

ABANDONED

THE BETRAYAL OF AMERICA'S IMMIGRANTS



STUDY GUIDE

BULLFROG FILMS

ABANDONED

THE BETRAYAL OF AMERICA'S IMMIGRANTS

Executive Producer: Katharine Kean

Producer: David Belle

Directed by David Belle and Nicholas Wrathal

2000 Crowing Rooster Arts, Inc.

Grades 10-12, college, adult

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32 minutes—English

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sociology • social psychology

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A supplemental package for activists is available from Bullfrog Films, or

Detention Watch Network

<http://www.detentionwatchnetwork.org/>

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BY CHARU NEWHOUSE AL-SAHLI

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❖ **About this film**

ABANDONED illustrates the most recent wave of anti-immigrant sentiment in the United States. Through a close look at the personal impact of new immigration laws, this film depicts the severity of current detention and deportation policies. Lives are changed forever, as legal residents find themselves being torn away from their American families and sent to countries they barely know. For political asylum seekers, dreams are put on hold, as they are kept for years in county jails that profit from their incarceration.

BACKGROUND

In 1996, the US Congress passed sweeping new immigration laws resulting in the mandatory detention and deportation of thousands of legal permanent residents and asylum-seekers. The new legislation also greatly expanded the types of crimes for which legal residents must be detained and deported. The laws were also made retroactive. As a result, legal residents and asylum-seekers are currently being held in jails across the country creating a multimillion-dollar industry in the detention of immigrants.

❖ **History**

As a nation of immigrants, the United States has a contradictory relationship with its newcomers. Until 1875, the United States had a relatively open immigration policy. As more people arrived from different parts of the world however, US immigration policy underwent many permutations so that by the mid-1900s American immigration law had become a complex mix of quotas and special provisions.

In the wake of World War II, the US was a leader in establishing international principles of human rights, including the right to asylum from persecution. In 1980,

the US Congress enacted the Refugee Act with the intention of establishing a politically and geographically neutral adjudication standard for both asylum and refugee status and to incorporate the 1951 UN Convention relating the Status of Refugees and the 1967 Protocol into US law. Shortly after though, in reaction to mass influxes of refugees from the Caribbean in the early 1980s beginning with the Mariel boat lift of Cubans in the spring of 1980, the US began detaining many asylum-seekers in an overt policy of deterrence. Although substantial changes in US asylum procedures and regulations in the past decade have led to a decrease in abuse of the system as well as a decrease in asylum applications, the notion of deterrence as a policy goal has far from subsided.

The global economy has made issues of migration even more complex. Technological advancements allowing for rapid communication and transportation have encouraged the movement of capital, goods and services across borders, which has been promoted by developed countries. Paradoxically, these same developed countries, like the United States, have discouraged the movement of people across borders. The 1996 immigration laws exemplify this policy of exclusion.

❖ **The 1996 Laws**

In February 1993, the World Trade Center was bombed by foreign extremists. In November 1994, California voters passed Proposition 187, a landmark anti-immigrant law, which attempted to cease public spending on immigrants. In April 1995, a federal building in Oklahoma City was bombed, and although the perpetrators turned out to be American, foreign terrorists were initially suspected. It was in the wake of these events and in a backlash against immigrants that the US Congress passed the Illegal Immigration Reform and Responsibility Act of 1996 (IIRIRA), followed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Although

there was some controversy in the procedure in which some provisions of the law were made, they were passed by a majority of Republicans and Democrats. The impact of the 1996 laws has been overwhelmingly harsh.

The 1996 laws produced a sweeping overhaul of the immigration and asylum system and represented a climax in anti-immigrant and restrictionist sentiment in the United States. The 1996 reforms allow the following:

— Significant expansion of crimes considered “aggravated felonies” for Legal Permanent Residents (LPRs), to include a broad range of minor, often nonviolent, crimes. Crimes that could now be considered aggravated felonies under the 96 laws include check fraud, petty theft and shoplifting.

— Detention is now mandatory for such “aggravated felons” or “criminal aliens” as described above, even though this detention occurs after they have completed their criminal sentences. In fact, since some of the crimes are so minor, INS detention is the first time some of these individuals have ever spent in jail.

— No discretion in most cases for Immigration Judges to consider individual circumstances to provide relief.

