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Bill Ong Hing

University of San Francisco School of Law, bhing@usfca.edu

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TEACHING IMMIGRATION LAW AND IMMIGRANT RIGHTS FROM YOUR OWN CASELOAD

BILL ONG HING*

INTRODUCTION

The case began about two months earlier. “Do you have time to come to our next staff meeting to go over the preference system and grounds of deportation?” I was on the phone with Vera Haile, a counselor and paralegal at the International Institute. Vera was a veteran counselor at the institute, working with foreign students on English language skills and advising newcomers on life in the United States. We were discussing a case that she had referred to me: a student from Eritrea who came to her center for help with his student visa. I was relatively new—about six months into the job. I was no “expert,” but if the staff at International Institute just wanted a summary of the immigration preference system and the grounds of deportation, I could certainly accommodate. I found out pretty early on the job that when you are a legal services attorney in a neighborhood law office, like it or not, you are considered an expert in your particular field by staff at community-based organizations and the neighborhood residents. In fact, a legal services attorney might be regarded as an expert on many subjects regarded as pertaining to “the law” in a community low on resources and service providers.¹

So about a week later, on a Tuesday afternoon, I walked from my SFNLAF² office at the corner of Broadway and Columbus, up Broadway, past the Royal Pacific Motel, Yank Sing Restaurant, the Stockton Pharmacy, a vegetable and fruit stand, a nondescript sewing factory, and through the Broadway tunnel. I had driven through the half-mile tunnel many times, but never walked it. The walk was a little unnerving; cars streamed by, some honking, and the noise bounced off the tiled walls of the tunnel. The exhaust-

* Professor of Law, University of San Francisco, and Professor Emeritus, University of California, Davis.

1. As Jerry López has reminded us, however, in most neighborhoods and communities, residents rely on a range of problem solvers and counselors, such as priests, activists, and even neighbors, for assistance on a host of conflicts. See Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59, 90–91 (2004).

2. The organization was officially known as the San Francisco Neighborhood Legal Services Foundation.

filled air was toxic, and my clothes even felt like they were soaking in fumes. I pretty much resolved that I would not walk back that way. When I emerged on the other side of the tunnel, it was another three blocks to the International Institute office on Van Ness Avenue.

I timed it about right, arriving five minutes before 3 PM, the time that Vera had asked me to arrive. Besides Vera, six other paralegal counselors were there, and two secretaries, gathered around a beautiful, old oak meeting table in a grand dining-type room with exquisite mahogany walls. The building was a Victorian landmark that had been converted to a set of offices; I was told that a benefactor—a former board member—had donated the edifice to the organization to provide the services.

The staff had varying degrees of experience. Monica Abello had been counseling for about two years (that was eighteen months more than me). Vera had been around for more than five years, and the rest of the staff for less than a year.

After introductions, I started by handing out an outline of the preference system and the grounds of deportation that I had prepared. Vera and Monica had familiarity with much of what was on the outline, and the others were somewhat familiar. Soon into my presentation, however, it was clear that they wanted examples. And one example they wanted to discuss was the case that Vera had referred to me: Fethawit Tengam.

Fethawit was one of my first clients. It was 1975. Fethawit was from Eritrea, a foreign student who had been denied an application to change schools from Fresno State University (in the central valley of California) to San Francisco State University.³ He was suffering from a rare heart condition—Eisenmenger's syndrome. The problem manifests itself when the patient is at a high elevation; the heart valves begin to close and the person becomes short of breath. Not knowing what he was suffering from, when Fethawit began having breathing problems, he visited a doctor in Fresno who couldn't figure out the problem; Fethawit was advised to consult with a heart specialist in San Francisco. That doctor diagnosed the problem, and recommended that Fethawit transfer to San Francisco State University, which is about a mile from the ocean. At sea level Fethawit began feeling better immediately.

