

Agency to Use Dormant Law to Bar Homosexuals From U.S.

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Body

On the eve of a major international AIDS conference in San Francisco, the Immigration and Naturalization service is preparing to invoke a little-enforced law that bars the entry of homosexuals to the United States as sexual deviants, agency officials say.

The officials said Friday that they had taken steps to enforce the law after being told that some gay groups from abroad were going to test the law by declaring themselves homosexuals when they arrived for the Sixth International Conference on AIDS in San Francisco on June 20.

Homosexual rights groups in the United States said they knew nothing of a plan to test the statute. Tom Stoddard, executive director of the Lambda Legal Defense and Education Fund, a rights organization, said the idea behind the immigration service's assertion was nonsense.

"They are living in a fantasy world," Mr. Stoddard said. He said that the law was not being enforced and that his organization did not want to challenge it because of the conservative makeup of the Supreme Court.

Action Is Called Reluctant

An immigration service spokesman, Duke Austin, said the agency was taking the action reluctantly. "We didn't want to implement the statute, but we are under a court order to do that," he said. Even though the court ruling Mr. Austin referred to came in 1983, Mr. Austin said the immigration service felt compelled to act now in the face of an open challenge.

The gay organizations were shocked and puzzled over the agency's move. They cited the Bush Administration's new policies making it easier for people infected with the AIDS virus to travel to the United States to attend international meetings.

"This is a sudden, irrational and unexpected move in another direction," Mr. Stoddard said.

Geoffrey Knox, a spokesman for the Gay Men's Health Crisis in New York City, said: "This will exacerbate rather than defuse the problems at the conference. It is unbelievable that they are going to do something like this."

The Public Health Service also seemed embarrassed by the plans. A spokesman for the agency, James Brown, said Secretary Louis W. Sullivan of the Department of Health and Human Services and Assistant Secretary James Mason "along with many others from the Public Health Service will attend this important conference and want it to be a success."

Memorandum Discloses Plans

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The immigration service's plans came to light this week in a memorandum written by a Federal health official in which he warned his superior that Public Health Service doctors would have to be involved in enforcing the law and that the agency faced potential embarrassment as a result. Before a homosexual can be barred by the immigration service, a Public Health Service doctor must certify the alien to be afflicted with a "sexual deviation, or a mental defect."

The requirement that a doctor's certification be issued before the law could be enforced was a result of a 1983 ruling by the United States Court of Appeals for the Ninth Circuit, in California. The court let stand the Federal law that had been on the books since the 1950's that barred homosexuals, but at the same time it ruled in favor of the challenge to the statute that had been brought by the Lesbian Gay Freedom Day Committee of San Francisco.

The committee had contended that a Public Health Service doctor's certificate declaring an alien a homosexual was required before the law, which bars homosexuals even for a visit, could be enforced. The appeals court agreed. In addition to California, the decision affects the states of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington and Hawaii.

The immigration service did not appeal the decision.

The agency contends that a doctor's certificate is not necessary to bar homosexuals' entry to this country in states outside the Ninth Circuit. But in most places the immigration service avoids enforcing the law, by not asking people if they are homosexual. When people declare themselves homosexual, an immigration service official who spoke on the condition of anonymity said, the service simply defers action on the case for the duration of the person's visit.

The law was amended in 1965 to describe people who should be barred from entry to the United States as those "with psychopathic personality, or sexual deviation, or a mental defect." The Supreme Court ruled in 1967 that homosexuals could be barred from the country as sexual deviants.

It was not immediately clear how many doctors the immigration service would need to enforce the law, but the Public Health Service said doctors would be available at any airport where they were required.

Official Cites Concern

In the memorandum by the Federal health official, dated May 22, Dr. John West, Acting Regional Health Administrator for the Health and Human Services in the Western States, said the department had been requested to make available "a P.H.S. medical officer to conduct examinations of aliens who enter the U.S. and who self-profess to be homosexuals."

He suggested in the memo that involvement by the Public Health Service could be embarrassing because the Bush Administration had been working to make the conference a success and because Public Health Service itself was involved. "I want to alert you to a potentially sensitive matter which relates to the Sixth International AIDS Conference in San Francisco and will affect public perceptions of P.H.S.," Dr. West wrote to Dr. James Allen, Director of the National AIDS Program Office. "I am bringing this to your attention given the heightened sensitivities about our agency's participation in various aspects of the conference."

He wrote in the memorandum: "In conducting these examinations, a P.H.S. medical officer would ask several questions, including, 'Are you a homosexual?' Then the medical officer would certify a form and return it to I.N.S. for whatever action I.N.S. deems is warranted."

'Inspectors Have No Choice'

Mr. Austin of the immigration agency said the issue was an old one and was not about AIDS. But he said, "If the inspectors get a guy who is coming into that conference and he wants to make an issue, make that kind of proclamation at the border, the inspectors have no choice."

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If the I.N.S. bars the entry of a homosexual, the person has the right to appeal to an administrative law judge.

Mr. Brown, the Public Health Service spokesman, said, "We do not want to issue these certificates, but we were told by the Department of Justice that the circuit court ruled that we must do it because it is the law."

This ruling by the Justice Department was made not long after the 1983 court decision requiring the doctor's certificate before a homosexual could be barred.

The Public Health Service stopped issuing certificates declaring a person a homosexual after the American Psychological Association officially stopped listing homosexuality as a mental disorder in 1979.

Gay organizations had thought they would not have to worry about homosexuals being barred from the country after the appeals court decision, which said, "Because the P.H.S. refuses to issue medical certificates on the basis of homosexuality per se, and because we today hold that the I.N.S. may not exclude homosexual aliens without such certificates, it is completely speculative that any aliens will be excluded in the future on the basis of their homosexuality per se."

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