— Retroactive application of laws, allowing INS to reach back in time to crimes long since paid for as grounds for deportation.

— “Expedited Removal”: INS may detain and immediately deport any persons arriving to the US without proper travel documents, without counsel and without the right to judicial review of their case, unless such persons express a fear of return or intent to apply for asylum during the initial stages of inspection.

— Mandatory detention for asylum seekers arriving without proper travel documents, many of whom remain imprisoned for months or even years.

— INS detention may be indefinite. There is no maximum limit on the duration of detention, and detainees almost

never know how long they will be incarcerated. Immigrants who have lost their legal cases but cannot be returned to their country of origin (due to the lack of diplomatic relations with some countries such as Vietnam, Laos, Cuba, Iraq, and for stateless persons such as Palestinians) are often called “lifers” because their detention literally is indefinite.

— No guarantee of legal counsel for persons in INS proceedings. Despite the incarceration of such individuals, their legal proceedings are considered civil proceedings, and there is no right to government paid lawyers in civil actions. They may only obtain representation at their own expense.

Overnight, these laws allowed for the detention and swift deportation of literally thousands of people. The laws have separated countless families. Legal residents that are married to US citizens and/or have US citizen children, that have spent almost their entire lives in the US, or have even served in the US military, may also be targeted by the above provisions of the ‘96 laws.

❖ **Asylum Seekers**

A person becomes a refugee as soon as s/he is forced to flee their home due to persecution or a well-founded fear of such—based on race, religion, nationality, social group or political opinion. US asylum and refugee policy distinguishes between individuals seeking such protection based upon where the claim is made. A person applying for refugee status overseas is a potential refugee. A person that applies for asylum in the US is a potential asylee. When a person flees persecution, s/he will often be unable to bring more than the barest necessities. For a refugee who has been or fears persecution at the hands of their government, obtaining the proper travel and personal identification documents can be dangerous in and of itself. For persons seeking asylum, who arrive in the US without these documents, the consequences are harsh.

Although the detention of people who arrive in the US to seek asylum is not new, the 1996 laws made such detention mandatory for those arriving without proper travel documents. Further, unlike most other developed countries where detention is used, the US puts no maximum limit on the duration of such detention. The US also relies overwhelmingly on local and county jails to house its detainees, an unclear number of which are asylum seekers. Despite INS' recognition of the notable decrease in asylum applications and less abuse of the system, the detention of asylum-seekers has increased dramatically since implementation of the '96 laws. While INS rhetoric claims to be generous to asylum seekers, who have not committed a crime other than to flee their homeland without proper travel documents, the reality is that months and sometimes years of detention in US county jails and prisons while their claims are adjudicated.

❖ **Implementation of the '96 Laws**

Deportations have obviously increased under the 1996 laws, which stripped immigrants and asylum seekers of many procedural safeguards. In 1996, INS deported 69,680 persons. In fiscal year 2000, this number has almost tripled to a total of 181,572 persons removed.

The 1996 laws placed enormous strain on the already inadequate INS detention system, leading to complete decentralization and a dispersal of detainees in a network of facilities across the country. Over half of INS detainees are placed in local prisons and jails, where they can be mixed with criminal populations. Women, which make up about 7% of the detained population, are more likely than men to be detained in a jail or prison because of their smaller numbers. Children are also detained in juvenile facilities across the country.

The mandatory detention provisions have caused the swelling INS detainee population to almost triple its size since introduction of the laws. More than 20,000

individuals are currently in INS detention per diem. The population is projected to rise to 24,000 in 2001.

INS uses several different types of facilities to detain immigrants and asylum seekers, all of which are punitively designed. Service Processing Centers (SPCs) are owned and operated by the INS, but as John Shallman, an INS spokesperson featured in the film, notes, SPCs are very much like any other detention facility and are modeled on the Bureau of Prisons. Unfortunately, the enforcement mentality and potential for abuse that seems pervasive throughout the US prison system is also present at the SPCs. Ninety female INS detainees were recently moved from the Krome SPC near Miami, FL, to a county jail after years of investigations regarding sexual abuse of women at the facility. At a county prison featured in the film in York, Pennsylvania, nine correctional officers were recently arraigned for the beating of an INS detainee.