Fethawit enrolled in classes at San Francisco State, and went to the local office of the Immigration and Naturalization Service (INS) at 630 Sansome Street to inform officials of the situation. He had been told by school officials

3. At the time, Eritrea was in the midst of a long struggle for independence from Ethiopia. From 1961 until 1991, Eritrea essentially was engaged in a civil war of independence against Ethiopia, ultimately leading to a referendum and peaceful separation in 1993. *See, e.g.,* Ubong E. Effeh, *Sub-Saharan Africa: A Case Study on How Not to Realize Economic, Social and Cultural Rights, and A Proposal for Change*, 3 NW. U. J. INT'L HUM. RTS. 2, 15, 39 (2005).

that he needed to request an official approval in order to transfer schools. With a letter from the San Francisco heart specialist in hand, and after waiting for two hours in the waiting room, Fethawit was called into an area with a number of INS adjudicators and investigators seated inside their cubicled confines. The interviewer examined the application for change of status from Fethawit, listened to his story, reviewed the doctor's letters, jotted down some notes, then shook his head and said, "You'll receive a decision by mail, but it doesn't look good."

A few weeks later, the letter from the INS adjudicator arrived. It read, "[I]f being at a high elevation is a problem, then take a boat back to Eritrea." Fethawit's application for permission to change schools from Fresno State University to San Francisco State University was "denied." Reading the administrative denial that Fethawit shared with me was part of my rude introduction to the world of agency discretion that I have encountered all too often over a thirty-five year span representing immigrants and citizens before the INS and the Department of Homeland Security (DHS). The administrative appeal I filed on Fethawit's behalf did not do much good, and eventually he had to depart. But his example certainly has served as a good tool for teaching about agency discretion.

My approach to teaching law students was shaped by my experience as a young legal services attorney with SFNLAF. With little experience in the immigration field, I was fortunate to land the job as the immigration attorney with the Chinatown-North Beach office of SFNLAF soon after graduation. Being able to speak Cantonese and Spanish helped, because in the 1970s, it seemed that practicing before the INS and the Immigration Court included a good deal of representing clients from China, Hong Kong, and Mexico. Rightly or wrongly, in those heady days of neighborhood legal services, even a cocky young staff attorney like me was embraced overnight by the community as an expert. That regard was not simply manifested by the constant flow of low income client referrals, but by regular invitations to speak at schools, senior citizens centers, community service centers, and community forums. Many community-based organizations provided a variety of services to immigrants, such as job training, English lessons, and a range of social services. Invariably, those organizations made client referrals to me, and their staffs requested presentations and training on basic immigration laws and procedures like the one I did for the International Institute. Before all of these groups and audiences, I found that the most effective presentations were those filled with real case examples—some mine, some theirs. Eventually, I also trained SFNLAF volunteers, new attorneys, law students, and pro bono attorneys with real case examples. By the time I started teaching immigration law and immigrant rights in law school classes, my example-based approach to teaching was set.

My approach is not simply to help the audience or students retain basic information about immigration law and procedure. I confess: I think that immigration laws are far too restrictive. I believe that immigration enforcement policies are far too harsh. I would like to convince my students that I am right. Sometimes I'm successful; sometimes I'm not. Some students are harder to convince than others. Some do not need convincing. Some can never be convinced.

In my effort to sway those who might be convinced, I have found that stories of real people can help a good deal. Sometimes they are the stories of real people that are the subject of reported appellate decisions, but usually not. Most of the stories I use are the stories of former clients or people I've met, people whom I've read or heard about in the news, or clients of other practitioners (e.g., friends, former students, clinical instructors).

The idea is to get students thinking about the back story—about the real lives of individuals that are affected by immigration policies. The goal is to go beyond the facts (even the unreported facts) of the appellate cases that are contained in casebooks or that establish precedent. They are the facts of real people in real situations that are affected by immigration policy. This includes the folks who are clearly not eligible for relief under current immigration policies, in the hopes of pushing the students to question those policies. For some students, the cases expose the shortcomings of the policies. For other students, these cases arouse no sympathies, and the individuals are simply examples of those who are subject to reasonable laws.

