Exiled once Again: Consequences of the Congressional Expansion of Deportable Offenses on the Southeast Asian Refugee Community

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I. INTRODUCTION

On November 16, 2003, the New York Times published "In a Homeland Far from Home," an article chronicling the life of Loeun Lun, a Cambodian refugee, whom the United States government deported to Cambodia due to recent changes in immigration law.¹

Loeun Lun was born to Soun Dok, an impoverished peanut farmer in the midst of the intense economic and social turmoil that defined Cambodia in 1975.² During this period, Cambodia’s communist dictatorship, the Khmer Rouge, brutally relocated citydwellers to the countryside and tore apart families, placing many into forced-labor camps.³ Dok and Lun languished in one such labor camp, facing abuse at the hands of guards.⁴ At one point, soldiers buried Dok up to her neck in mud and left her to die to punish her for supplementing her meager allowance of gruel with bamboo shoots.⁵ She eventually escaped and reunited with Lun and together they

† J.D. Candidate, University of California, Berkeley School of Law (Boalt Hall), 2006; B.S.F.S., Culture and Politics, Edmund A. Walsh School of Foreign Service, Georgetown University, 2003. I would like to express my deep appreciation to Professors Junichi Semitsu and Angela Harris for their invaluable guidance as well as the Asian Law Journal editorial staff for their unyielding support and insightful comments. I would also like to thank the panelists and speakers of the 2005 Asian Law Journal Symposium on the Deportation of Southeast Asian Refugees. Your unflinching commitment to social justice and energetic activism serve as an inspiration.

2. Id. at 50; see generally JAN ROBIN LINOWITZ, RESettlement of Southeast Asian Unaccompanied MINor REFUGEES: FINDING THE RIGHT PLACeMENT 8 (1986) (discussing the treatment of the societal conditions plaguing Cambodia at that time).
3. See KEITH ST. CARTMAIL, EXODUS INDOCHINA 49 (1983) (stating that husbands and wives were separated and sent to different farming communes); RONALD TAKAKI, Strangers FROM a different Shore: A HISTORY OF ASIAN AMERICANS 451–52 (1998); MARY CAROL HOPKINS, Bringing a New World: Cambodian (Khmer) Refugees in an American City 12 (1996) (stating that children were separated from their families and sent off to labor camps).
4. Sontag, supra note 1, at 51.
5. Id.
fled the country. Dok and Lun trekked through malaria-infested jungles and landmine-laden terrain to reach a refugee camp in Thailand, and eventually arrived in the United States.

However, their arrival in the U.S. brought about new challenges as they struggled to adapt to a completely different way of life. On August 20, 1994, Lun encountered a drifter selling a nickel-plated .25-caliber handgun for twenty dollars. Unlike many other Cambodian American youths in his housing project in Tacoma, Washington, Lun had never sought protection in local gangs and had no prior criminal record. Nevertheless, tired of harassment in the projects and fearing for the security of his widowed mother, Lun purchased the gun. He subsequently convened with a friend, another Cambodian American, at a local shopping mall. While there, a group of black teenagers began shouting racial slurs at the two, who responded by hurling their own insults. One of the black teenagers then flashed a gun tucked underneath his shirt. Realizing that they were outnumbered by the other youths, Lun and his friend made a quick exit. Before leaving, however, Lun fired his new weapon, bought earlier that day, and shattered a glass door.

6. Id.
7. Id. at 48, 51.
8. Id. at 48.
9. Throughout this Comment, I will refer to non-citizens who entered the United States as refugees, as "Americans" (i.e. Cambodian Americans, Vietnamese Americans, etc.). I employ this term in the cultural sense. Many of those who face deportation under the 1996 AEDPA and IIRIRA have lived in the United States since early childhood and know no other home. While they do not possess U.S. citizenship, these individuals are in every other sense Americans who love this country no less than their compatriots who do have citizenship. They have made the United States their home by starting families and establishing careers. These individuals are not guests; they are a part of our society. Even the strongest supporters of AEDPA and IIRIRA can agree that there is more to being an American than citizenship.

In referring to them as Americans, I aim to dispel the image of these non-citizens as being part of an undifferentiated foreign mass. It is precisely this perception which has rendered non-citizens easy scapegoats for contemporary anxiety over terrorism, crime and economic uncertainty. I believe that before there can be any legislative remedy for dilemmas posed by AEDPA and IIRIRA, the popular perception of this population must change.

10. Sontag, supra note 1.
11. Id.
12. Id.
13. Id.
14. Id.
15. Id.
16. Id. at 48, 50.
17. Id. at 50.
18. Id.
19. See id. at 50; see also Chris McGann, Refugees with a Record Face Shock—Deportation: A New Agreement Paves the Way for the U.S. to Send Many People Back to Cambodia, SEATTLE POST-INTELLIGENCER, June 14, 2002, at A1, available at http://seattlepi.nwsource.com/lo-
to subsequent changes in immigration law expanding the category of deportable offenses, the federal government expelled Lun from the United States, his home for twenty-two years, and repatriated him to Cambodia, a land from which he as a child barely escaped with his life.\textsuperscript{20}

Many other Southeast Asian refugees, like Dok and Lun, faced substantial challenges in achieving socioeconomic stability, as their lack of English proficiency barred them from employment and educational opportunities more readily available to immigrants.\textsuperscript{21} Southeast Asian refugees are not immigrants who voluntarily enter the U.S., but instead are primarily individuals fleeing political or ethnic persecution in one of the three nations, Cambodia, Vietnam and Laos, which formerly comprised French Indochina.\textsuperscript{22} In the absence of effective institutional support and the means to attain socioeconomic advancement, many Southeast Asian refugees, like Lun, have resorted to criminal activity in order to survive.\textsuperscript{23}

\textsuperscript{20} Sontag, supra note 1, at 50, 51.
\textsuperscript{21} Id. at 51; see also HARRY H.L. KITANO & ROGER DANIELS, ASIAN AMERICANS: EMERGING MINORITIES 155 (1988) (citing that lack of English skills and the unavailability of childcare were the main obstacles to employment for Southeast Asian refugees).
\textsuperscript{22} In this Comment, I address the impact of the changes in deportation policy on the Vietnamese, Laotian, Cambodian and Hmong refugee communities. In many respects, I treat these four populations as one community primarily because of commonalities in their resettlement and adjustment experiences. The U.S. resettlement authorities treated these four groups of refugees largely the same, dispersing them throughout the country and providing similar levels and kinds of support. Accordingly, the government failure affected all four groups similarly. Vietnamese, Laotian, Cambodian and Hmong Americans all have ranked the lowest in various socioeconomic indicators. Moreover, these groups of refugees all fled their homelands to escape persecution by Southeast Asian communist regimes. The ideological and geopolitical struggles that initiated their departure from Southeast Asia were analogous. Finally, due to the cultural affinities that these groups have with each other, they have encountered similar difficulties in adjusting to American life. See TAKAKI, supra note 3, at 470-471 (stating that “Southeast Asians [in America] share something unique, a fundamentally different experience from all of the other Asian groups: ‘necessity,’ not ‘extravagance,’ has defined their lives”); see also CARTMAIL, supra note 3, at 11-84 (chronicling the parallel suffering of Southeast Asian refugees at the hands of communist dictatorships and their experiences in refugee camps).

The term “Indochina” refers to a region of Southeast Asia comprised of modern-day Vietnam, Cambodia and Laos, a region dominated by the French from 1862 until 1954. While the area has remained home to dozens of distinct cultures with thousands of years of recorded history, French colonists perceived the region to be a mere crossroads of Indian and Chinese civilizations and thus, coined the term “Indochine” to refer to this colonial possession. Their former status as French protectorates marks a historical divergence of these three nations from the rest of Southeast Asia. The similar ideological and geopolitical struggles stemming from this common historical experience resulted in parallel migrations from these countries to the United States. While it may be more precise to refer to these refugee groups singularly as “Indochinese,” I remain reluctant to perpetuate the use of the term, a relic of French imperialism. Instead, for the purpose of referring to things and people related to Vietnam, Laos and Cambodia, I will employ the term Southeast Asian. See, e.g., KITANO & DANIELS, supra note 21, at 135-157 (employing the term “Southeast Asian” instead of “Indochinese” in reference to the Vietnamese, Laotian, Cambodian and Hmong refugee populations).

\textsuperscript{23} See DOUGLAS D. DAYE, A LAW ENFORCEMENT SOURCEBOOK OF ASIAN CRIME AND CULTURES: TACTICS AND MINDSETS 248 (1997) (stating that for gang members, survival is all); see also Sontag, supra note 1, at 48, 51 (stating that many Cambodian American boys seek refuge in gangs and that Cambodians lack effective institutional support).
Many have also sought refuge in street gangs as their sole source of financial and emotional support. The poverty and despair of this sector of the Asian American community have made Southeast Asian refugees especially susceptible to deportation under new laws.

In this Comment, I will examine the historical, institutional and socioeconomic factors that have rendered the Southeast Asian refugee community particularly vulnerable to recent Congressional changes in deportation law. Section II addresses the geopolitical and ideological struggles taking place in the region formerly known as Indochina during the years preceding the first wave of refugees and the subsequent political and economic conditions, which have compelled hundreds of thousands of Southeast Asians to flee their countries of origin. Section III examines the lack of effective institutional support from the United States government for Southeast Asian refugees and the consequences of this failure by the U.S. resettlement authorities on the socioeconomic mobility of this community. Section IV explores how the absence of socioeconomic opportunities and the presence of high poverty levels have provided fertile ground for the proliferation of gangs and crime in the Southeast Asian refugee community. Section V investigates the impact of the Congressional changes in deportation law given the particular experience of the Southeast Asian refugee community. My conclusion will address Asian American community activism and coalition building as the primary means by which we can remedy this injustice.

II. THE POLITICAL AND ECONOMIC REALITIES INITIATING THE MASS EXODUS OF SOUTHEAST ASIAN REFUGEES TO THE UNITED STATES

Immediately after the fall of the U.S.-backed government of South Vietnam, hundreds of thousands of Vietnamese associated with the American government or with the former regime fled their homeland under fear of persecution by the new communist authorities. However, with the collapse of U.S. strongholds in Cambodia and Laos, and the withdrawal of American troops from Southeast Asia, this first wave of Southeast Asian refugees was not the last. These two nations also saw the rise of communist regimes triggering the exodus of hundreds of thousands more impoverished and battered souls escaping the starvation and horror of their homelands following the departure of American military advisors.

