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Bill of Right in Action

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Seeking Asylum in the U.S.

Early in June 1993, an old freighter named the *Golden Venture* ran aground off a New York beach. On board, the U.S. Coast Guard discovered 200 Chinese who were being smuggled into the United States. Some of these unfortunate travelers had paid several thousand dollars apiece to smugglers (called "snakeheads" by the Chinese). Others had agreed to work off their passage fees as indentured servants in New York City's Chinatown.

When the *Golden Venture* grounded, some of these illegal immigrants panicked and tried to swim ashore. Six drowned. The Coast Guard took the rest into custody. At this point, many of the *Golden Venture's* passengers applied for political asylum.

Since the end of World War II, the United States has taken in thousands of refugees seeking asylum (protection from persecution). Under current U.S. law, those who manage to reach American soil and claim asylum will not be deported until their case has been considered in a lengthy hearing and appeal process. If refugees can establish a basis for asylum, they will be permitted to stay in the United States, even though they may have entered the country illegally.

Currently, about 900,000 people a year immigrate legally into the United States. Another 300,000 enter illegally. Asylum seekers make up only a small part of the immigrant flow (about 130,000 in 1993). Some say, however, that many asylum seekers are taking advantage of U.S. asylum laws to avoid normal immigration limitations and procedures.

The Right of Asylum

Following World War II, most nations in the world agreed to offer asylum to victims of persecution in order to prevent any repetition of the tragic fate of Jewish refugees caught up in the Nazi Holocaust. In 1951, the United Nations adopted the Convention Relating to the Status of Refugees. This international treaty defined a refugee as someone with "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." According to the agreement (signed by the United States and codified in U.S. law in 1980), qualified refugees who can reach a "safe country" have the right to be given shelter and granted asylum in that country.

The "Jet People"

While most asylum seekers reach the United States by boat, motor vehicle, or even on foot, an increasing number now fly into the country aboard commercial airliners. These "jet people" often pay a smuggler upwards of \$30,000 for an airline ticket and a phony passport. When "jet people" land, they are stopped by U.S. customs, but at this point they can claim asylum.

New York's John F. Kennedy International Airport is currently the "jet people's" preferred port of entry. JFK has been called "America's most unguarded border." In 1992, nearly 10,000 "excludable aliens" requested asylum at JFK. All but a handful arrived carrying false papers or no travel documents at all.

Given the number of asylum seekers who land daily at JFK, the [Immigration and Naturalization Service](#) has little choice but to give each alien a work permit and a hearing date. A significant percentage of these newcomers simply vanish into the underground economy and are never seen again by the INS.

For those who pursue their asylum claims, the approval process can take months or even years. If the INS does not approve a claim for asylum after two sets of hearings, an alien has the right to a U.S. court appeal. The process can be slow and tedious. By the end of Fiscal Year 1994, 425,000 asylum cases were in backlog. The system was in crisis, and the nation began to clamor for asylum reform.

Asylum Reform

In response to demands for asylum reform, President [Clinton](#) remarked, "We cannot and will not surrender our borders to those who wish to exploit our history of compassion and justice." In August 1993, the first of a wave of asylum reform bills was introduced in Congress.

In 1995, Congress enacted several of the proposed reforms. One piece of legislation doubled the number of asylum officers and increased the number of asylum judges. Additional legislation mandated that asylum applicants without legal status whose applications are not approved must be referred directly to immigration court. Whereas employment authorization used to be provided immediately, it is now provided 150 days after the date of filing for asylum or after asylum has been granted. Congress also passed legislation adding gender-based persecution to the list of claims qualifying for an asylum hearing.

One massive piece of legislative reform is the [Illegal Immigration Reform and Immigrant Responsibility Act of 1996](#). According to this Act, those who do not file asylum applications within one year after entering the U.S. forfeit the right to have their asylum claims heard. In addition, this legislation authorizes the use of certain [wiretaps](#) by officers investigating immigration cases.

Critics of these legislative reforms claim that changes to U.S. asylum law are unfair and violate the [U.S. Constitution](#). Lucas Guttentag, director of the [Immigrant Rights Project](#)

[of the American Civil Liberties Union](#), fears the potentially serious consequences that could await refugees who fail to qualify for asylum under tougher laws.

Others argue that hiring additional hearing officers and expanding INS facilities is the only practical solution to asylum abuse. The INS issued a [report](#) stating that asylum reform has resulted in a 75 percent decrease in new asylum cases being filed. In addition, the INS reported an increase in approval rates from 15 percent in 1993 to 38 percent in 1999.

Do our current asylum laws encourage protection or abuse? Rep. Charles E. Schumer (D-N.Y.) has declared, "Asylum, which had almost a holy name to it 50 years ago, is now being trashed." How do we determine who shall—or shall not—qualify for asylum in the United States? How do we measure the misuse of these laws against the well-being of those who truly deserve protection? These are questions lawmakers must address if America is to continue to serve as a safe haven for the oppressed.

For Discussion and Writing

1. Do you agree or disagree with the 1951 U.N. Convention Relating to the Status of Refugees that obligates the United States to admit refugees who qualify for asylum? Why or why not?
2. How have some people from foreign lands abused U.S. asylum procedures in order to gain entry into the country?
3. Do you think that asylum applicants should have the right to have lawyers present their cases? Should the United States pay for lawyers if the applicants cannot afford their own?
4. Of all the proposals discussed in this article under "Asylum Reform," which one do you think is the best? Explain why.

For Further Information

[Worldwide Refugee Information](#): This web site reports on conditions for refugees and internally displaced persons in 120 countries.