The purpose of this Essay is to provide readers with a handful of illustrations culled from the cases which I have been involved with over the past few decades. I use these and other such cases throughout courses I teach on immigration law and community lawyering. I do not mean to say that my caseload was or is special. I firmly believe that anyone who teaches immigration law and immigrant rights can come up with similar cases easily. If you don't have a caseload of your own, then local practitioners, the clinical staff, and community-based organizations can fill you in on the multitude of relevant cases they handle day in, day out.

I. *LA MIGRA* BANGS ON THE DOOR AT 4 AM

The Cabral family moved to San Jose, California, from Mexico in 1974, about the time I was graduating from law school. The father of the family, Felipe, was a baker in a local *panaderia*, a Mexican pastry shop. Lucrecia, the mother, was a stay-at-home mom, and they had four children—two daughters and two sons. The family entered surreptitiously by paying a smuggler to help them cross the border, in Felipe's words, to seek "a better life." But a few years later, someone—a "friend" or enemy or neighbor or co-worker—reported them to federal immigration agents, *la migra*, as they are called in the Mexican community.

The arrest was rude. It came at four in the morning, when agents surrounded the house and pounded on the front door. After several minutes, Sylvia, one of the daughters, answered the door and denied that anyone else was home. But the agents busted in and eventually found the rest of the family hiding under the house. Everyone was arrested and dragged into federal detention. This was on May 20, 1976, and several days later I met the Cabral family when I was doing my rounds as a legal services attorney assigned to interview immigrants who had been taken into custody by *la migra*. Another daughter, Maria Reyna, who was seventeen at the time of the raid, recently told me that “the incident was the most terrifying and traumatic experience of [her] life.” For a long time, Maria Reyna “couldn’t sleep and was often depressed.”

Unfortunately, there was not a whole lot that could be asserted on behalf of the Cabral family given the lack of rights provided to undocumented under federal law. In those days, it was easy enough to convince an immigration judge to allow Lucrecia and the children out of custody pending the deportation hearing, and Felipe was also released after the family came up with \$2000 bail. At least the family was out of custody as we prepared for the deportation hearing. I remember visiting the family in San Jose on a Sunday afternoon to prepare for the hearing. They showed me around the house and the trapdoor that family members had used to hide under the house. They were upset about how the agents shoved their way into the house at 4 AM, and the family wanted to at least develop a strategy where they could protest the INS behavior at the hearing. We decided that at their deportation hearing, they would refuse to admit deportability, thereby setting up a procedure where we could object to the introduction of their statements at the time of arrest on Fourth and Fifth Amendment grounds that they were questioned during an illegal search and seizure by the agents. We knew that it would not get too far, but at least the family would be able to testify and complain about the conditions of the arrests. That was important to them.

The Cabrals took me in from the start. They were like the families that I grew up knowing, loving, and respecting in my hometown of Superior, Arizona, a small copper mining community in central Arizona that is predominantly Mexican American. The Cabral family, like the dozens of other families I knew in Superior, was kind, warm-hearted, friendly, hard-working, and decent. The children were fun-loving; the parents committed to their children, neighborhood, and church. They were in the United States to share a part of the American dream, not unlike the Gold Mountain image of America that Chinese migrants I knew had as well.

Although the immigration judge was not sympathetic and ruled against the Cabrals, the family was passionate about their plight. So much so that over the next decade I made special motions on their behalf, filed administrative and judicial appeals (including one to the U.S. Supreme Court), and tried to get Congress interested in their case for a private bill. Fortunately, in 1986,

Congress enacted the Immigration Reform Control Act,⁴ which granted legalization (amnesty) for undocumented individuals who were in the United States for at least five years, and the Cabral family was able to obtain legal status.

Felipe recently passed away, but I'm still in touch with the rest of this great *familia*. Maria Reyna, who now has her own family and works full time for Chrysler, volunteers on evenings and weekends for an immigrant rights organization in Redwood City, California. This is her way of helping others who are now facing what her own family endured.