A. Escape by Vietnamese Refugees from Ethnic and Political Persecution

In 1954, the Geneva Accords divided Vietnam in half at the seventeenth parallel with a communist regime in the North and a U.S.-


25. See Daye, supra note 23; Sontag, supra note 1, at 52.
backed regime in the South. Democratic elections were to be held within two years of the agreement to reunify the country. However, the United States, aware that such an election would likely lead to a communist victory, rejected this option, and instead chose to continue its support for the brutal dictatorship in the South. In subsequent years, the United States poured money, arms and thousands of American troops into an unwinnable civil war, which resulted in the deaths of two to three million Vietnamese and devastated the country. With the 1975 collapse of the U.S.-supported South Vietnamese government in Saigon, the Viet Minh achieved its goal of unifying the country under a communist government after years of civil war. The emergence of communist rule initiated a mass exodus of Vietnamese, primarily over the course of two successive migratory waves.

The first wave of Vietnamese migrants comprised the most affluent set of Southeast Asian refugees. The victorious communist regime in Vietnam targeted the wealthiest and most educated of the country for particularly harsh persecution compelling many of them to flee. The Vietnamese government sent large portions of the urban elite, particularly businessmen and professionals, to "Special Economic Zones" where they were forced to toil in the countryside. Those who did not comply with these policies were sent to re-education centers where the internees would endure confinement and hard physical labor. One Vietnamese child refugee recalled that "[i]n Vietnam, if you do not work, the communists beat you and shoot you. In Vietnam, there was a lot of bombing; the communist bombed my house. Luckily, we... hid in the basement."

Refugees from this first wave were not sojourners, but instead arrived in the U.S. as well-educated families. Thirty-seven percent of these households were headed by high school graduates, and sixteen percent of them were headed by college graduates. Additionally, about two-thirds of the first wave of refugees spoke English and about half were Christian, as

26. TAKAKI, supra note 3, at 449.
27. Id.
28. Id.
29. See KITANO & DANIELS, supra note 21, at 140.
30. Takaki, supra note 3, at 449.
31. Id.
32. Id. at 449, 451.
33. See TAKAKI, supra note 3, at 451-52 (stating that the urban business and professional elites were relocated to the countryside to perform manual labor); see CARTMAIL, supra note 3, at 21. (stating that declared personal savings were confiscated).
34. TAKAKI, supra note 3, at 451-52.
35. See CARTMAIL, supra note 3, at 32-33.
37. TAKAKI, supra note 3 at 449; BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 134 (1993); KITANO & DANIELS, supra note 21, at 138 (1995) (stating that the refugees from the first wave came from more advantaged backgrounds).
38. TAKAKI, supra note 3, at 451.
many of them worked with the U.S. government during the war.\textsuperscript{39} They fled aboard U.S. airplanes and ships alongside the Western military and diplomatic personnel who withdrew from the country in face of the imminent communist victory.\textsuperscript{40} Altogether, about 130,000 Vietnamese refugees obtained asylum immediately after the fall of Saigon, constituting only the first wave of many thousands of Vietnamese who would seek refuge in the U.S.\textsuperscript{41} Even after this enormous influx of refugees, thousands more continued to escape as the social and economic policies of the new Vietnamese government became more unbearable.\textsuperscript{42} 

The second wave of Vietnamese refugees, which arrived from 1977 to 1979, had little association with Western governments or economic privilege.\textsuperscript{43} This wave consisted primarily of Vietnamese from the lower economic classes and members of the ethnic Chinese community in Vietnam.\textsuperscript{44} Poor economic conditions as well as political repression compelled many to flee.\textsuperscript{45} As one ethnic Chinese businessman recounted, "life was very hard for everybody. All had changed... I could see no future for me in Vietnam, no better life! I wanted escape [sic]."\textsuperscript{46} Hundreds of thousands ultimately escaped—21,000 in 1977, 106,500 in 1978, over 150,000 in 1979 and thousands more afterwards.\textsuperscript{47} Ethnic Chinese from Vietnam comprised approximately 200,000 of the refugees during this period, as the government in Hanoi felt increasingly threatened by Beijing and consequently suspicious of its own Chinese minority.\textsuperscript{48} Those coming in the second wave did not depart on U.S. vessels or airlifts, but instead journeyed by land or boarded rickety boats toward uncertain fates.\textsuperscript{49} Those who fled by sea often became the victims of storms, malnutrition and pirates who robbed, raped and killed.\textsuperscript{50} From ten to fifty percent of these individuals died at sea.\textsuperscript{51}

The fall of Saigon and the departure of U.S. forces allowed for the emergence of communist regimes in neighboring countries—the Pathet Lao
in Laos and the Khmer Rouge in Cambodia. Each of these regimes engaged in brutal repression of its people.

B. Cambodian Refugees Fleeing the Genocidal Khmer Rouge

As the North Vietnamese forces seized Saigon, the Khmer Rouge—communist forces led by Pol Pot—achieved its goal of enforcing its dominion over all of Cambodia. The new regime soon implemented a policy called “Angka Loeu” or “High Organization,” which was designed to purge the country of foreign influences and things associated with its feudal and colonial past. Through this policy, Pol Pot and his faction aimed to destroy traditional Cambodian society and rebuild it in accordance with Maoist theory, which idealized the rural poor and mistrusted the urban proletariat. The regime evacuated the cities and forced the urban population into the countryside, where they toiled in slave-like conditions and endured unimaginable cruelty.

Under the Khmer Rouge, approximately one third of Cambodia’s population perished, most of them from starvation and disease. While there seemed to be no safe haven from its paranoia and brutality, the regime did target specific segments of the population for particularly harsh treatment: those linked with the former colonial rulers or members of the intellectual elite, including teachers and doctors, were typically the first to be accused of counterrevolutionary activities and executed. Characteristics as seemingly innocent as wearing glasses or being able to

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52. Id. at 19, 42.
53. See id. at 35, 47, 81 (detailing atrocities in Cambodia and in Laos).
54. TAKAKI, supra note 3, at 468 (stating that the North Vietnamese stormed Saigon while the Khmer Rouge came to power).
55. CARTMAIL, supra note 3, at 45, 47, 49 (stating that under “Angka Loeu,” the Khmer Rouge sought to restructure the economy in order to purge the country of “decadent colonial influences,” describing “Angka Loeu” as incorporating a supposed need to purge the “urban decadence and the foreign contamination of the past, and stating that the Khmer Rouge “wanted a new beginning with no foreigners or outside interference . . . no traditional ties with the past, no churches, no education or schools, no family life, no hated intelligensia and therefore no professional class”); see Suellen Ratliff, comment, UN Representation Disputes: A Case Study of Cambodia and a New Accreditation Proposal for the Twenty-First Century, 87 CAL. L. REV. 1207, 1251 (1999) (stating that the Khmer Rouge sought to eliminate those deemed to be bourgeoisie, capitalists, and feudalists).
56. Maoism, a brand of communism inspired by the teachings of Mao Zedong, holds that Communist revolutions should gestate among the rural peasantry, not among the urban proletariat as espoused in Marxism-Leninism. Maoist theory distrusts urban industrialization, which is perceived as a potential source of bourgeois elitism. This model has its origins in the Chinese Communist rural insurgencies of the 1920s and 1930s, which eventually brought Mao to power. See JACK GRAY & PATRICK CAVENDISH, CHINESE COMMUNISM IN CRISIS: MAOISM AND THE CULTURAL REVOLUTION 67-68 (1968).
57. Ratliff, supra note 55, at 1250 (stating that the Khmer Rouge planned a communist utopia based on Maoist ideals).
58. CARTMAIL, supra note 3, at 47-48.
59. See TAKAKI, supra note 3, at 468.
60. Id.; CARTMAIL, supra note 3, at 48-49.
read and write were often taken as evidence of one’s status as a “decadent intellectual”, and served as grounds for persecution.\textsuperscript{61}

Survivors of the Cambodian Genocide carry with them vivid memories of the atrocities and the suffering exacted on them by the Khmer Rouge, as well as their own suffering during this turmoil.\textsuperscript{62} Soun Dok, the Cambodian peanut farmer, witnessed the murder of foreign nationals who were tied to poles and speared with sticks and recalled digging a grave for her five year old niece who had been tortured to death by Khmer Rouge officers.\textsuperscript{63} Other refugees can recount similar tragedies, such as being brutalized by soldiers or witnessing the murder and cannibalism of family members.\textsuperscript{64} After experiencing such destruction and cruelty, many Cambodian refugees still suffer from deep psychological scars.\textsuperscript{65} One teenage Cambodian refugee said of his ordeal that “the tragedy during the war hurts inside when I remember what happened in the past.”\textsuperscript{66} Escaping the political and economic turmoil of their home countries, over 100,000 Cambodian refugees have resettled in the U.S.\textsuperscript{67}

\textbf{C. Laotian and Hmong Refugees Escaping Persecution for Past Associations with the United States Government}

Once the Geneva Accords established Laos as an independent state in 1954, civil war broke out between two groups of Laotian nationalists, the Pathet Lao and the Royal Lao.\textsuperscript{68} In the ensuing years, the conflict in Laos merged with the neighboring struggle in Vietnam between the communist Viet Minh and the U.S.-backed South Vietnamese government.\textsuperscript{69} As ideological cousins, the Viet Minh provided support to the Pathet Lao, which in turn allowed the communist Vietnamese to route supply lines through communist-held Laotian territory.\textsuperscript{70} To disrupt these supply lines, the United States supported the Royal Lao and engaged in clandestine operations aimed at defeating the Laotian communists.\textsuperscript{71} As part of this strategy, the Central Intelligence Agency (CIA) recruited and trained members of hill tribes living in the Laotian highlands, like the Hmong, reportedly promising them protection and assistance against territorial

\begin{enumerate}[\textsuperscript{61}]
\item \textsc{Cartmial}, \textit{supra} note 3, at 49.
\item \textsc{Takaki}, \textit{supra} note 3, at 469.
\item Sontag, \textit{supra} note 1, 50-51.
\item \textsc{See Cartmial}, \textit{supra} note 3, at 49-50 (stating that victims of the Khmer Rouge were often thrown off cliffs or buried alive), 54 (describing how a Cambodian girl recalled the cannibalism of her brother and mother by Khmer Rouge soldiers).
\item \textsc{Seanglim Bit, The Warrior Heritage: A Psychological Perspective of Cambodian Trauma} 110-34 (1991).
\item \textsc{Takaki}, \textit{supra} note 3, at 469.
\item \textit{Id.}; \textsc{Hopkins}, \textit{supra} note 3, at 2.
\item \textsc{Takaki}, \textit{supra} note 3, at 460.
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\end{enumerate}
encroachment by the Laotian communists in exchange for their support.\textsuperscript{72} However, once the Pathet Lao came to power, the Americans left many of their Laotian and Hmong supporters at the mercy of the communists, who initiated a bloody campaign to destroy those associated with the United States and the Royal Lao.\textsuperscript{73} In subsequent years, approximately 70,000 ethnic Lao and 60,000 Hmong fled and sought sanctuary in the United States.\textsuperscript{74}

