

AMERICA'S RESPONSE TO TERRORISM

“Anti-Terrorism, the Caribbean, Legal Rights and Habeas Corpus”

The Sun Sentinel published an article on November 12, 2000 in which it estimated that over 300,000 Jamaicans reside in South Florida. A year later this number would have grown. In that group of more than 300,000 people, most are very hard working and making a valuable contribution to the economy of the State and of the country. Most also, have close ties with the Mother Country, Jamaica, and contribute in very important ways to the financial and development affairs of Jamaica. Some of us, however, are undocumented and face more than the normal share of problems in these troubled times. We therefore have a large community that will be affected by some of the measures being contemplated by the US Government to improve security both in the short run and in the future.

On Friday October 26, 2001, President Bush signed into law the Antiterrorism Act, popularly known as the [PATRIOT ACT](#). Quite outside and apart from this Act, are the more stringent measures that have been implemented by the Immigration Authorities to arrest, detain and deport aliens who have overstayed their entry Visa permission.

The Antiterrorism Bill covers a wide range of antiterrorism measures, from immigration to money laundering and "wire-tapping". The Bill contains the following measures:

- a. Authorities can collect unspecified, unidentified information about web-browsing and E-mail. However, the law enforcement authorities have to reveal to a judge all details about an installation called "CARNIVORE" including the identity of the installer, those who have access to the device, its configuration and precise details about what it will collect.
- b. Universities and Network administrators can authorize surveillance of those who are using their computers without first obtaining judicial permission.
- c. Authorities can install "Roving Wiretaps" which will enable them to snoop on people from phone to phone and from computer to computer, even if a suspect was not in control of the device.
- d. The Government can Tap all computers in a Library if a suspect is using one of them.

Law Enforcement Officers can install Wiretaps without having any probable cause in respect of criminal investigations including messages passing over the Internet.

Personal Records which are now protected under the Privacy Acts may be invaded under this new Act.

Habeas Corpus can be suspended for aliens who have violated their Visa permission and for persons generally suspected of being terrorists. These persons may be detained for any period determined by the law enforcement authorities.

Trial lawyers are very unhappy over the provision for the suspension of Habeas Corpus. As the President of the Trial Lawyers Association has said:

"Depriving Americans of their 200 year old right to habeas corpus is a fitting memorial only to the tragic triumph of politics over substance as our Republic enters its third century".

Before I turn to look at some of the topical discussions in the media reporting on Government's intentions, let me give a short background about the legal regime under which aliens enter, remain and may be removed from the United States.

We know that the Immigration and Nationality Act provides a raft of Visa categories under which an alien may lawfully enter and remain in the United States. They range from the B1-B2 Visa, best known as the Visitor's Visa, to the L-Visa, the H-Visa and the J-Visa, all three of which permit persons with certain high qualifications to enter and work in the United States. Teachers and Nurses are being recruited by U.S. Agencies for employment in the US under the J-Visa program. And of course we must not forget the Agricultural Workers program through which hundreds of Jamaicans seasonally work in the U.S.

There are complicated regulations for the adjustment of status for an alien who enters the US in one Visa category and wishes to remain, for example to study, or to work. That is why there are many Attorneys all over the United States who specialize in Immigration Law. If a Jamaican is in Florida and has overstayed the limit of his/her Visa, the remedy is not to "hide" but to go to an [Immigration Attorney](#) and seek advice as to how to apply for an adjustment of Status.

When we are dealing with aliens who enter the US on a valid Visa and apply for an adjustment of status in a timely manner, that is the easy part. When an alien has lawfully entered the US but acts in breach of the Visa, that individual is removable from the U.S. An alien who has been granted Lawful Permanent Resident Status and holds the Green Card is still an alien and until the day comes when he/she is naturalized as a US citizen, the Green Card does not remove the status of "alien".

Most of us know the term "deportation". It is no longer fashionable to speak of deportation and the new technical name for these proceedings is now "**Removal and Exclusion proceedings**". The name is certainly less offensive to the ear but the consequences remain harsh and draconian.

In 1996 Congress enacted a draconian law in relation to aliens. It is called the **Illegal Immigration and Immigrant Reform Act of 1996**. This Act provides in part that any alien who commits a crime of moral turpitude or a crime related to a controlled substance (drugs) is removable, if the maximum penalty for that violation exceeds 12 months imprisonment. The Act goes further and it states that if an alien is convicted for 2 or more offenses, regardless of whether the offenses were in a single trial or whether the offenses arose out of a single scheme or misconduct and regardless of whether the offense involved moral turpitude, the alien is removable.

Let me tell you that almost any little misdemeanor attracts a maximum sentence of 12 months imprisonment and two traffic breaches (DUI, speeding) can fall within the definition shown above. And what is worse, the alien can be deported regardless of when the offenses were committed. The fact that the Act only came into force in 1996, an alien who committed the offenses in 1980 would still be liable to the sanctions under the 1996 Act. This is the regime under which we now live.