II. RUNNIN' IN CHINATOWN

Okay, so I really didn't know much about San Francisco Chinatown when I started going to law school in San Francisco in 1971. Going to school at U.C. Berkeley from 1967 to 1971 helped a little because I got to know many students who grew up in San Francisco, and especially when I started dating my future wife, who grew up in the Chinatown/North Beach part of town. During the summer of 1972, after my first year of law school, I had the good fortune to spend all of my time in Chinatown. I landed two different part-time jobs—the Chinatown YWCA kids summer camp and the Chinatown/North Beach neighborhood branch of SFNLAF.

The work at the YWCA was especially educational for me in beginning to comprehend what it was like growing up in Chinatown. My kids' group was composed almost exclusively of immigrants from China and Hong Kong. I was able to make use of my kitchen Cantonese with these energy-packed youngsters, and I even put my guitar playing to use. By the end of the summer, I taught them how to sing and appreciate some classic American folk songs from Pete Seeger to Woodie Guthrie, along with a healthy dose of Peter, Paul, and Mary, Bob Dylan, and the Kingston Trio. They put on a grand performance for their immigrant parents in the final, late August camp show.

While I was at the YWCA only for that one summer, I ended up working at SFNLAF for eight years as a law clerk and attorney. My SFNLAF experience opened up great opportunities to get to know Chinatown and, eventually, the entire northern California immigrant community. For a time, I was receiving referrals from community-based organizations all over the region and represented clients from everywhere. As a law student, I assisted Ed Steinman with his Supreme Court cases, *Lau v. Nichols*⁵ (often referred to as the bilingual education case), and *Wong v. Hampton*⁶ (federal civil service jobs for immigrants). As an attorney, I handled the case of Peter McMullen, a

4. Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.).

5. 414 U.S. 563 (1974).

6. 426 U.S. 88 (1976).

former member of the Provisional Irish Republican Army,⁷ and Luz Cardoza-Fonseca, whose case ended up as a major victory in the Supreme Court.⁸

Down the hall from the SFNLAF office, at 250 Columbus Avenue (near Broadway) was the Chinatown Youth Center, a gang counseling organization. I couldn't help but get to know the counselors and many of the young men and women who hung out in the building, often wandering in and out of our reception area. I met many young gang members in a more official capacity as a young immigration attorney at SFNLAF. One was John Suey.

For a kid in Chinatown, John's story was not unusual. He was born in Hong Kong, one of six children. His parents, originally from mainland China, immigrated to Hong Kong after 1949 when the Communist Party took over. From there, the family was sponsored to come to the United States by John's aunt; John was seven years old. They settled in San Francisco's Chinatown in 1963, where John's aunt owned a restaurant. John's parents worked twelve to sixteen-hour days in the restaurant, mostly washing dishes. They were grateful for the opportunity to work and earn money, but found themselves too tired to spend much time with their children. Their search for other work was limited because they could not speak English.

The family was poor and the parents had to work long hours. The long working hours kept John's parents from providing much supervision as John and his siblings faced complicated cultural and economic adjustments. John's older siblings in high school started working part-time to help. John was the youngest boy in the family and had a lot of time on his hands. In grade school, he found camaraderie with neighborhood children who shared a similar background. Their parents were also busy struggling to get by. Like John these immigrant children faced cultural and identity conflicts. John had trouble learning English and had little outside support for his studies. His parents did not know about tutoring and did not have the time to provide help in school. At school, the American-born Chinese ("ABCs") children would pick on the foreign-born kids. This was more reason for John to hang out with children most like him. He did okay in school, but often got into fights with the ABCs. John did not see the rivalries as a racial thing, but simply the way things were in the neighborhood in which he grew up.

John gradually lost interest in school. On a typical day, he would go to school to meet his friends and cut classes. They started stealing from local stores for fun. Because his parents could hardly afford to give him any spending money, this became an easy and exciting way to get the small things he wanted. By selling what he stole, John made enough money to party, go out for dinner, and drink with his friends. Smoking, drinking, and fighting became a regular part of life in the neighborhood and John was caught participating in

7. *McMullen v. Immigration & Naturalization Service*, 658 F.2d 1312 (1981).

8. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

these activities several times. When John first started getting in trouble, his parents would hit him. But it soon became clear that they could not control him, and they decided to allow the law-enforcement authorities to transfer John to a boys' home in Palm Springs after being sent to Juvenile Hall. He thought he would do better from then on, but John ended up in Juvenile Hall a total of eight times by the time he reached the age of eighteen, mostly for stealing, but also for fighting.

The other kids in Juvenile Hall were of different races and bigger than John. John was forced to stand up for himself since he was constantly picked on by the bulkier kids. The counselors would give boxing gloves to kids who wanted to fight so they could settle their differences, and John obliged. By the time he was released, John was tougher, and things got worse. He and his friends did not consider themselves a gang (they had no gang name and did not function like a typical gang). John only cared about having fun and making money, but his actions led to a conviction for armed robbery at age nineteen, and he spent three years at Soledad, a maximum-security state prison.

John has said, "If you're not a criminal and you're sent to state prison, you become a criminal." John found himself in a place dominated by Blacks, Whites, and Latinos. This world taught him to sell drugs and offered him a heroin addiction. In Soledad, many of the inmates were serving sentences for murder. John was new and still a teenager, but the people around him had been there for years and held sway over younger inmates. Hardened by his previous experiences, John held his own as a "tough guy." No matter how tough he tried to be, John still knew he needed to ally himself with a group. With the few Asians in prison, he made friends who would watch his back even as he did the same for them. At the same time, these friends exposed John to drugs. Each racial group had an organizer who negotiated and provided whatever the group needed. John was involved in several fights and spent most of his time in lockdowns and solitary confinement. Yet, after serving three years in state prison, he was released on parole for good behavior.

John spent six months at a halfway house. He received training in electronics and got a job at General Electric. Soon he was able to move out of the halfway house and rent an apartment in San Jose. The taste of freedom was sweet, and he quickly wanted more. Because his family and friends were still in San Francisco, John started commuting frequently and visiting his girlfriend. John grew bored of working and tired of commuting from San Jose to San Francisco. He knew that moving back to his San Francisco neighborhood would expose him to strong temptation to return to his old habits, but he missed his family's home cooking and the support that he could only find close to those who knew and cared for him. After his parole ended, John quit his job with General Electric and returned to San Francisco. Back in his old neighborhood, he reverted to hanging out with old friends, using drugs,

and getting into fights. Prison had exposed him to heavy drugs, so that was what he sought. Without someone supervising his every action, it was almost as if he did not know what to do with so much freedom. He quit a construction job and started distributing drugs for a drug dealer to earn money. Finally, he was caught and arrested.

In 1979, just two years after being released from state prison, John pleaded guilty in federal court to possession with intent to distribute heroin and was sentenced to two years. John spent the first twenty months in rehabilitation for his heroin addiction and learned that federal prison was much different from Soledad. In federal prison, many of the inmates were educated. They had not committed violent crimes, but were instead serving time for big-time embezzlement, smuggling, and other white-collar crimes. The environment in the federal prison led John to think more clearly about what he was doing and where he was headed. He completed his GED while serving time and also attended a drug rehabilitation program. John was able to meet “a lot of good people.” One of these was a seventy-three-year-old man who became his friend and mentor. This man, an Asian minister, taught John to value his own life and the lives of others. John was forced to take a closer look at himself and realized the importance of self discipline.

John learned of his mother’s death while he was still in federal prison. This news caused him to feel great remorse for what he had done and to realize how he had missed being with those he loved. “It hurt me a lot. I [would always] return [from jail] badder and badder.” Upon release in 1981, John, now age twenty-five, decided to do things right.

John was now married, and he was determined to stay out of trouble and to find steady work. Because he was an ex-felon, he was rejected for employment over and over again, until an old friend helped him get a job at City Hall as a minimum wage clerk. After a year, he was accepted into a program for mechanic assistants.

Just as his life appeared to be on track, immigration officials took John into custody and initiated deportation proceedings because of his criminal record. John had been in the United States for more than twenty-five years, and he thought he had paid for his crimes by serving time in prison. “I did my time, I don’t deserve getting deported,” he thought to himself.