III. THE LACK OF EFFECTIVE INSTITUTIONAL SUPPORT FOR SOUTHEAST ASIAN REFUGEES

Resettlement programs intended to facilitate adjustment of the refugees into American life often did not account for the particular languages and histories of these communities.\textsuperscript{75} Having little experience with Southeast Asian refugees, the resettlement authorities frequently treated them in the same manner as the Eastern and Central European refugees that came before them.\textsuperscript{76} This absence of effective institutional support from the U.S. government resulted in increased rates of gang and criminal activity among Southeast Asian refugees and rendered this community particularly vulnerable to the deportations years later.\textsuperscript{77} Lavinia Limón, executive director of the U.S. Committee for Refugees, believes that the most significant mistake in the treatment of the refugees was the lack of specialized assistance stating that “[w]hat Southeast Asian refugees went through is not something you bounce back from without a lot of tailored and targeted and expensive help . . . [e]specially if you’re a non-Western peasant.”\textsuperscript{78} As a consequence of this lack of specialized assistance, many Southeast Asian refugees have faced substantial economic challenges as their lack of English proficiency and adjustment difficulties prevented them from employment and educational opportunities.

A. Lack of Government Sensitivity for the Distinct Experiences and Cultures of Southeast Asian Refugees

Due to the failure of government bureaucracies to coordinate their services and to recognize the distinct cultural experience of this population, many Southeast Asian refugees have not been able to achieve economic self-sufficiency or build a foundation for social advancement. Agencies


\textsuperscript{73} \textit{Takaki}, \textit{supra} note 3, at 461; see also \textit{John C. Harles, Politics in an American Lifeboat: The Case of Laotian Immigrants} 150-51 (1998) (describing the persecution of the rightists and those associated with the Royal Lao by the Laotian communists).

\textsuperscript{74} \textit{Takaki}, \textit{supra} note 3, at 461.

\textsuperscript{75} \textit{See Sontag, supra} note 1, at 51 (quoting Lavinia Limón and citing the lack of Khmer speakers at schools, clinics and job centers).

\textsuperscript{76} \textit{Id}.

\textsuperscript{77} \textit{See infra Part IV(A)}.

\textsuperscript{78} \textit{See Sontag, supra} note 1, at 51.
have often demonstrated little sensitivity to the particular needs and experiences of each ethnic group. Different groups of Southeast Asian refugees speak very distinct languages and possessed varied cultural experiences in their home countries. However, English classes and job-training programs often lack trainers and educators who speak the appropriate Southeast Asian language. Even in communities with large Cambodian populations, such as Long Beach, California and Tacoma, Washington, it appears that many Cambodian refugees receive only minimal institutional guidance due to the absence of Khmer speakers at schools, clinics and job centers.

Unlike immigrants, these refugees did not voluntarily leave their home countries. Instead, they fled economic and political persecution by their home governments. Most of the refugees were rural peasants with little formal education who left their homeland in order to survive. While immigrants usually recognized the challenges of moving to the United States and prepared themselves to adapt, many Southeast Asian refugees had never intended to leave their birthplace until they were compelled to flee by events out of their control. As one Laotian refugee described his experience, "[i]t is easier to move the mountains than get used to American culture." Similarly, many Hmong refugees decided to cooperate with the CIA precisely because they intended to remain in their mountain homes and protect it from encroachment by outside forces. Nevertheless, the U.S. government in many respects ignored their unique experiences, which in turn decreased the effectiveness of the resettlement program.

B. Government's Failed Resettlement Policy for Southeast Asian Refugees

Many Southeast Asian refugees have low socioeconomic mobility largely due to the government’s method of resettlement and lack of consideration for this population’s cultural needs. Under intense pressure to resettle the refugees as soon as possible, the resettlement authorities

79. KITANO & DANIELS, supra note 21, at 153 (stating that government showed little sensitivity to the culture of the Vietnamese refugees); see Sontag, supra note 1, at 51 (quoting Limón that one of the mistakes of the resettlement program was that the government did not pay adequate attention to the unique experiences of the refugees).
80. TAKAKI, supra note 3, at 470.
81. See Sontag, supra note 1, at 51 (citing the lack of Khmer speakers at schools, clinics and job centers); see also HOPKINS, supra note 3, at 133 (stating that teachers who educated Cambodian refugee children did not have training in Cambodian culture and language and had little federal support).
82. See Sontag, supra note 1, at 51 (stating that after undergoing the second migration to Cambodian hubs, Cambodian refugees received minimal institutional guidance due to the lack of Khmer speakers at schools, clinics and job centers).
83. See also TAKAKI, supra note 3, at 452; see also CARTMAIL, supra note 3, at 12-13.
84. TAKAKI, supra note 3, at 451.
85. Id. at 461.
86. Choua Ly, supra note 72 (inferring from the fact that the Hmong were assisting the U.S. government because they were already fighting encroachment on their territory by the Pathet Lao, allies of the communist Vietnamese).
divided the refugee population into small groups and scattered them in isolated localities across the country, however unsuitable the conditions. Ignoring the years of trauma endured by these communities and the unique needs posed by their history, the government eagerly treated the refugees as voluntary migrants who would be able to take care of themselves and become American. As Arthur Helton, senior fellow for refugee studies and preventive action at the Council on Foreign Relations, stated, “[i]n the U.S., we have this new frontier mentality, the notion being we can pluck you from the Cambodian jungle and drop you in a housing project in the Midwest and after a very, very crude orientation you’re on your own.”

One of the goals of such distribution was to facilitate assimilation into mainstream American society by avoiding the immigrant ghettos, which the government saw as obstacles to achieving the “melting pot.” Resettlement authorities also aimed to mitigate the harsh competition for local jobs, which a large influx of refugees in particular localities would induce, thereby defusing any potential backlash by American workers.

Although the federal government attempted to mitigate the deleterious effects of such a large flood of refugees, the policy failed to take into consideration the essential roles played by ethnic communities. Placed in a completely foreign culture and still coping with the intense trauma experienced in their homelands, the refugees stood in a unique position to offer each other social and psychological support. Only they could truly understand the severe suffering and cruelty inflicted by their government, as well as the ordeals of flight and resettlement. Unlike the Russian and Hungarian refugees before them, the Southeast Asians did not share with their new neighbors a common cultural heritage rooted in European civilization nor common physical racial characteristics. As a consequence, members of the local population often targeted isolated pockets of Southeast Asians for discrimination and harassment, thus increasing feelings of alienation among these newcomers.

87. HING, supra note 37, at 129; see also SENATE COMM. ON THE JUDICIARY, 96th CONG., REVIEW OF THE US REFUGEE RESETTLEMENT PROGRAMS AND POLICIES 124 (Comm. Print 1980).
88. KITANO & DANIELS, supra note 21, at 150.
89. See Sontag, supra note 1, at 51 (quoting Arthur Helton, a lawyer and human rights activist who was killed in the 2003 bombing of United Nations headquarters in Iraq).
90. HING, supra note 37, at 129; see KITANO & DANIELS, supra note 21, at 150 (stating that the policy of scattering the refugees throughout the country was based on the goal of integration).
91. KITANO & DANIELS, supra note 21, at 150, 154; see also HING, supra note 37, at 129 (stating that the appeal of dispersing the refugee population was the possibility that it would help “avoid economic stress in host communities”).
92. KITANO & DANIELS, supra note 21, at 151.
93. Id.; HING, supra note 37, at 129.
94. KITANO & DANIELS, supra note 21, at 151.
95. See JUANITA TAMAYO LOTT, ASIAN AMERICANS: FROM RACIAL CATEGORY TO MULTIPLE IDENTITIES 74 (1997); see also KITANO & DANIELS, supra note 21, at 145.
96. See JUANITA TAMAYO LOTT, ASIAN AMERICANS: FROM RACIAL CATEGORY TO MULTIPLE IDENTITIES 74 (1997); see also KITANO & DANIELS, supra note 21, at 145.
Moreover, the lack of ethnic communities deprived the refugees of the special economic cooperation essential to achieving upward mobility. Indeed, policymakers ignored the negative social and psychological consequences of separating refugees who shared a common culture and experience. For instance, the refugee reception centers in the United States, such as Camp Pendleton in California and Fort Chaffee in Arkansas, provided little or no orientation to facilitate adjustment into what were often remote American communities. As a consequence of the alienation, many refugees moved away from their initial place of resettlement to live in Southeast Asian enclaves in California, Texas and Louisiana. By 1980, forty-five percent of the first waves of Southeast Asian refugees had undergone a second migration relocating from their initially assigned locations to Southeast Asian communities in different states.

Furthermore, even though Southeast Asian refugees generally had more difficulty establishing economic self-sufficiency than non-refugee populations on welfare, the level of federal funding for the two groups remained proportionately the same. For example, with the arrival of the first two waves of Vietnamese refugees, the federal government fully reimbursed state and local authorities for the cost of public services for this population, but only for the first three years after their arrival. After this period, state and local authorities had to assume half the costs of serving Vietnamese refugees. In essence, the federal government assumed the same burden for the impoverished refugee population as they did for other less needy groups on welfare. For example, unlike most immigrants, the Southeast Asian refugees often had an array of health problems, such as malnutrition and parasitic diseases, which stemmed from their having spent months or years in unsanitary refugee camps.

