

## **LEGAL IMMIGRANTS FACE TERROR IN TERRORISM LAW: DEPORTATION**

San Jose Mercury News (California)

JUNE 3, 1996 Monday MORNING FINAL EDITION

Copyright 1996 San Jose Mercury News All Rights Reserved

**Section:** FRONT; Pg. 1A

**Length:** 1153 words

**Byline:** S.L. BACHMAN, Mercury News Staff Writer

### **Body**

---

Refugio Rubio Arias, Mexico-born but a **legal** U.S. resident for 33 years, applied for citizenship in January. He had one blot on his record: a 1972 conviction for marijuana possession.

In the 24 years since his conviction, he had lived a clean life. He had worked as a pipe fitter at the same company for 15 years. He and his wife had built a house in Vallejo, where they raised seven boys. His lawyer believes he had a strong case for citizenship.

But when Rubio checked in last month at the U.S. Immigration and Naturalization Service office in San Francisco, he was arrested, jailed and told he would be **deported** for the 1972 felony - an offense for which he had already served months in jail.

Thousands or even tens of thousands of other **legal immigrants** nationwide, and hundreds in the Bay Area, **face** a similar plight.

Unknown to Rubio, and practically unnoticed outside of the nation's capital, the number of criminal actions for which a non-citizen could be **deported** was expanded by Congress in the anti-**terrorism law** it passed in April.

Under the old **law**, foreigners with at least seven years' **legal** residence in the United States who had also committed deportable offenses could ask a judge for permission to stay in the United States on humanitarian grounds. The crimes had to be punishable by no more than a five-year prison sentence. Now, a judge's ability to grant such permission has been almost eliminated - even in cases in which the felon has created a new life.

"Most people were completely unaware," said Camille Cook, Rubio's San Francisco-based attorney.

While no one knows for sure how many **legal** residents committed felonies at some point in their lives, the number of would-be citizens who have applied for the waiver offers some clue into the size of the relevant population. In the 12 months that ended Oct. 31, 1995, 2,303 people received such waivers, out of 5,330 who applied nationally. In the previous 12 months, 1,778 received waivers out of 4,134 who applied, according to INS figures.

"The numbers are very, very small and don't affect in any meaningful way the demographics of immigration," said Mark Silverman of the **Immigrant Legal** Resource Center, which has San Francisco and East Palo Alto offices. "This is not only anti-**immigrant** but anti-family and anti-human rights."

A large portion of the people applying for waivers had immigrated as children and were convicted of drug offenses, immigration lawyers say.

Supporters few, foes vocal

## LEGAL IMMIGRANTS FACE TERROR IN TERRORISM LAW: DEPORTATION

Supporters of the new law are hard to find in Washington. Congressional staff members, activist groups, lawyers and even INS officials say they don't know exactly who put the immigration provisions in the anti-terrorism bill, although similar measures were in an earlier House crime bill. Opponents, however, are outspoken.

Immigration lawyers say many of the people who could now be deported are people who have lived here for years, sometimes their whole lives. If they are sent back to their countries of origin, their families will be broken apart and they will be returning to countries they do not know, where they have no friends or family and often do not speak the language.

Typical is the case of Manuel Sardinha, a 26-year-old Santa Clara resident. Born to Portuguese parents in South Africa, he moved with them to the United States when he was 7. He has never been back to South Africa.

Sardinha has been jailed twice in the United States, once for possession of a stolen vehicle and once for evading a police officer. After the latest jail sentence ended about a year ago, the INS began to deport him to South Africa.

"I've been here 20 years," he said in an interview. "I was raised here, you know what I mean? I'm American!"

In another case, Joe M., who would tell his story only if his full name was not used, moved to the United States in 1969 with his Costa Rican parents. He was 5 years old. After moving to California at age 17, he was arrested twice on drug charges. The INS is in the process of deporting the 33-year-old to Costa Rica, where he has never been as an adult.