John became my client at SFNLAF just the way the Cabral family had, when I encountered him in custody at the local immigration holding facility. He was able to make bail of \$5000, and we began to prepare his case, knowing that his only chance was to persuade an immigration judge that he was now rehabilitated and deserved a second chance. Since his initial immigration to the United States at the age of seven, John had never returned to Hong Kong. He knew no relatives or friends there and would have an extremely difficult time adjusting. His life, his home, his work, and his family were in the United

States. In addition, John had become the sole provider and caretaker of his elderly father.

Dozens of letters supporting John were collected from friends, family, a supervisor, co-workers, a parole officer, and a court-appointed psychologist. John was a real partner in his case preparation, coming up with ideas on who could testify on his behalf and helping to gather letters of support. My friends at the Chinatown Youth Center also stepped up to help John with counseling and direction. In 1985, John was granted a waiver of deportation by a hard-nosed immigration judge by establishing his rehabilitation and the likely hardship to himself and his family if he was deported. He was given a second chance to establish a productive life in the United States.

John not only maintained his status as a lawful permanent resident of the United States, but applied and became a naturalized citizen as soon as he was eligible. He continues to live in San Francisco and has worked with the municipal railway as a mechanic for twenty-five years now. He is married and has three teenage daughters. His children are his inspiration—he is clean from all drugs and works daily to keep his life on track. John is eternally grateful for everyone's help. I check in with John regularly, because he inspires me to keep battling for others who deserve a second chance.

III. FROM POL POT TO HOT POT

Many (pronounced the same as “Manny”) Uch is a different sort of client of mine. You might say he's a policy client. What does that mean? Well, his case or situation represents a policy that advocates like me are trying to get changed. In 1996, Congress, in its wisdom, amended the immigration laws so that someone in John Suey's situation, namely an immigrant convicted of an aggravated felony, could no longer ask for a second chance. Now deportation is essentially automatic once you've been convicted of anything classified as an aggravated felony.⁹

Many is one of these poor souls who was convicted of an aggravated felony after 1996, who has a pending deportation order. I first met Many through his federal public defender, Jay Stansell, who told me about Many and how, while he was awaiting deportation, he started a Little League Baseball team for some Cambodian youth in Seattle. That piqued my interest because I grew up playing Little League Baseball summer after summer in the Arizona heat. It was a no brainer for me to send Many a \$100 check so that he could buy mitts for some of the youngsters.

At the age of seven, Many, his mother, and two older brothers came to the United States under horrific conditions. After their home country of Cambodia

9. See Bill Ong Hing, *Detention to Deportation—Rethinking the Removal of Cambodian Refugees*, 38 U.C. DAVIS L. REV. 891 (2005).

was dragged into war when the United States began bombing along the Vietnam/Cambodia border, the brutal Pol Pot-led Khmer Rouge regime came to power. Many's family was captured by the Khmer Rouge army, separated from their father, and forced from their home into the jungle. There they spent almost an entire year roaming and foraging for enough food to survive. In 1980, Red Cross workers found the family among the sick and the dead and placed them in a refugee camp.

Over the next four years the family bounced around from camp to camp, uncertain of their fate or of loved ones left behind. They assumed the worst. When Many's family made it to a refugee camp in the Philippines he began to pick up English and realized he was "a pretty smart kid." Yet life in the camps was dreary, and they were willing to sit through incomprehensible "Jesus movies" just to take their minds off tragedy.

On April 14, 1984, Many's family arrived in the United States as refugees. Their first destination was Richmond, Virginia, a place where nobody was like them. The family was scared and alone. In this strange new environment, they were placed in low-income housing, given a welfare check, and left to fend for themselves.

A year later Many's family decided to move to Seattle where other Cambodians they knew had been placed. There, living in a public housing project, they sought solace among others who understood their trauma. Although these bonds helped, they could do little to assist Many when it came to actually succeeding in America.