Given that a huge number of Southeast Asian refugees congregated in only a few areas, assuming such a large share of these costs represented a substantial strain on the budgets of certain states. For example, by 1984, 300,000 to 350,000 of the 696,000 Vietnamese refugees arriving in the U.S. since the 1975 fall of Saigon settled in California. During this period, a significant portion of the Vietnamese refugees in this state,

97. See Hing, supra note 37, at 129, 133.
99. Hing, supra note 37, at 129-30.
100. Hing, supra note 37, at 130.
101. Kitano & Daniels, supra note 21, at 153 (stating that the federal government assumed the same share of costs for public assistance for refugee populations as for non-refugee populations).
102. Id.
103. Id.
104. Id.
106. Kitano & Daniels, supra note 21, at 153.
107. Id.
approximately 140,000 persons, received welfare assistance. As a consequence, the state's cost for providing social services to this population climbed from zero in 1980 (because of federal assistance) to $84 million in 1983 and then to an estimated $140 million in 1984. States, like California, have faced huge fiscal burdens from their large refugee populations raising the risk of decreases in much needed services for these communities, such as job and language training as well as daycare. Such cuts in social services not only exacerbate the already high poverty rates of this population, but also prevent many refugees from taking advantage of the economic opportunities necessary to alleviate such poverty.

Federal and state governments have neither provided effective support for Southeast Asian refugees, nor adequately taken into account the unique needs of this community. Consequently, the Southeast Asian refugees have ranked the lowest in a variety of socioeconomic indicators. Vietnamese Americans constitute one of the six largest Asian American subgroups—Vietnamese, Japanese, Chinese, Filipino, Koreans and Asian Indians. However, out of these six, Vietnamese Americans had the lowest average family income during the 1980’s, the first decade following the first wave of refugees. On average, Vietnamese Americans earned less than half the amount earned by Japanese Americans or Asian Indian Americans for this period according to the 1980 census. Accordingly, Vietnamese-Americans also have extraordinarily high poverty and unemployment rates. At that time, over one third lived in poverty and thirty-five percent could not find jobs. Unfortunately, the negative income and poverty trends for Vietnamese Americans continued into the nineties. While Vietnamese Americans continued to be one of the six largest Asian American subgroups, they also continued to have the lowest per capita income out of the six according to the 1990 census, taken about fifteen years after the arrival of the first wave of refugees. The average income for a Vietnamese American stood at $17,590 compared to $22,579 for Chinese Americans and $28,257 for Japanese Americans. In fact, Southeast Asian refugee populations, including Hmong, Cambodians,
Vietnamese and Laotians, ranked at the four lowest places with regards to per capita income for Asian Americans (non-Pacific Islander) in 1990.\textsuperscript{119} Southeast Asians, the majority of whom came as refugees, have the highest welfare dependency of any racial group.\textsuperscript{120} Although Southeast Asians comprise only thirteen percent of Asian Americans, they make up eighty-seven percent of Asian Americans on welfare.\textsuperscript{121} In decades following the first wave of refugees in the mid-seventies, members of this population have cited the lack of marketable skills and child care as the main obstacles to employment.\textsuperscript{122}

\textit{C. Challenges Faced by Young Southeast Asian Refugees in Education}

While the lack of effective governmental support has prevented many Southeast Asian refugees from taking advantage of opportunities for economic advancement, child refugees face additional challenges integrating into the American educational system. Programs intended to facilitate adjustment failed to adequately emphasize the importance of education to advancement in American society. Without such insight, many refugee parents, who came from rural backgrounds where formal schooling was rare, often did not sufficiently encourage their children to take this traditional American path towards socioeconomic mobility. According to Jean Moua, a Hmong educator, unschooled parents need training in how they can best support their children in school.\textsuperscript{123}

Due to the lack of familial support for academic endeavors and an educational system ill-equipped to fulfill the particular needs of young Southeast Asian refugees, the refugee population’s record of educational attainment lags behind those of other Asian American groups, as well as the general U.S. population.\textsuperscript{124} While twenty-two percent of Chinese Americans and Korean Americans have obtained bachelor’s degrees, less than thirteen percent of Vietnamese Americans have done the same.\textsuperscript{125} Other Southeast Asian American groups that generally did not enter the United States as refugees, like Thai Americans, have significantly higher rates of educational achievement: almost twenty percent of Thai Americans hold bachelor’s degrees.\textsuperscript{126} However, the Southeast Asian Americans who generally arrived in the U.S. as refugees, such as Vietnamese, Hmong, Cambodians and Laotians, occupy the bottom four places for educational attainment among Asian Americans.\textsuperscript{127} The Vietnamese population, which

\textsuperscript{119} Id.
\textsuperscript{120} DAYE, supra note 23.
\textsuperscript{121} Id.
\textsuperscript{122} KITANO & DANIELS, supra note 21.
\textsuperscript{123} HOPKINS, supra note 3, at 127.
\textsuperscript{124} See UCLA AMERICAN STUDIES CENTER, supra note 117, at 105; see also JULIE G. CANNIFF, CAMBODIAN REFUGEES’ PATHWAYS TO SUCCESS: DEVELOPING A BI-CULTURAL IDENTITY 11 (2001).
\textsuperscript{125} UCLA AMERICAN STUDIES CENTER, supra note 117, at 105.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
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usually fares the best in education out of the four Southeast Asian groups, still has lags well behind white Americans in this respect. 128

Many Southeast Asian refugees come from cultures lacking perceptions of formal education as a path to social mobility and consequently encounter little support for academic endeavors. Because many refugees came from rural areas of Cambodia and Laos where little practical use for formal education existed, familial attitudes toward their academic achievement remain lax. Traditional Hmong society has, until recently, lacked any kind of formal education system. 129 Accordingly, educational levels among Hmong historically remain low. 130 Illiteracy rates hover at around ninety-nine percent in certain mountain regions of Laos, the areas of the country that are home to most Hmong. 131 Because Hmong refugees came from a preliterate culture, the idea that signs and letters could carry meanings were often unfamiliar concepts to those newcomers. 132 Only in 1953 did the Hmong language finally acquire a writing system, one provided by American and French missionaries. 133 Despite such innovation, approximately seventy percent of Hmong refugees remain illiterate in their own language. 134 However, Hmong culture traditionally did not consider “illiterate” tantamount to “ignorant.” 135 During French rule, in an effort to prevent disintegration of the country along ethnic lines, the colonial authorities established a “people’s aristocracy” meant to control the masses. 136 Following the departure of the French, members of this class became the leaders of an independent Laos. Without the support of the colonial government, the aristocracy attempted to maintain power by limiting education in order keep the mountain people, especially the Hmong, in a state of intellectual inferiority. 137 The policy preserved the traditional absence of formal education in Hmong society.

Unlike the first wave of Vietnamese refugees in 1975, the vast majority of Cambodian adults arrived in the U.S. as uneducated farmers fleeing the famine and persecution of their homeland. 138 In rural Cambodia,

128. Hurh, supra note 111, at 518; UCLA American Studies Center, supra note 117, at 105 (citing the 1990 census, which indicates that out of the Southeast Asian Refugee populations, only Vietnamese Americans had a college graduation rate of above five percent); Kitano & Daniels, supra note 21, at 163 (citing Table 12-6, which indicates that 75.5% of Vietnamese Americans ages twenty-five to twenty-nine has graduated from high school compared to 87% for whites).
130. Id.
131. Id.
132. See Takaki, supra note 3, at 463.
133. Id.
134. Id.
135. See Dao, supra note 129.
136. Id.
137. Id.
138. Takaki, supra note 3, at 469; see also Daye, supra note 23, at 246 (stating that the first wave of Vietnamese refugees were typically middle and upper-class, well-educated military and civil service
achieving literacy served mainly for the purpose of reading Buddhist texts in order to lead a moral life. Consequently, learning to read and write had minimal practical importance and was not useful in the everyday lives of rural Cambodians. Furthermore, rural Cambodians considered literacy the province of the elite residents of the capital, Phnom Penh, who were educated, French-speaking, and colonially influenced—a class generally mistrusted by those in the countryside. Additionally, rural Cambodians considered the essence of Buddhism to be a virtuous person and placed a great emphasis on the values of the Ebihara—selflessness, cooperation, and respect. Industriousness in education was good, but did not serve as an indication of one living a virtuous life. Accordingly, the ability to learn academic subjects is viewed in the same way that many Americans view artistic talent: a wonderful blessing, but not a characteristic which must be forced on children. The stark contrast between the values of Americans and those of rural Cambodians with regards to education poses substantial challenges to educating the Southeast Asian refugee population.

Given such cultural attitudes toward educational attainment, Southeast Asian refugee children have encountered difficulty in American schools. For example, generally, Cambodian children obtain good grades and attend school regularly during their first years in the education system. However, by the time they start middle school, their habits change as course work becomes more challenging and strong familial support for academic endeavors remains absent. As a consequence, these students attend class less and less and their grades suffer. Due to frequent absences, such children do not develop good study habits such as taking notes in class and doing homework and fall behind. Discouraged by their lack of success, many of these students drop out of school by the age of sixteen. Those who graduate and attempt community college often find themselves unprepared and quit before obtaining a degree. Some Cambodian college students have cited the lack of parental support and understanding as their biggest problem in high school. In fact, although

139. HOPKINS, supra note 3, at 128.
140. Id.; see generally BIT, supra note 65, at 50-51.
141. HOPKINS, supra note 3, at 128.
142. Id. at 128, 130.
143. Id. at 130.
144. Id. at 129.
145. Id. at 128-30.
146. Id.
147. Id. at 126.
148. Id.
149. Id.
150. Id.
151. Id.
152. Id.
153. Id. at 127.
Obedience remains essential in family matters, Cambodian parents allow their children substantial freedom to make many choices regarding their personal lives, including whether or not they want to attend school. Not seeing a practical purpose in continuing with their education, many young Southeast Asian Americans decide to drop out with little objection from family.

IV. PREVALENCE OF GANGS AND CRIME AMONG SOUTHEAST ASIAN REFUGEE YOUTH

The prevalence of gang membership among the Southeast Asian refugee youth has led many of them to commit crimes—often mere infractions that because of the recent changes in immigration law can now serve as a basis for deportation decades after the conviction. Given the lack of effective institutional assistance, many Southeast Asian refugees have been unable to attain socioeconomic advancement and have consequently languished in poverty since arriving in the United States. As a result, many of the young refugees have resorted to joining criminal gangs to escape the poverty and despair of their daily lives. Often criminal gangs offer young refugees a sense of belonging, financial security, economic opportunities and protection from the dangers of their crime-ridden neighborhoods. According to Lt. Jack Willoughby, an officer at the New Orleans Police Department who frequently deals with the Vietnamese gang problem, “[the refugees] have seen the worst that life can deliver, and because of their experiences of the past years, [they] expect and look forward to nothing . . . Survival is all . . . [and] the only survival some of them see is as a member of a gang.”

