China's population control laws as "social policy" applicable to all, not "persecution." A federal court ruled otherwise in 1994. Ironically, the Chinese Government, in dealing with the U.S. government on steps to stop Chinese alien smuggling, has suggested that less magnetic

asylum opportunities in the U.S. would help slow the flow.

The foregoing are but a sample of some of the immense variety of victim groups Washington has responded to. Others would include Syrian Jews, Iraqi Kurds and Christians, Soviet scientists, victims of human trafficking, unemployed Northern Irish, volcano-struck Monserratan, Indochinese children of American soldiers, Bosnians, Croats and Kosovars, and if Congress has its way North Korean refugees in China and Japan.

## Conclusion

If a sustainable, stationary U.S. population is to be achieved, sizable cuts in all forms of immigration are a must. Despite its inflated moral claims to exception, Humanitarian immigration, because of its egregious political manipulation and the carelessness in its application, must be a candidate for major pruning. Alarm over its abuse and its likely future trajectory, has led the U.S. and a number of western nations to consider or even adopt hardheaded measures to block mass population transfers to their soil under a presumed entitlement to protection. Many of the measures that would have been unthinkable in the West when innocence prevailed and the numbers were low (interdiction at sea, offshore protection, limited temporary protection only), have become a reality. But restrictive laws will provide little relief until western nations — the U.S. included — accept the need for close and continuous tracking of their non-citizen populations to identify and promptly remove the uninvited. A forthcoming NPG Forum paper will examine the options for remedying a broken humanitarian system and the institutional misperceptions and flaws that nurture it.

### NOTES:

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2. (a) Adrienne Milbank (2001), Australia and the 1951 Refugee Convention, *People and Places*, Vol. 9, no 2; (b) *Migration Watch UK: Asylum Laws: a Way Forward (2003)* — [www.migrationwatchUK.org/bulletinNo6.htm](http://www.migrationwatchUK.org/bulletinNo6.htm)

3. Harald Lederer (1998). *Illegal Immigration: Why Does it Exist and What do We Know about the Numbers and Trends? European Forum for Migration Studies, Bamberg, EFMS Paper No. 19*
4. Gil Loescher and John A. Scanlan (1986): *Calculated Kindness: Refugees and America's Half-Open Door — 1945 to the Present*, New York: The Free Press.
5. U.S. Committee for Refugees, *World Refugee Report - 2002*
6. Mark Fritz, "U.S. admits record low number of refugees," *Associated Press*, September 21, 2003
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10. "Lawmakers attack use of anti-torture law to block immigrants' deportation." *New York Times*, July 12, 2003
11. Mark Krikorian, *Past Grants of Temporary Protection*, Testimony Prepared for the U.S. House of Representative, Committee on the Judiciary, Subcommittee on Immigration, March 4, 1999

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