Refugees, Many says, "face many more obstacles than immigrants who voluntarily come here to work." Being forced from their homes to escape death, they are often unprepared for adjusting and still troubled by the nightmares of war. For Many, this abrupt move was especially tough coming from a country of very different traditions. Because his mother could not speak English and did not understand American customs, she could not advise him about school nor could she easily seek help from others. She had no formal education and most of the other elders had been farmers back home. None of them knew what dreams Many could have here.

Life at school was not much better for Many. He was placed in an "alternative school" that was completely unfit to teach him. "I didn't learn anything there, it was just too damn easy. They didn't expect anything from us, just to not cause any trouble." Half the girls were pregnant and almost all the guys were involved in something illegal. "How do I fit in with that?" he questioned.

Meanwhile in his neighborhood, Many faced the frustrations of poverty and discrimination. He always wondered why he couldn't have the things that other kids had. Kids at school would pick on Many for being different and poor. Riding the bus home from school, they would make fun of him for disembarking in the "projects." They would also tell him to "go back to his

country.” Many didn’t know how to respond, so sometimes he would get into fights over the harassment.

In his elementary school English as a Second Language (ESL) class, Many befriended a group of guys from similar backgrounds who had similar problems. Growing up together, they became very close. If other kids would pick on them, they would stand up for each other. “If our friend got jumped, we didn’t think twice. We’d go get those guys.” Soon Many became trapped in this “tough mentality.” If he didn’t fight, the other guys might look at him as weak. Sometimes he would have to steal to prove himself. And if someone would get in trouble with the law, he would never snitch.

Many and his large group of friends went everywhere together. To him they were a much-needed support group, but to police they were a gang. In the late 1980s when gang life in Los Angeles was being popularized, the label was pinned on Many and his friends. “We were never a gang, that title was given to us,” he explained.

As Many grew older, life in the street became faster paced, and he found himself doing worse crimes to get by. Fighting and stealing became a way of life; Many felt he had no other options. “You don’t really think you’re wrong ‘cause everyone in the neighborhood is doing the same things,” he explained. As his life of crime escalated, Many found himself trapped. To get the increasing amounts of money he needed, Many began to get involved with drugs and guns. When Many was eighteen, he was convicted of robbery and sent to prison.

Over the next six years Many was in some form of detention. He spent more than three years in prison and over two in immigration detention. Ironically, it was here he would have the opportunity to cultivate himself in a manner that he was unable to in his neighborhood. Many took advantage of the opportunity. In prison he read books, went to school, and learned the law. Later he used this knowledge to petition for his release. After a tough battle, Many eventually won his freedom.

In many ways, Many is a unique success story of a criminal justice system that has all but abandoned rehabilitation as a goal. And since 2002, when the United States forced Cambodia to sign a repatriation agreement, the U.S. government has deported many refugee youth like Many. He finds the breaking up of families unnecessary, especially after these youths have paid their debt to society. The community suffers severe damage as a result of deportations.

Many has not let this threat stop him from working to improve lives of kids from his neighborhood who might fall victim to the same troubles he did. In addition to the Little League Baseball team he started, Many tutors students at a local elementary school. “I want to show them the options nobody showed me. These kids relate to me because I know what they’re going through.”

Many's life now is quite different than before. He is engaged to be married and runs his own delivery business. Growing up, Many never realized how tough life was in his neighborhood because his only other comparison was a life of war. Although he has prepared himself to be separated from his family once again, for others, he says, "it would be a disaster." That's why he works tirelessly to help them. "I just wish someone would've gave me these tools back then, I really think I could have made it."

That's why I work with Many. And that's why colleagues and I continue to try to convince Congress to reinstate second-chance options for immigration judges to exercise that existed in the law prior to 1996.

CONCLUSION: THE WAR ON TERRORISM

Undocumented immigrants and immigrants convicted of crimes have never been very popular. I recall an old book titled *Attorney for the Damned*¹⁰ about the famous courtroom attorney Clarence Darrow, who represented some pretty unpopular souls during his career. I'm certainly not a Clarence Darrow; but over the course of my career, my time in immigration courts and the federal courts has been spent representing and working with individuals and families that are among the most maligned groups in the United States today—undocumented immigrants from Mexico and legal residents ("green card" holders) who have been convicted of crimes. We are a nation of immigrants, yet we are also a nation that goes through evil cycles of anti-immigrant fervor. But even in the best of times, the so-called "illegal" immigrants and criminal aliens don't have much support in the eyes of the public.