A. Effect of the Absence of Proper Parental Guidance and Supervision on Southeast Asian Refugee Youth

In the absence of parental supervision, many young Southeast Asian refugees rely on criminal gangs not only for protection, but also as their sole source of emotional and financial support. With limited marketable skills, many Southeast Asian refugee parents often work long hours at menial jobs to support their families. Consequently, they have little time to supervise their children or give them proper guidance. Their unfamiliarity with American culture and the English language often prevent them from finding workable solutions once they become aware of problems

154. Id. at 129.
155. See id. at 126-7.
156. Sontag, supra note 1, at 52 (stating that joining gangs was one way of acquiring standing and defending themselves against harassment and that the gangs engaged in robberies, auto theft, drug dealing and weapons trading).
157. DAYE, supra note 23.
158. Sontag, supra note 1, at 51.
159. Id.
in their children's lives. For instance, Southeast Asian refugee parents often are unable to communicate directly with government officials and instead need to rely on their children to translate. As a consequence, parents remain unable to access community support to steer their children away from gangs and crime.

The prevalence of single mothers in the Southeast Asian refugee population aggravates these problems. Often, the male head of the household perished in their homeland before the remainder of the family resettled in the United States. In such circumstances, mothers must serve as the head of the household and as the sole source of income while the children adapt to life in the U.S. without the traditional disciplinary figure. For example, one law enforcement official who deals extensively with the Cambodian American community estimates that eight-five percent of Cambodian American households in Long Beach, California are led by single females. Young male Southeast Asian refugees in poor, single-parent households frequently look to gangs to provide them with the material wealth that their parents cannot afford. Bang Karnsouvong, who counsels Southeast Asian youth at Gompers High School, an alternative school in Richmond, California, says that "the [refugee] parents are working long hours and don't know how to help their kids. The kids in gangs, they pretty much grew up on their own. They don't relate to their parents."

B. Criminal Gangs as the Sole Source of Emotional and Financial Support and Protection

For Southeast Asian refugee youth, criminal gangs have often serve as the sole source of emotional and financial support as well as protection from abuse by other ethnic groups. Some Southeast Asian gangs formed in refugee camps in Thailand and Malaysia while the exiles awaited resettlement. The intense poverty in these camps produced dangers from

161. Id.
162. Id. at 98 (stating that Cambodian parents' inability to address harassment at school leads their children to join gangs).
163. Id. at 100; see also CANNIFF, supra note 124, at 12.
164. Chittapalo, supra note 24.
165. Id.; see DAYE, supra note 23, at 254 (stating that the father is the traditional leader and disciplinarian of the Vietnamese household); see also CANNIFF, supra note 124, at 12 (stating that researchers have connected the high welfare rate of Cambodian American families to the prevalence of single parent families).
166. Chittapalo, supra note 24 (stating that eighty-five percent of Cambodian females who bring their children to Long Beach do not have husbands because they were killed in Cambodia).
167. Id. at 100-01 (stating that gangs become young refugees' support and provide for their material desires).
which gang membership offered protection.\textsuperscript{170} Due to the crime and harassment common in the depressed neighborhoods in which they settled, many Southeast Asian refugees maintained these gang affiliations and even formed new ones.\textsuperscript{171} Gangs offer impressionable and alienated refugee youth the opportunity to achieve a sense of belonging and security with those who share a common culture and historical experience. In Long Beach alone, more than 1,800 Cambodian Americans belong to criminal gangs.\textsuperscript{172} According to Samthoun Chittapalo, a Cambodian American refugee who is the community liaison officer in the Asian Affairs Division of the Long Beach Police Department, "[t]he Asians start to be picked on by [Blacks and Latinos]; so they formed gangs to protect themselves. The kids reported [the harassment] to their parents, [but] the parents [didn't] know what to do."\textsuperscript{173}

Although initially formed for the purposes of protection from harassment in the refugee camps and from other ethnic groups, Southeast Asian gangs began engaging in criminal activity for economic gain and to protect the honor of their members.\textsuperscript{174} Detective Manjit Sappal, an Asian gang expert with the Richmond Police Department, recounts that "[i]n the early 90's, these immigrants started forming loose alliances to protect themselves. When it started out, they were in tough neighborhoods just trying to avoid getting picked on at school. These groups evolved into gangs that are now into a lot of different criminal activity."\textsuperscript{175} For instance, Vietnamese gang activities often involve partners from other Southeast Asian communities\textsuperscript{176} and typically include car theft, robbery, and extortion perpetrated within their own communities.\textsuperscript{177} Some of these gangs specialize in violent home-invasion robberies\textsuperscript{178} often against other Southeast Asian Americans, who tend to store large amounts of cash in

\textsuperscript{170} Id. (quoting Lt. Jack Willoughby, New Orleans Police Department, that "[Southeast Asian refugee] [g]angs formed in camps for self protection and survival"); see also HOPKINS, supra note 3, at 12 (stating that refugees were robbed, beaten and raped in the camps).

\textsuperscript{171} DAYE, supra note 23 (quoting Lt. Jack Willoughby, New Orleans Police Department, that "[Southeast Asian refugee] [g]angs . . . continue when the members are transported to the US"); Chittapalo, supra note 24, at 99 (stating that some gangs in the refugee community were formed for the purpose of protection against harassment by other ethnic groups).

\textsuperscript{172} Chittapalo, supra note 24, at 99.

\textsuperscript{173} Id. at 98.

\textsuperscript{174} See State v. Yang, 2004 WL 291996, at 2 (Minn. App. 2004) (citing the testimony of a law enforcement official that the Imperial Gansters, a Hmong gang, engaged in robbery as well as sold weapons and drugs); see also State v. Xiong, 2004 Minn. App. Lexis 305, at 5, 11-12 (Minn. App. 2004) (citing the testimony of a law enforcement officer, who was an expert on Hmong gangs, that "most cases [of crimes by Asian gangs] . . . have involved assaults against other gang members, usually motivated by women, by being in the wrong place at the wrong time, or by feeling disrespected").

\textsuperscript{175} See Zamora, supra note 168.

\textsuperscript{176} Chittapalo, supra note 24, at 99.


\textsuperscript{178} Id.; DAYE, supra note 23, at 244.
their homes due to their mistrust of banks.\textsuperscript{179} Other Vietnamese gangs focus on illicit currency transfers, auto theft for transfer to Vietnam and high-tech theft involving computer chips.\textsuperscript{180} In other instances, Southeast Asian gangs receive money for serving as extortionists or enforcers for more organized Chinese American crime syndicates.\textsuperscript{181}

Southeast Asian gangs have developed a reputation for their brutality, careful planning and extreme mobility.\textsuperscript{182} For example, Jonathan Hankes, a Ramsey County Sheriff’s Department deputy who works as a Hmong gang investigator with the Minnesota Gang Strike Force, testified in \textit{State v. Yang} that one such gang, the Imperial Gangsters, was known to have committed murder, aggravated and simple assault, drive-by shootings, illicit firearms dealings, and robberies.\textsuperscript{183} Often crimes perpetrated by Southeast Asian gangs do not involve illicit business dealings but rather attacks on other Southeast Asian gang members. In \textit{State v. Xiong}, an expert witness from the Minnesota Gang Strike Force testified that most cases of violence among the area’s Hmong gang members were because of women, being in the wrong place at the wrong time, or perceived disrespect by rival gang members.\textsuperscript{184} A case in Fresno, California, a Hmong enclave, involved the murder of two Hmong children aged fourteen and seven.\textsuperscript{185} A California court convicted another Hmong youth, a fourteen-year-old member of a gang called “Men of Destruction,” for the shooting death of the two in an apparent attempt to assassinate the founding members of a rival gang.\textsuperscript{186}

Because of the lack of socioeconomic mobility and high poverty levels in the Southeast Asian refugee community, many youth have resorted to crime and gang membership in order to gain emotional and financial support. Even after such youth mature into adulthood and leave their illicit behavior and gang associations behind, their previous encounters with the criminal justice system may have unforeseen consequences on their immigration status, particularly for those refugees who have not obtained citizenship.\textsuperscript{187} With changes in immigration law, the criminal records of many refugees have rendered them deportable to countries they have not seen in decades.\textsuperscript{188}

\textsuperscript{179} \textsc{Holland, supra} note 177, at 274; Chittapalo, \textit{supra} note 24, at 101; \textsc{Daye, supra} note 23, at 244.
\textsuperscript{180} \textsc{Daye, supra} note 23, at 244.
\textsuperscript{181} \textit{Id.} at 243.
\textsuperscript{182} \textit{Id.} at 244; \textsc{Holland, supra} note 177, at 274.
\textsuperscript{183} \textit{See Yang}, 2004 WL 291996, at 2.
\textsuperscript{184} \textit{See Xiong}, 2004 Minn. App. Lexis 305, at 11.
\textsuperscript{185} \textit{See People v. Lee}, 74 P.3d 176, 179 (Cal. 2003).
\textsuperscript{186} \textit{Id.} at 179–80.
\textsuperscript{187} \textit{See Kathleen O’Rourke, Deportability, Detention and Due Process: An Analysis of Recent Tenth Circuit Decisions in Immigration Law, 79 Denv. U. L. Rev. 353, 354-55 (2002)} (providing examples of Xuan Wilson and Sokhom Oeur, non-citizens who may be deported due to the retroactivity of AEDPA and IIRIRA).
\textsuperscript{188} \textit{See Sontag, supra} note 1, at 50, 52.
V. CONGRESSIONAL EXPANSION OF THE CATEGORY OF DEPORTABLE CRIMINAL OFFENSES

Congressional expansion of the category of deportable offenses has rendered countless numbers of non-citizens—including potentially thousands of Southeast Asian refugees—eligible for deportation to their "native" lands. For Southeast Asian refugees, this means deportation to lands that they have not seen in decades. Additionally, the retroactive application of the changes in immigration law makes possible the deportation of many Southeast Asian refugees for crimes committed sometimes decades before Congress enacted the modifications.189

A. Implications of AEDPA and IIRIRA for Immigration Law

In the wake of widespread public resentment of "undesirable" permanent residents, Congress passed the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA). The Judiciary Committee, in approving the bill wrote:

The increasing public attention paid to our nation's immigration policies has brought to light the high number of aliens, both legal and illegal, who commit crimes while enjoying the benefits of this country. . . . In the past, many aliens who committed serious crimes were released into American society after they were released from incarceration, where they then continue to pose a threat to those around them. The government's attempts to deport those aliens committing the most serious crimes have proved to be ineffective.190

The bill fundamentally altered the terrain of American immigration law by expanding the offenses classified as "aggravated felonies"—the category of offenses that can serve as grounds for deportation.191 The penalty for non-citizen offenders first appeared in the Anti-Drug Abuse Act of 1988, which created a presumption of deportability for aggravated felons and barred their re-entry as part of a governmental effort to rid the nation of foreign drug dealers.192 However, while the classification of aggravated felony originally only included murder, drug-trafficking and weapons trafficking, Congress has steadily expanded the category with every subsequent criminal legislation and immigration act.193 According to Allen Kay, a spokesman for Congressman Lamar S. Smith, a Republican from Texas who sponsored the legislation, "[t]here is no reason to go easy on immigrants who commit crimes when there are millions of people brimming with potential who want to come here."194 AEDPA served as a

189. See O'Rourke, supra note 187, at 354–55.
192. See id. at 592-93; O'Rourke, supra note 187, at 354.
193. Coonan, supra note 191, at 592-93; O'Rourke, supra note 187, at 354.
194. Pamela Constable, Years Later, Immigrants Pursued by Their Pasts: Even Minor Offenses
major step toward this trend by incorporating non-violent crimes such as illicit gambling and mutilating a passport as deportable offenses.\textsuperscript{195}

Less than six months after the enactment of AEDPA, Congress implemented another drastic change to immigration law with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).\textsuperscript{196} In addition to categorizing more crimes as aggravated felonies, IIRIRA significantly lowers the sentencing thresholds under which certain crimes become deportable offenses.\textsuperscript{197} The changes implemented by the Act apply retroactively, making even ex-offenders who have already served their sentences and reestablished themselves in their communities, eligible for deportation.\textsuperscript{198} Section 321(c) of IIRIRA states that the aggravated felony definition “shall apply to actions taken on or after the date of enactment, regardless of when the conviction occurred.”\textsuperscript{199} Similarly, another provision, Section 321(b), states that the definition of aggravated felony “applies regardless of whether the conviction was entered before, on, or after the date of enactment” of IIRIRA in 1996.\textsuperscript{200}

Before IIRIRA and AEDPA, deportation proceedings of permanent residents convicted of crimes involved two stages.\textsuperscript{201} In the first stage, an immigration judge determined whether the permanent resident was deportable given the category of the crime.\textsuperscript{202} If the judge concluded that the offender indeed was deportable, the proceedings would then enter into the second stage, during which the permanent resident could present his case for deportation relief, including facts concerning his individual circumstances.\textsuperscript{203}

The expansion of the definition of aggravated felony by Congress rendered more non-citizen offenders presumptively deportable in the first stage.\textsuperscript{204} At the same time, relief formerly possible in the second stage has for the most part been eliminated.\textsuperscript{205} Once a non-citizen receives an “aggravated felony” conviction, he becomes ineligible for “cancellation of removal” or any sort of discretionary deportation relief.\textsuperscript{206} Such

\textsuperscript{195} Coonan, supra note 191, at 600-01.
\textsuperscript{197} Coonan, supra note 191, at 602, 603.
\textsuperscript{198} Id. at 603.
\textsuperscript{200} 8 U.S.C. § 1101(a)(43).
\textsuperscript{202} Id.
\textsuperscript{203} Id.
\textsuperscript{204} Id.
\textsuperscript{205} Id.
\textsuperscript{206} Id. at 702.
classification essentially renders an individual per se deportable for a wide range of offenses. As a result, the enactment of IIRIRA and AEDPA has had devastating consequences for many Southeast Asian refugees, such as Loeun Lun. Some courts have even ruled that infractions as minor as "operation of a vehicle while under the influence" constitute a crime of violence and thus, fall under the category of aggravated felony, along with crimes such as murder and aggravated assault.

B. Effect of Retroactive Application of AEDPA and IIRIRA on Southeast Asian Refugees

Because of the retroactive application of the expansion of deportable offenses, many refugees have faced deportation proceedings for crimes committed before the changes in immigration laws. Often, such individuals have already served their sentences and led crime-free lives in the years since being released. In one such instance, Xuan Wilson, a Vietnamese refugee who arrived in the US at age four, wrote a forged check in the amount of $19.83 fifteen years ago; for this, he faced deportation and a bar on ever reentering the country. Another case involved a Vietnamese refugee who worked two part-time jobs as a grocery clerk and a computer technician in order to support himself as he completed his college degree in computer science. Many years ago, while he was a high school student, he got into a fight with a fellow classmate and broke his nose. Because of the fight, local authorities arrested and charged him with "unlawful wounding" and subsequently gave him a two-year suspended sentence. Despite his age at the time of the offense and the minor nature of the crime, the conviction renders him eligible for deportation. Anxious that his mistake as a youth could wipe out all he has worked for since then, the young man states, "I'm not saying I'm a perfect person, but I'm not like a drug dealer or a murderer. . . . I have worked very hard, and there are many people counting on me. I want to move on with my life, but now this could destroy it."

Not only can immigration authorities deport refugees for crimes committed decades earlier, they may also arbitrarily re-incarcerate individuals awaiting deportation, even though the refugees have already

207. See id.
208. See, e.g., Tapia Garcia v. INS, 237 F.3d 1216, 1222 (10th Cir. 2001) (holding that even a DUI conviction constituted an aggravated felony for which deportation and ban on re-entry could proceed, even if there was no physical injury).
209. See, e.g., Sontag, supra note 1, at 50 (describing the government's refusal to consider Loeun Lun's subsequent reformation when deporting him).
210. See O'Rourke, supra note 187, at 355.
211. See Constable, supra note 194.
212. See id.
213. Id.
214. Id.
215. Id.
served their sentences.\textsuperscript{216} Overruling both the District Court and the Ninth Circuit, the Supreme Court in \textit{Demore v. Kim} found that such a practice does not violate substantive due process and upheld detention of potentially deportable non-citizens without any requirement for a case-by-case analysis.\textsuperscript{217} The case involved Hyung Joon Kim, a Korean American who immigrated to the United States in 1984 at the age of six and gained permanent residency two years after his entry.\textsuperscript{218} In 1996, Kim was convicted of first-degree burglary in California and a year later of "petty theft with priors."\textsuperscript{219} The two convictions rendered Kim deportable as an aggravated felon.\textsuperscript{220} Although not asserting that Kim posed a flight risk or a threat to public welfare, the INS argued that detentions remain necessary to prevent aliens from fleeing before deportation.\textsuperscript{221} The Court agreed stating that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens."\textsuperscript{222} The \textit{Kim} decision essentially eliminates any requirement for individual review as to whether the offender poses a flight risk or threat to society when determining whether the permanent resident should be confined during deportation proceedings.

Retroactive application of IIRIRA and AEDPA has similarly devastated Southeast Asian refugees who conceded guilt in accordance with plea bargains. Considering that such offenders usually served little or no jail time and were able to obtain plea bargains for non-violent offenses, their guilty pleas nevertheless have served as a basis for deportation. The changes in the immigration laws blindsided many Southeast Asian refugee offenders who could not have foreseen that their plea bargains would result in expulsion to a land from which they barely escaped with their lives. One such case involved Sokhom Oeur, a Cambodian refugee who arrived in the U.S. as a teenager.\textsuperscript{223} According to Dallas police, in 1995, one year before the change in immigration laws, a group of young men threatened Oeur as he was managing a small store in South Dallas.\textsuperscript{224} To scare them off, Oeur fired a shot with his gun.\textsuperscript{225} The bullet ricocheted and grazed one of the men.\textsuperscript{226} As part of a plea bargain for the offense, Oeur pled guilty to

\begin{footnotesize}
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\item \textsuperscript{216} See, e.g., \textit{Demore v. Kim}, 538 U.S. 510, 531 (2003) (holding that "detention during removal proceedings is a constitutionally permissible part of that process").
\item \textsuperscript{217} \textit{ld.}
\item \textsuperscript{218} \textit{ld.} at 513.
\item \textsuperscript{219} \textit{ld.}
\item \textsuperscript{220} \textit{ld.}
\item \textsuperscript{221} \textit{ld.} at 528.
\item \textsuperscript{222} \textit{ld.} at 522.
\item \textsuperscript{223} Todd Bensman, \textit{Some Await Deportation to Nations that Won't Take Them; Families, Immigrant Advocates Fault Detention; Officials Say It's Necessary}, \textit{The Dallas Morning News}, November 18, 1997, at 4A.
\item \textsuperscript{224} \textit{ld.}
\item \textsuperscript{225} \textit{ld.}
\item \textsuperscript{226} \textit{ld.}
\end{itemize}
\end{footnotesize}
aggravated assault with a deadly weapon.\textsuperscript{227} He received only five years probation due to the self-defense use of his weapon.\textsuperscript{228} However in 1997, two years after the ordeal, police detained Oeur for a traffic violation and subsequently transferred him to the INS for deportation.\textsuperscript{229}

Despite the prevalence of these types of cases, federal courts have held that the unforeseen impact of plea bargains on immigration status cannot serve as a basis for withdrawing from the agreement or overturning the guilty plea.\textsuperscript{230} Deportation and exclusion from the United States, unlike criminal incarceration, does not fit the technical definition of a "direct consequence" of a conviction—a necessary factor for criminal courts to render the plea bargain void.\textsuperscript{231} Rather, courts consider the effect of criminal convictions on immigration status collateral and thus, insufficient grounds for overturning a guilty plea.\textsuperscript{232} For the same reason, failure by the court or defense counsel to advise defendant aliens of the possible consequences of plea bargains cannot serve as the basis for overturning convictions or plea bargains.\textsuperscript{233} Such an approach would have been more reasonable before the 1996 changes in immigration law, when case-by-case analysis allowed for discretionary relief based on an individual's circumstances. At that time, whether a non-citizen realized the immigration consequences of his or her plea bargain could be a substantial, mitigating factor at a removal hearing—making deportation uncertain. However, under IIRIRA and AEDPA, permanent expulsion of non-citizen offenders has become almost assured in such cases, rendering deportation in fact, if not in law, a "direct consequence" of conviction.\textsuperscript{234}

Such reasoning by federal courts results in part from the perception that deportation is usually a civil, rather than a criminal, matter.\textsuperscript{235} As a consequence, many courts do not consider deportation a punishment, even given some judicial acknowledgement to the contrary.\textsuperscript{236} For example, in Scheidemann v. INS, Judge Sarokin of the Third Circuit urged the U.S. Supreme Court to abandon the legal fiction that deportation is not a punishment.\textsuperscript{237} The Supreme Court itself acknowledged in Ng v. White that deportation may deprive individuals of all that makes life worth living.\textsuperscript{238} The fiction that deportation is not a punishment, by which many courts
operate, eliminates the protection which would be available if deportation were considered a criminal punishment. 239 Accordingly, deportation of a Southeast Asian refugee to a poverty-stricken country without the language abilities or skills to survive would not violate the Eighth Amendment prohibiting cruel and unusual punishment. 240 Despite the fact that federal courts remain unwilling to intervene on behalf of these refugee offenders, only eighteen states, such as California and Massachusetts, require courts or defense counsels to advise defendant aliens about the potential impact of plea agreements on their immigration status. 241 Consequently, in the vast majority of states, Southeast Asian refugees classified as permanent residents may agree to these accords, unaware that they are providing for their own expulsions after the sentencing.