INS detainees are often transferred from facility to facility across the country, presenting further obstacles for their legal defense. Immigration advocates cite transfers as a method of punishment for detainees, who are often located in or transferred to remote facilities far from friends, family and their attorney, if they are represented at all. They may be linguistically isolated, adding to the concerns for their treatment.

Custody decisions are not reviewed by a judicial authority, but rather by the INS, which has an uneven track record from one INS district to the next. The reason immigrants and asylum seekers are detained is supposedly to ensure their availability for immigration proceedings. Although there have been some efforts at pilot projects to develop alternatives to detention, which have been remarkably successful, the costlier option of detention remains as the principle means of accommodating immigrants and asylum seekers during their immigration proceedings.

Persons in immigration detention are administrative detainees, and do not have the right to free legal counsel.

For immigrants detained in remote facilities and/or for those do not speak English, finding an attorney can be extremely difficult. Pro-bono representation services are more likely to be found in cities. Asylum seekers are also often indigent upon arrival. In fact, according to the Executive Office of Immigration Review, only about 11% of INS detainees are able to obtain legal representation. The complex nature of US immigration law, combined with the adverse conditions of detention, make successful claims for relief rare for the remaining 89% of the detained population through pro se representation.

Detention alone impedes access to and communication with the outside world, information about the legal process and defense/relief options, as well as opportunities to acquire counsel, and the emotional support of family and friends. Circumstances are aggravated by the conditions of detention at many of the jails and prisons used by INS. Detainees often face overcrowding, arbitrary and excessive use of discipline and isolation, poor medical attention, and verbal and sometimes physical abuse. Faced with such conditions and the prospect of long term incarceration, many detainees “voluntarily” sign a deportation order just to get out of detention.

❖ **The Custody Business**

The detention of immigrants is the fastest growing and most profitable prison program in the United States. According to an investigative report in the Oregonian in December 2000, INS pays an average of \$73 per day to accommodate one detainee. On top of the profit made from INS, prisons and jails often charge inflated prices for everything from essential items at prison stores to telephone calls.

The film profiles the York County Prison in Pennsylvania, which at the time of production was renting 700 beds from York at \$60 per day per detainee. As the film indicates, the county’s actual costs are \$38 per day,

earning York County \$5.6 million in profit for the year 2000 due to its lucrative relationship with INS.

Immigrants that could be leading productive lives in their communities are held in prisons and jails at a high cost to taxpayers. Congress increased INS' budget for FY2000 by 8%, to a total of 4.27 billion dollars. Further, the detention of immigrants as a very lucrative industry has served to further dehumanize an already extremely marginalized population.

❖ **Efforts for Change**

Commentary on the effects of the '96 laws on the lives of immigrants and asylum seekers and their families in the US has been highly critical. Immigrant advocacy and human rights groups point to the laws and their impact as inhumane, unjust and un-American.

Community groups amongst others have begun to lobby Congress to change the laws. Activists are promoting awareness to bring more light to the consequences of the laws, as well as to the inefficient and costly means through which they have been implemented.

The laws inherently undermine the American tradition of pride in its diversity and as a land of freedom, justice and opportunity. The principle of family unity, which had been a cornerstone of US immigration policy, has been severely compromised with these laws.

Congressional support to change the '96 laws does seem to be building. However, substantive change has been slow in coming. Instead, INS and Members of Congress have tended to deflect blame back and forth. There are a number of bills that seek to address the harshest elements of the law, and to restore fairness to US immigration policy.

In the meantime, deportations continue at an unprecedented level. Moreover, the detention population, along with its financial and moral costs, continues to rise.

DISCUSSION GUIDE

Discussion Before Viewing

— Ask students to reflect on their own immigrant history and immigrants they know: where their families are from, when they came and what they did when they arrived.

List the different reasons why they came. Do students think they would still be able to immigrate today?

— Discuss students' general opinions on immigration, do they favor more or fewer restrictions and why.

— Discuss factors that encourage and/or force migration of men, women and children globally.

— How do asylum seekers come to the decision to seek protection in the United States? Discuss how students think such individuals are received and treated upon arrival in this country and what types of provisions for their protection are made for them.

— What are students' perceptions of the legal rights of citizens in comparison with those of non-citizens residing legally or illegally in the US?