The tragic events of September 11, 2001, served as a peculiar reminder that the United States is a nation of immigrants that has grown more and more diverse since immigration laws were changed in 1965. As the nation reeled from the attacks, Americans regrouped in incredible demonstrations of unity and patriotism. But an ugly side to that patriotism also emerged,¹¹ targeting immigrant communities of Arab Americans, Muslims, Sikhs, and Pakistani Americans.¹² Hate speech and hate crimes directed at those groups surged, condoned largely by a governmental movement under the pretext of homeland security.

10. CLARENCE DARROW, *ATTORNEY FOR THE DAMNED: CLARENCE DARROW IN THE COURTROOM* (Arthur Weinberg ed., 1989).

11. See, e.g., Erwin Chemerinsky, *The War on Terrorism and the Loss of Freedom*, 6 *NEW CENTENNIAL REV.* 55, 66–67 (2006) (arguing with the words of Justice Brandeis that "the greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding").

12. See Bill Ong Hing, *Misusing Immigration Policies in the Name of Homeland Security*, 6 *NEW CENTENNIAL REV.* 195, 197–98 (2006).

Targeting Arabs, Muslims, and South Asians in the United States began immediately after 9/11. U.S. Attorney General John Ashcroft authorized the immediate detention of 1500 to 2000 as “suspected terrorists,” although none were ever charged with a terrorist act.¹³ Another 6000 from countries identified as al Qaeda strongholds were subjected to questioning, arrest, and deportation for ignoring court orders to leave the country.¹⁴ Then, in late 2002, immigration officials mandated that everyone with a temporary visa from Iran, Iraq, Libya, Syria, and Sudan had to report for new registration.¹⁵ This led to the unexpected detention of at least 450 people on technical immigration violations, many of whom had nearly completed the process for legal residency.¹⁶ Citizens of fifteen other countries, including North Korea, Saudi Arabia, Indonesia, Pakistan, and North African nations had to register by February 2003.¹⁷ Very many of those were held in secret without access to family or legal counsel, deported even if minor immigration violations were found. In all, officials screened about 7500 noncitizens under this effort, with none ever being charged with terrorism.

The post-9/11 racial profiling by ICE and the public has manifested itself in more and more direct-service and policy clients at my doorstep and the doorsteps of programs with which I have been involved like the Immigrant Legal Resource Center, the Asian Law Caucus, and the immigration clinic at U.C. Davis. And so it goes. There’s plenty of work today and tomorrow for anyone willing to serve as attorneys for the damned. And those cases provide a running supply of teaching examples for my courses, community presentations, and scholarship.

My cases and clients are why I teach and write about immigrants, immigration laws, the world of immigration policies, and the need for reform. My experiences with immigrants and the policies that affect them motivate me to inform others—especially students and policy makers—about the mostly misguided nature of U.S. immigration policies and enforcement priorities. Those experiences help me paint a real picture of those policies and priorities and, I hope, motivate others to take action and positions to advocate for progressive change.

13. David Cole, *Enemy Aliens and American Freedoms*, NATION, Sept. 23, 2002, at 20, 20.

14. Anny Bakalian & Mehdi Bozorgmehr, *Government Initiatives after the September 11th Attack on America*, in ENCYCLOPEDIA OF RACISM IN THE UNITED STATES (Pyong Gap Min ed., 2005), available at: http://web.gc.cuny.edu/memeac/research/Government_Initiatives.pdf.

15. MIGRATION POLICY INSTITUTE, CHRONOLOGY OF EVENTS SINCE SEPTEMBER 11, 2001 RELATED TO IMMIGRATION AND NATIONAL SECURITY 18 (2003), available at <http://www.migrationinformation.org/chronology.pdf>.

16. *Id.* at 21.

17. *Id.* at 18, 21.