If non-citizen offenders naturalized before the U.S. Congress included their offenses in the category of aggravated felony, the government would not be able to apply retroactive application of IIRIRA and AEDPA against them. However, many in the Southeast Asian refugee community, having little formal education, remain unaware of their rights under U.S. law and consequently do not know the protections that citizenship provides to them and their foreign-born children. 242 Many have no idea that citizenship could protect them from deportation if they ever violated the law. 243

Returning to the case of Loeun Lun, immigration officials began an investigation into his case when he applied for citizenship years after finishing his sentence. Acknowledging his past crime, Loeun thought he had nothing to fear from honest contact with immigration authorities. 244 However, on March 12, 2002, Loeun reported as requested to the Seattle immigration office where officials arrested him and prepared him for deportation. 245

C. Obstacles to the Implementation of IIRIRA and AEDPA

The lack of repatriation agreements with certain Southeast Asian nations remains the only major obstacle to government deportation of Southeast Asian non-citizens. The federal government initially attempted to detain such refugee offenders indefinitely even after they had fully served

239. See Kim, 538 U.S. at 522 (stating that the Supreme Court “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens”).
240. Coonan, supra note 191, at 613.
241. Francis, supra note 201, at 694.
242. See Sontag, supra note 1, at 50 (stating that Cambodian refugees often know little of the rights and responsibilities, which citizenship confers); Ra Pok, Southeast Asian Deportation Campaign Director, Khmer Girls in Action, Closing Speech at the Asian Law Journal Annual Symposium (Feb. 26, 2005) (on file with the Asian Law Journal) (stating that many in the Cambodian refugee community believe that the status of legal permanent resident protects against deportation).
243. Id.
244. Id.
245. Id.
EXILED ONCE AGAIN

their sentences. Under such a policy, if the country of origin refused to concede such an agreement, the offender could conceivably remain in detention for the remainder of his life for even a minor offense. However, in April of 2000, the Ninth Circuit ruled that such a practice was unconstitutional in the case of Ma v. Reno. The case involved Kim Ho Ma, a Cambodian refugee who fled his country of origin at age two and had resided in the United States as a permanent resident since the age of six. At seventeen, he became involved in a gang-related shooting and was ultimately convicted of manslaughter. After completing his two-year prison term, the INS placed Ma into custody and attempted to deport him—an effort unsuccessful due only to the then-absence of a U.S.-Cambodian repatriation agreement. Despite an abundance of information demonstrating his intention to avoid gangs and criminal behavior, the INS attempted to detain him indefinitely claiming that they were uncertain that the petitioner would remain non-violent. The agency argued that Congress had granted it authority to do so under 8 U.S.C. § 1231(a)(6), which allows for detention of an alien beyond the regular ninety-day period if the individual constitutes a risk to the community or is unlikely to comply with the deportation order. However, the Ninth Circuit found that the government could use the statute only when removal was reasonably foreseeable. Accordingly, the court affirmed the lower court’s ruling that indefinite detention of Ma constituted a violation of due process because of the then-uncertainty concerning a repatriation agreement between the U.S. and Cambodia.

The U.S. has employed its financial and diplomatic muscle in efforts to force repatriation agreements with the three Southeast Asian countries. To date, only Cambodia has submitted to U.S. pressure for a repatriation agreement, signing the “Memorandum of Understanding” on March 22, 2003. The agreement allows for the deportation of 1,600 Cambodian

246. See Ma v. Reno, 208 F.3d 815 (9th Cir. 2000), vacated by 533 U.S. 678 (2001) (holding that where “an alien . . . cannot be removed in the reasonably foreseeable future, detention beyond the removal period is not justified”).
247. Id. at 818.
248. Id. at 830-31.
249. Id. at 818.
250. Id.
251. Id.
252. Id. at 820.
253. 8 U.S.C. § 1231(a)(6) (stating that “[a]n alien . . . who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period”).
254. Ma, 208 F.3d at 821.
255. Id. at 830-31.
256. Id. at 816, 831.
American non-citizens. In an interview with the New York Times, Major General Meach Sophana of the Cambodian police stated with regard to this agreement that Cambodia was “more than willing to comply with international laws and standards.” However, when asked if the U.S. had coerced Cambodia with threats to withhold American visas or international loans, he responded “[i]n any negotiation, there are tactics.”

Because of the broad nature of Congressional plenary power and the lack of judicial discretion in removal cases, the only remedy for those who have already been deported and for those susceptible to removal under IIRIRA and AEDPA will be a repeal of, or amendment to, the 1996 legislation.

D. Family Reunification Act

Recognizing the injustice caused by the 1996 changes, Congressman Barney Frank, Democrat from Massachusetts, introduced a bill to the House Judiciary Committee in 2001 to alleviate some of the hardship caused by the new deportation policy. The Family Reunification Act (FRA), named for the families torn apart by IIRIRA and AEDPA, sets forth the conditions under which the Attorney General may cancel the removal of a permanent resident alien. Like the 1996 changes, the Act would apply retroactively, providing an opportunity for those Cambodian Americans, who already have been deported, to request readmission to the United States. After some changes to the initial bill, Congressman Frank was able to garner support from key Republican Judiciary Committee members in 2002, such as then-Committee Chairman James Sensenbrenner, Republican from Wisconsin.

The current version provides four avenues of relief from removal for lawful permanent residents convicted of aggravated felonies. All four require the aggravated felon: (1) to be a lawful permanent resident for at least five years; (2) to have resided in the U.S. continuously for at least seven years; and (3) not to have been convicted of murder, rape or sexual abuse of a minor, in addition to other requisites specific to each provision.

258. See Sontag, supra note 1, at 52.
259. Id.
260. Id.
262. H.R. REP. NO. 107-785, at 12 (2002) (stating that “[w]hile aliens who have already been deported may move to reopen to apply for relief, those aliens must apply from abroad and can only reenter the United States if they are actually granted relief”).
263. Id. at 23 (citing Sensenbrenner’s statement that after not being able to support the bill in its original form, he was “pleased to say that . . . [he and Congressman Frank had] worked out a compromise that strikes an appropriate and fair balance on the issue of relief from deportation for permanent resident aliens”).
264. Id. at 2-3 (citing the first three requisites of the four avenues of deportation relief for aggravated felons, (a)(2)(A)-(C), (a)(3)(A)-(C), (a)(4)(A)-(C), (a)(5)(A)-(C)).
most common hardship scenarios inadvertently triggered by IIRIRA and AEDPA. The first avenue provides that nonviolent aggravated felons may seek relief if they: (1) received a sentence of less than four years for no more than one scheme of misconduct; and (2) were not organizers or leaders of the aggravated felony.265 This provision aims to provide an opportunity for relief for individuals like Xuan-Wilson, the Vietnamese American non-citizen facing deportation and a bar on re-entry due to a conviction for writing a forged check in the amount of $19.83 fifteen years ago.266 The requirement that the aggravated felony or felonies arise out of a single scheme of misconduct precludes relief for those nonviolent aggravated felons with a pattern of criminal conduct, and also for those organizing such activity, from seeking relief under FRA.

Meanwhile, lawful permanent residents convicted of “crimes of violence” may similarly seek relief if: (1) they received a sentence of less than two years; (2) the offense did not result in any serious bodily injury or death; (3) the aggravated felonies arose out of no more than one scheme of criminal conduct; and (4) they were not organizers or leaders of the aggravated felony.267 Like the first avenue for deportation relief, this provision would provide opportunities to seek readmission or a cancellation of removal for those aggravated felons who do not have a pattern of engaging in or inciting in others criminal behavior. This stipulation of the FRA provides relief for individuals such as Loeun Lun, the Cambodian American convicted of assault over ten years ago.268 Because his “crime of violence” did not result in any bodily injury and resulted in only eleven months in jail, Loeun, who has no other criminal convictions and has satisfied the residency requirements, would have the opportunity to request readmission to the U.S. under the FRA.

A non-citizen, such as Loeun, could also seek readmission to the U.S. through the third and fourth avenues of deportation relief.269 The third provision allows for readmission or a cancellation of removal if in addition to satisfying the general requisites for invoking the FRA, the non-citizen: (1) was lawfully admitted to the United States before the age of ten; and (2) has never been incarcerated for aggravated felonies which arose out of more than two schemes of criminal conduct.270 The fourth provision provides the same opportunity for review to those deportees who lawfully entered the U.S. before the age of sixteen.271 However, in addition to the

265. *Id.* at 11.
266. *See* O'Rourke, *supra* note 187, at 355.
268. *Id.* at 11.
269. *See id.* at 3, 11 (applying sections (a)(4)-(5) of the FRA to the facts of Loun and the description of the third and fourth avenues of deportation relief for aggravated felonies to the facts of Loeun).
270. *Id.*
271. *Id.* at 11 (stating that with regards to the fourth avenue for deportation relief, “an alien who
requirements imposed under the third provision, the non-citizen must not have committed the aggravated felony in the first seven years of his residency.272 Both provisions aim to provide relief to non-citizens who often have little connection to or memory of their country of birth. Returnees, like Loeun Lun who fled Cambodia at the age of four, often struggle with linguistic as well as cultural barriers to gaining employment and establishing a stable life in their lands of birth.273 Thus, the deportations punish the non-citizens by denying them more than just the right to live in the United States, but also by placing such individuals in foreign lands without the proper means to support themselves. While the FRA allows for discretion in these specific circumstances, a great number of cases fall outside of its parameters.