"I have been clean and sober for the last three to four years," the Santa Cruz resident said. "I haven't even received a ticket or nothing. Basically, I have turned my life around."

Two worst parts of new law

"The worst part of the law is that it doesn't recognize that people can be rehabilitated," said Byron Park, an immigration attorney whose 37 cases of people eligible to stay under the old program have been reduced to one. "The second-worst part is that people who are deported are probably going to sneak back in."

A deportee who is caught in the United States can be jailed for 10 to 15 years.

INS general counsel David Martin, who wants to see the law modified, concedes nonetheless that the current law will speed deportation procedures and save money. Yet he added that the government should recognize that breaking some human ties, what lawyers call "equities," might be harmful.

"There ought to be some capacity for recognition of the equities that somebody has developed, and these cases involve individuals who have developed those ties perfectly lawfully," Martin said.

Immigration attorneys and civil rights groups also worry about the vague wording of the new law. INS offices around the country initially interpreted it to mean that any non-citizen who had been convicted of a felony must be deported, no matter how long ago the offense was committed.

But arrests of people with old convictions, like Rubio's, prompted an outcry from immigration lawyers and activist groups. On May 7, a few days after the new law took effect, the INS instructed local offices not to arrest people with old convictions. Although he and other former felons still face deportation proceedings, Rubio was released from INS detention May 10.

Judge taking action on own

One immigration judge in San Francisco is taking action on his own. Administrative law judge Bernard J. Hornbach has said he will throw out cases of non-citizens with criminal convictions that occurred prior to the new law. Other judges have not said what they will do.

## LEGAL IMMIGRANTS FACE TERROR IN TERRORISM LAW: DEPORTATION

Immigration lawyers and the INS are now are trying to get the law changed. The Senate version of an omnibus immigration bill that will be discussed in a House-Senate conference committee this week restores the ability of judges to waive deportation under special circumstances.

Congress originally adopted the waivers because politicians got tired of constantly being petitioned by legal residents for legislation to allow them to stay in the country.

"Clearly, Congress is going to want a strong statement on criminal aliens," Martin said. But if the new law isn't changed, he said, the volume of demand for legislation affecting just one person or family will probably increase. "As the volume builds up, I suspect history will repeat itself."

## Graphic

---

Photos (2);

PHOTO: BY RICHARD WISDOM - MERCURY NEWS

Refugio Rubio Arias holds one of the chickens his family uses for food and eggs. Because of a 1972 marijuana conviction, he faces deportation, even though he has lived in Vallejo and worked as a pipe fitter for 15 years.

[960603 FR 14A 5]

PHOTO: Rubio

New law has him fighting deportation

[960603 FR 1A 6; color]

## Classification

---

**Language:** ENGLISH

**Subject:** IMMIGRATION (90%); CITIZENSHIP (90%); CRIMINAL CONVICTIONS (90%); JUDGES (90%); CRIMINAL OFFENSES (90%); JAIL SENTENCING (90%); LAWYERS (89%); FELONIES (89%); US FEDERAL GOVERNMENT (78%); POPULATION SIZE (78%); SENTENCING (77%); CORRECTIONS (77%); ARRESTS (77%); CONTROLLED SUBSTANCES CRIME (77%); LEGISLATION (76%); CANNABIS (72%); MARIJUANA (72%); HUMAN RIGHTS (71%); DEMOGRAPHIC GROUPS (67%); TERRORISM (66%)

**Company:** BAY AREA INSURANCE SERVICES (56%)

**Organization:** IMMIGRATION & NATURALIZATION SERVICE (57%); IMMIGRATION & NATURALIZATION SERVICE (57%)

**Industry:** LAWYERS (89%); CANNABIS (72%); MARIJUANA (72%)

**Geographic:** SAN FRANCISCO BAY AREA, CA, USA (79%); CALIFORNIA, USA (92%); UNITED STATES (94%)

LEGAL IMMIGRANTS FACE TERROR IN TERRORISM LAW: DEPORTATION

**Load-Date:** October 23, 2002

---

End of Document