As Attorneys we have had to work with this Act. We have had to look at the marginal and really hard cases and we have had to take bold steps to try to deal with some of these cases. We have had to engage in multiple appeals where there is not even a shred of evidence to support the case. We have looked at some extremely hard cases; for example, where a woman here, some of whom are married to US citizens, and where the INS has now refused naturalization of the mother on the basis that her marriage (which took place more than 20 years ago) was a 'sham marriage'. We have wielded the Habeas Corpus Writ mightily in favor of such a person and she has been released on Bond. We have used the Habeas Corpus to obtain quick decisions from the INS and we have used it where the Jamaican has been arrested and detained in custody without Bond as a Material Witness. Through the Habeas Corpus process we achieved almost instant release. The Immigration Statutes put up firewalls against access to the regular Federal Courts in Immigration matters, but we have found areas where the Writ of Habeas Corpus can be validly used and that has been one of our effective weapons.

Although the term **moral turpitude** has been defined in very specific ways, we have raised powerful and persuasive arguments in the Immigration Courts to remove certain actions from the prima facie categorization of crimes of moral turpitude.

One of our immediate concerns is the policy that the INS has adopted in relation to Visas and the second is as to the national attitude of the Federal Government to the September 11 disaster. It is frustrating that terrorism of this magnitude has taken place and we as a people cannot yet place our hands on the perpetrators. There is reliable information that the INS will make a background check of all future applications for Visitor's Visas. That will mean delay of up to six months for the issuance of a Visitor's Visa which formerly could be done in a morning. If people cannot travel freely into Florida for shopping and tourist purposes, the Florida economy is likely to suffer.

In addition, applicants for Visas will hereafter provide greater personal information and may have to provide such information relating to their contacts in the United States.

There is the proposal for a National Identity Card. As I understand it, every person in the US would be required under this Scheme to carry this ID card on his/her person at all times. Further, the individual would be obliged to report to some authority every change of address. Law enforcement officers would be able to make random checks for identity cards at anytime and failure to produce such identification could lead to detention and sanctions. It may be one of the restrictions that persons could not travel outside prescribed areas without permission. We know that these procedures exist in some totalitarian societies, where the Police are all powerful.

This is a time when Americans must search for answers to determine how persons who lived amongst us could without our knowledge or even suspicion organize and execute such a dastardly attack. America must improve security for all its citizens but not at all costs. Some aspects of our democracy and our open society must be sacred and must remain sacred. If an ID card system is to be introduced, there should be massive and prolonged publicity about its introduction and there should never be a power to the Officers of the State to invade a citizen's home to check identifications without probable cause and a search warrant. We must keep an open mind as to whether the ID system is necessary or workable until we see the details of the proposed scheme. However, the ideals of freedom must be carefully protected even as we improve our security.

The Jamaican Consulate has continued to be very vigilant for the welfare of Jamaican citizens who fall into the Federal Immigration Enforcement system or into the criminal justice system. Persons most vulnerable are those entering the country. An official standard system has now been established that requires the law enforcement officers at all the ports of entry in Florida to report the arrest or detention of a Jamaican citizen who was seeking entry into the US to the Jamaican Consulate immediately. The system is working.

The Jamaican Government has stationed at the Consulate a very experienced Specialist Officer, Mr. VANCE CARTER, who, under the supervision of the Honorable John Atkins, Consul General, has made a wealth of difference to scores of Jamaicans who have found themselves in grave circumstances.

By virtue of this notification system, many individuals have been repatriated to Jamaica from the ports of entry without further incident; minors have been given full protection and returned safely to Jamaica either on the date of attempted entry or as soon thereafter as is practicable; Consular visits have been arranged for persons who continue to be detained and the Consulate ensures that those who wish can obtain legal representation.

Persons in **Removal and Exclusion** proceedings, many of them women, have been relocated, released on bond or deported without having to spend unnecessarily long periods of time in the Krome facility. Mr. VANCE CARTER leads the Mission team which determines that if the US

attempt to deport an alleged Jamaican to Jamaica, is not in the best interest of the individual, the Consulate requires complete background checks to determine, beyond doubt that the individual is a Jamaican citizen. It must be realized that some persons enter the US without inspection and therefore it takes a great deal of time to determine the authenticity of any document produced by such an individual many years later.

We must be vigilant to insure that there is no negative backlash against Jamaican citizens now resident in Florida. There is no present indication that the Government plans to speed up the process of removal or to be more proactive in placing persons in removal proceedings who fall within the provisions of the Illegal Immigration and Immigrant Reform Act of 1996.

I have received information that persons of East Indian descent in Trinidad and in Guyana are experiencing new and additional difficulties in obtaining first time Visas and in getting renewal of their former visas to enter the United States. These disadvantages may be directly associated with the present stringent US Immigration procedures.

There is however, a significant commercial backlash that Jamaica has suffered and continues to suffer since September 11. The country's Tourist Industry has all but collapsed. Americans are not flying. They have canceled reservations in hundreds. It has been reported in the Press that several North Coast Hotels have had to close their doors and lay off the Staff. The Government is spending millions in Advertising to attract Tourists.

There is massive delay in the transportation of Goods from Jamaica to the United States. This is particularly noticed in Perishable Produce, such as Agricultural Products. The Winter Vegetables that were exported to the USA, are most vulnerable to these new delays. It is reported that shipments of "YAMS" can take as long as 4 Weeks to be delivered in the USA. These shipments have been spoiled and worthless.

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Lecture by Professor David P. Rowe to FIU Faculty and students, Florida.

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