The FRA grants the Attorney General discretion to cancel removal or permit readmission under four very specific circumstances.274 However, while the bill would restore a limited amount of fairness to deportation policy, the broad range of injustices caused by IIRIRA and AEDPA cannot be pigeonholed into these narrow categories. One such case involves Sokhom Oeur, a Cambodian American non-citizen who arrived in the U.S. as a teenager and ran a small store in South Dallas in the year prior to the changes in deportation policy.275 As mentioned above, a group of young men threatened Oeur, who attempted to scare them off by firing his gun.276

The bullet ricocheted and grazed one of the men.277 As part of a plea bargain, Oeur pled guilty to aggravated assault with a deadly weapon and received only five years probation because he had used the weapon in self-defense.278 However, two years later, police detained Oeur for a traffic violation and subsequently transferred him to the INS for deportation.279 Under the FRA, because Oeur’s “crime of violence” resulted in a bodily injury and was committed after the age of sixteen, he would be unable to avail himself of the relief, despite mitigating circumstances such as the self-defense use of his weapon and his lack of incarceration. The FRA lacks the flexibility to account for all mitigating factors necessary for just adjudication in removal cases. Moreover, while the bill offers only narrow

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272. Id.
273. See id. at 25 (citing the case of an adoptee from Afghanistan who faced deportation to a war-torn homeland where he no longer had connections and did not speak the local language); see also Sontag, supra note 1, at 105 (stating that many returnees know little about contemporary Cambodia and are "timid about navigating an unfamiliar, corrupt system" when seeking employment).
274. H.R. REP. No. 107-785, at 11 (2002) (stating that "the bill provides that only the Attorney General or Deputy Attorney General may grant the relief provided").
275. Bensman, supra note 223.
276. Id.
277. Id.
278. Id.
279. Id.; O'Rourke, supra note 187, at 355 (citing Oeur's "self-defensive use" of his weapon).
categories for relief and so has garnered some bipartisan support, opponents have been able to preempt the FRA by preventing it from coming to the House floor for a vote.280

Due to intense public anxiety about foreign nationals following the September 11th terrorist attacks, the political climate remains inhospitable to legislation which would even appear to ease controls on non-citizens. Republican Congressman Lamar Smith, a staunch opponent of the bill, stated:

A few days ago, Fox News documented Mexican smugglers who smuggled Middle Eastern radical Muslims into the country. Alien smuggling is usually considered a nonviolent crime and sentences rarely exceed 4 years. So under this amendment in the nature of a substitute, alien smugglers who serve their time in prison could go right back to bringing terrorists into the country. I thought America was at war against terrorism.281

The opinion reflects widespread public consternation about non-citizens, who in the national consciousness now constitute more than just the economic threat represented by Mexican immigrants, but criminal and terrorist threats represented by Muslims. Opponents of the bill tap both of these fears. Although the Attorney General would weed out applications for readmission of individuals who constitute a national security threat, the bill’s detractors discount this safeguard. The perception of non-citizen convicts remains that of a population determined to exploit the nation’s welfare system and undermine the American way of life. Consequently, key to easing political and public opposition to amending IIRIRA and AEDPA is dispelling the perception of deportees as the “un-American other” through community activism and education.

E. Community Responses to the Legislation

In the years following the Memorandum of Understanding between the United States and Cambodia, organizations such as the Committee Against Anti-Asian Violence (CAAAV) and Khmer Girls in Action (KGA) have fought for changes in deportation policy, while offering a variety of support to those already slated for removal.282 CAAAV has sponsored online petitions demanding a halt to the enforcement of IIRIRA and AEDPA.283 The organization has also held workshops where Southeast Asian activists, concerned community members and those with final orders

280. Randall Richard, Os Deportados—Mass. Congressman Hoping Crazy Law Can Be Changed, PROVIDENCE JOURNAL-BULLETIN, June 22, 2000 (reporting Frank’s statement that Republicans will not let the FRA come to a floor for a vote).

281. Id. at 26, 27 (recognizing Congressman Smith to speak and describing report from Fox News).


of deportation can discuss strategies to affect change and raise public awareness about the issue. It was at one such CAAAV workshop in the summer of 2002 where the Southeast Asian Freedom Network (SEAFN) was born. SEAFN is a coalition of Southeast Asian American community organizations comprised of the Asian Freedom Project (Madison, WI), Asian and Pacific Islanders for Community Empowerment (Oakland, CA), Khmer Girls in Action (Long Beach, CA), Asian Pacific Islander Youth Promoting Advocacy and Leadership (Oakland, CA), Family Unity of Lowell (Lowell, MA), Cambodian Association of Greater Philadelphia (Philadelphia, PA), and Providence Youth Student Movement (Providence, RI). The coalition strives to achieve a national remedy to the issue and advocates on behalf of deportees and their families, offering both access to media outlets and legal assistance.

KGA, one of the member organizations of SEAFN, remains at the forefront of the struggle against the deportations in Long Beach, California, home to the largest Cambodian population in the U.S. The organization was originally formed in 1996 by Asian Pacific Islanders for Reproductive Health (APIRH) as a project to provide young Cambodian American women a space in which to explore their identity, culture and potential for leadership. KGA has since evolved with one of its primary missions being community education about the deportations as well as support for deportees and their families. Collaborating with other community groups, KGA organizes rallies, candle light vigils, and community forums to broaden awareness of the issue. Many of those slated for removal also look to the organization for legal referrals as well as moral support. As few other Cambodian American organizations in the area were willing to address the issue, KGA assumed the task of fighting the deportations knowing that effects of this issue would not be confined to the deportees. Ra Pok, the director of KGA’s campaign against the deportations, has emphasized that while this issue has been framed as one primarily affecting young male non-citizens, the women and children left behind, her clients, suffer immensely due to the absence of brothers, fathers and husbands. In outlining her strategy for change, Pok asserts that litigation alone will not

285. Id.; Pok, supra note 242.
287. Id.
288. Pok, supra note 242; see Sontag, supra note 1, at 51 (stating that Long Beach, California is a Cambodian enclave).
289. Pok, supra note 242.
290. Id.
291. Id.
292. Id.
293. Id.
suffice and that instead "[the issue of deportations] needs to be addressed and fought by the community, the media, and in solidarity for other [social justice] movements." 294

VI. CONCLUSION

One may wonder why our government should offer second chances to refugees who have violated the nation's laws. After all, did these refugees not exploit our hospitality and good will? Did this country not rescue them from tyrants? Provide them with food and shelter? Allow them liberties unimaginable in their homelands? Are there not millions of people desperate to experience the opportunities offered in this great country, opportunities that they so foolishly squandered? Are we as a society not better off by ridding ourselves of these "undesirables"? As aforementioned, Allen Kay, the spokesman for a sponsor of the 1996 legislation, expressed how much of the American public may perceive these non-citizens with his statement that "[t]here is no reason to go easy on immigrants who commit crimes when there are millions of people brimming with potential who want to come here." 295

Only, Southeast Asian refugees are not immigrants. These individuals did not depart their homelands voluntarily, but instead were fleeing the killing fields of Cambodia or the labor camps of Vietnam. In leaving, they sought not to take advantage of the abundant economic opportunities offered in this country, but to survive. Now what gives rise to a moral obligation on the part of the United States is the fact that such individuals suffer today as the direct consequence of failures in American public policy. It was with our nation's encouragement that these refugees offered assistance to the U.S. military during the Vietnam War, a decision for which they would face persecution. It was American interventionism in the region that perpetuated the civil strife that compelled hundreds of thousands to flee. And it was our government's failed resettlement policy that spawned the economic dislocation and social alienation experienced by this community. The lack of effective institutional support prevented many Southeast Asian refugees from gaining a foothold into American society and thus, began a cycle of poverty, crime and incarceation, which continues to this day.

The deportations will not break this cycle; they will perpetuate it. Bill Ong Hing, professor of law and Asian American Studies, observes that "[i]n our souls, we [Americans] know that when we repatriate these refugees and others who are products of our society we further destroy a family at a time when the family needs more than ever before to be whole." 296 Indeed, the broad suffering inflicted by these deportations is not

294. Id.
295. Constable, supra note 194.
296. Bill Ong Hing, Professor of Law and Asian American Studies, University of California at
limited to those who are repatriated. The deportees leave behind aging parents, young children and struggling partners and siblings. It is the parents who anguish over the reoccurring dismemberment of their families by political forces from above. It is the partners and siblings who must toil to provide for the loved ones, which the deportees were forced to leave behind and for the deportees themselves, who have no other means of financial support. And it is the children who will mature into adulthood without the loving supervision of an exiled parent. These children will not have the opportunity to benefit from the wisdom gained by their parents’ mistakes remaining evermore vulnerable to the criminality caused by the poverty and despair in their communities.

Litigation remains vital to securing humane treatment for the deportees, to pushing through the rare case where relief is possible and to reminding a deferential judiciary of the deep injustice posed by these deportations. But given the broad nature of Congressional and Executive plenary power, litigation alone will not suffice. Any comprehensive solution for the current state of immigration law lies with Congress. However, in order to make any legislative remedy politically viable, the popular perception of the deportees, as an undifferentiated foreign mass intent on exploiting this nation and victimizing its people, must change. It is precisely this perception, which has rendered non-citizens easy scapegoats for contemporary anxiety over terrorism, crime and the economy. As Joren Lyons, a staff attorney at the Asian Law Caucus states, “[u]ntil we break through the image in the public mind of who is getting deported and why, things are not going to change.”

We—as activists, students, lawyers, educators and concerned community members—must work in solidarity to publicize the plight of those slated for deportation and to remind our country of the moral responsibility owed to this community. It is vital that we frame this issue as not one affecting only aggravated felons or only refugees or only Southeast Asians, but instead as one affecting all those concerned with social justice. In struggling for change, we must tap the fundamental concepts of justice and compassion, which serve as the moral foundation of our society. Only then, will we—as a nation—be ready to embrace these non-citizens as fellow Americans and welcome our exiled compatriots back home.