— Discuss what types of crimes students think can or should lead to a legal resident's deportation, after that person has served their criminal sentence. Are there circumstances that might mitigate a decision requiring removal (family/community ties, youthful offender, etc.)?

Discussion After Viewing

— Consider the title of the film. In what specific ways have America's immigrants been abandoned or betrayed? Have students' opinions been altered by information provided by the film?

— Do students think their family histories might be different if their families were to attempt to immigrate today?

— Does the United States' unique history with respect to immigration seem congruent with current immigration law and policy?

— While global trade and the flow of information, goods and services across borders is at an all time high, the movement of people from country to country appears to be increasingly restricted. Ask students to discuss this contradiction.

— Did public opinion influence the passage of the 1996 laws? What kinds of discussion preceded their passage and implementation? Has the impact of the laws exceeded their intent?

— What are the forces that drive current immigration policies?

— Why has there been a reticence to change and/or improve the legislation?

— What restrictions does administrative INS detention impose on immigrants and asylum seekers? How do persons detained by INS acquire counsel or representation, particularly if they are without financial means? What implications do these restrictions have for an individual's legal defense?

— Are there reasonable alternatives to detention? What might these look like?

— What are the incentives for communities to make their county jails available to the INS for detention? Is there a legal and/or ethical responsibility incumbent on communities which provide the means for non-citizens to be detained?

— Is there an inherent conflict of interest in INS' role as prosecutor, judge and custodian of immigrants and asylum in detention? Why or why not? If so, are there other governmental agencies which might more appropriately assume responsibility for one or more of those roles?

— Do US citizens really know what is being done with

respect to immigrants and asylum seekers in detention and removal proceedings?

— If desired, how can effective change be brought about?

— At the other extreme end of the spectrum from detention- is an open door policy. Do you support this policy?

— What are your thoughts concerning immigration and schools, hospitals, social services?

— Do you think immigrants put a burden on the system, or that immigrants contribute?

Discussion Issues for Law Students

— In what particular ways does detention impede access to a fair asylum adjudication process? In what ways does detention affect individuals in post conviction removal proceedings?

— What procedural safeguards were stripped by the 1996 laws?

— What rights do non-citizens have in comparison with those citizens have in the US? From where does the distinction between the rights of citizens versus non-citizens derive? How is this distinction regarded under international law?

— How do the rights of citizen inmates and INS detainees compare?

— How do US immigration laws adhere to or conflict with its obligations and responsibilities under international treaties and protocols? With US obligations and responsibilities with the human rights as defined by the Universal Declaration of Human Rights?

— Are there other more binding international covenants that the U.S. detention policy possibly violates?

— Has INS interpreted the 1996 laws more strictly than necessary? Is there any benefit accruing to INS as an agency by strict enforcement? Is there any basis for a

more discretionary approach on the part of INS provided by current legislation?

RESOURCES

The following organizations were featured in the film:

Citizens and Immigrants for Equal Justice (CIEJ)
<http://www.ciej.org>
972/329-7080

Federation for American Immigration Reform (FAIR)
<http://www.fairus.org/>
FAIR is linked to the Pioneer Fund:
<http://www.pioneerfund.org>

Florida Immigrant Advocacy Center (FIAC)
<http://www.fiacfla.org>
3000 Biscayne Blvd. #400; Miami, FL 33137
phone: 305-573-1106, fax: 305-576-6273

Immigration and Naturalization Service (INS)
<http://www.uscis.gov>

Members of Congress featured in this film:

House: <http://www.house.gov/house/MemberWWW.html>
Senate: <http://www.senate.gov/senators/index.cfm>

Internet resources on immigration and asylum issues in the United States:

American Bar Association (ABA) *Immigration Pro Bono Development Project*
<http://www.abanet.org/immigprobono/>

American Civil Liberties Union (ACLU), *Immigrant Rights*
<http://www.aclu.org/immigrants/index.html>

Amnesty International USA, *Refugees Home Page*
<http://www.amnesty-usa.org/refugee/>

Catholic Legal Immigration Network (CLINIC)
<http://www.cliniclegal.org/>

Human Rights Watch, *United States Initiatives*
<http://www.hrw.org/about/initiatives/usfront.htm>

Lawyers Committee for Human Rights, *Protecting Asylum Seekers*
<http://www.humanrightsfirst.org/asylum/asylum.htm>

Lutheran Immigration and Refugee Service
<http://www.lirs.org/>

United Nations High Commission for Refugees, USA Profile
<http://www.unhcr.ch/world/amer/usa.htm>

US Committee for Refugees
<http://www.refugees.org/>

Women's Commission for Refugee Women and Children
<http://www.womenscommission.org/>

Internet Resources on Immigration Laws:

Asylum Law
<http://www.asylumlaw.org/>

Executive Office for Immigration Review (EOIR)

<http://www.usdoj.gov/eoir/>

INS Laws, Regulations and Guides

<http://www.uscis.gov/portal/site/uscis>

Reports:

The following are reports that can be accessed online free of charge. Visit the report site's home page for more information on refugee and asylum concerns.

1. *Lost in the labyrinth: Detention of asylum seekers*, Sept. 1999

<http://www.amnestyusa.org/document.php?lang=e&id=CCA1246D90686CB08025690000693482>

2. *Detained and Deprived of Rights: Children in the Custody of the U.S. Immigration and Naturalization Service*. Jo Becker and Michael Bochenek, 1998

<http://www.hrw.org/hrw/reports98/ins2/index.html>

3. *Locked Away: Immigration Detainees in Jails in the United States*. September, 1998

<http://www.hrw.org/reports98/us-immig/>

4. *Liberty Denied: Women Seeking Asylum Imprisoned in the United States*. April 1997

www.intrescom.org/wcrwc/reports/reports.html

5. *Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*, August 1999

<http://www.humanrightsfirst.org/pubs/descriptions/behindbars.htm>

Related Bullfrog Films:

See website for descriptions: <http://www.bullfrogfilms.com>

TRIUMPH OVER TERROR- 6 x 30 minutes. Efforts to defend human rights in Thailand, Nepal, Bangladesh, Nigeria, South Africa and Sierra Leone.

A QUESTION OF RIGHTS- 5 x 15 minutes. The state of women's rights in Ethiopia, Latvia, Jamaica and Fiji

LIFE Series 30 x 24 minutes. The first series on the effects of globalization on the world's individuals & communities

SUGGESTIONS FOR ACTION

For ways to get involved in the issues addressed by **Abandoned: The Betrayal of America's Immigrants** please explore the below websites and organizations.

Detention Watch Network

<http://www.detentionwatchnetwork.org/>

Contact: Alisha Horowitz

Email: ahorowitz@lirs.org Phone: 410/230-2732

DWN includes over one hundred religious, civil, immigrant and human rights organizations working to unite the voices and efforts of those who have experienced detention and those who advocate for the legal, social, and religious needs of asylum seekers and immigrants in detention.

Forgotten Refugees Campaign – <http://www.lirs.org>

Contact: Esther Ebrahimian

Email: estherlirs@hotmail.com Phone: 212/665-4115

The FRC is a national public outreach and advocacy effort

for the just treatment of asylum seekers in the United States. Community-based groups that serve asylum seekers will be organizing local activities to educate and advocate the general public.

Citizens and Immigrants for Equal Justice - <http://www.ciej.org>

Contact: Laurie Kozuba

Email: ciejtx@aol.com

Phone: 972/329-7080

CIEJ is a coalition of American/Legal resident families facing permanent separation due to the 1996 immigration acts AEDPA, and IIRIRA. CIEJ works to raise public awareness and provide information to legal residents and their families about how these laws may affect them.

“Through intimate, often passionate interviews, and shocking footage of detainees’ treatment behind bars, filmmakers Belle and Wrathall build a powerful argument for the urgent need to reform immigration laws before more lives are ruined and more families torn apart.”

-Human Rights Watch Film Festival-



“ABANDONED ... looks at a 1996 law that allows for the Immigration and Naturalization Service to imprison legal permanent residents and asylum applicants. ‘They can’t do that,’ say the astounded victims of this unjust law—and so will you.”

-IndieWire-



Awards

2001 A.I. duPont Columbia University Award

Human Rights Watch Film Festival

Hot Springs Documentary Film Festival

Stony Brook Film Festival

Crested Butte Reel Fest



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