

alien absconders currently loose in this country, and our law enforcement authorities simply don't know where they are. But as for those who are not a threat, those who want nothing more than the opportunity to work temporarily and return to their homes with the savings and the skills they need in order to have a better life in their home country, I believe we must move these temporary workers out of the shadows. We must at the same time ensure the security of our borders. We must restore respect for our law, and we must bring our broken immigration system into the 21st century.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

In 1999, a 37-year-old man was the target of a brutal anti-gay attack on a cruise ship off the California coast. The victim was assaulted in a hallway of the ship by two other passengers who called him a "faggot" several times. He sustained injuries including a broken nose, three skull fractures around his eyes, chipped teeth and multiple contusions.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ENFORCING U.S. IMMIGRATION LAWS

Mr. LEAHY. Mr. President, we all agree that among the things we learned from the September 11 attacks was that we need to do a much better job of enforcing our immigration laws. While no system is foolproof, we should at least make it as difficult as possible to evade our border controls and enter this country illegally.

In doing so we must also be sure that we protect the rights and dignity of innocent travelers, to ensure that those who have every right to come to this country are able to do so with a minimum of delay and difficulty. We must

also ensure that we do not betray our historic commitment to asylum, a dedication to provide refuge to those who flee oppression.

Since September 11, we have thwarted some illegal immigrants, although we do not know how many of them, if any, sought to come here to commit acts of terrorism. But we have also read about instances where innocent people were swept up by our border patrol agencies, and subjected to unnecessary and humiliating treatment.

These abuses not only damage the individual, but they damage our image around the world. As a result, people who would otherwise travel to the United States, as tourists, students, or for business, are deciding against coming out of fear that because of their race, or ethnicity, or nationality, or just because of the chance of a mistake, they might be mistreated or imprisoned.

Today I want to call attention to two cases. The first case involves Ms. Antje Croton, a German citizen married to an American school teacher from Brooklyn, whose ordeal was described in the January 21, 2004 edition of the *New York Times*.

Ms. Croton encountered a nightmarish immigration fiasco as she and her infant daughter tried to re-enter the United States after spending the holidays in Germany. The *New York Times* called Ms. Croton's ordeal "Kafkaesque." There is no better word for it.

Concerned that her travel permit had expired in July, Ms. Croton visited a Department of Homeland Security, DHS, office in New York City before leaving the country for Germany on December 9, 2003. After talking to officials there, she was assured that her permit was valid through April 2004. Believing her documents were in order, Ms. Croton left for Germany.

Upon her return, Ms. Croton was told by an immigration official at the airport in New York that her travel permit had expired, and that she could not enter the country. With her infant daughter, Ms. Croton was interrogated until 2 a.m. and told she was to be put on the next plane back to Germany, all without informing her husband, who was waiting in the terminal.

At one point, Ms. Croton and her daughter were taken to a room where a dozen individuals, including some who were suspected of transporting drugs and illegal firearms, were being held. After several more hours of back and forth, immigration officials finally gave Ms. Croton the option of leaving the airport if she bought a return ticket that left for Germany within 30 days.

Ms. Croton and her husband spent the next 30 days negotiating layers of byzantine immigration rules and regulations in an effort to resolve her case before she was forced to depart. Even with the help of elected officials and immigration lawyers, the couple was getting nowhere. It was only after an

inquiry from a *New York Times* reporter that the DHS began to pay attention.

The second case involves Sonam, a 30-year-old Buddhist nun whose plight was recounted in the January 27, 2004 edition of the *Washington Post*. Sonam, who goes by only one name, was detained at Dulles International Airport last August after arriving from Nepal.

After her father was arrested and tortured, Sonam fled from her native Tibet, controlled by China, to Nepal 3 years ago. She reached Nepal by walking for 8 days across mountainous territory. She then fled Nepal last summer, after the government there began returning Tibetan refugees to China, where they face prison and torture.

Sonam was granted asylum by a United States immigration judge last November, but the DHS immediately appealed the ruling and refused to release Sonam from custody during the pendency of the appeal. As a result, she may spend years in a local jail outside Richmond where she has been detained. In this jail, she is housed among common criminals and is unable to communicate with anyone because she does not know English.

The DHS defends its punitive policies toward asylum seekers on the grounds that it is concerned that terrorists may manipulate the asylum process. It strains belief to imagine that the DHS believes that a nun from Tibet with no knowledge of English or history of violence, whom a U.S. Government official has found deserving of asylum, is a potential terrorist.

Even Asa Hutchinson, the DHS Undersecretary for Border and Transportation Security, told the *Post* that "[e]ven a well-balanced policy can get out of kilter on an individual case because someone has exercised poor judgment." It is clearly the case here that someone at DHS is exercising poor judgment, and Secretary Ridge or Undersecretary Hutchinson should do something to rectify this injustice.

There is no question that securing our borders from international terrorists, criminals, and illegal immigrants is one of the most important responsibilities of the Federal Government. We are more aware of this today than ever before.

But this does not give DHS a license to act in a bureaucratic and heavy-handed manner, which is precisely how it appears they behaved in these cases.

Border security involves striking a balance. Instead of wasting time and resources scaring and harassing a German woman and her baby or a Tibetan nun, who pose no threat to the security of the United States, DHS should be focused on stopping real terrorists and criminals. Moreover, in the Croton case, an immigration official told Ms. Croton that her paperwork was in order before she left the United States.

Thanks to the *New York Times* and others, the Croton case may be headed for a happy ending. But this is an instance where the victim spoke English,

is married to an American, and is a citizen of a nation that is a close ally of the United States.

What if this had involved someone who spoke little or no English? What if the person in question were not married to an American citizen? What if the media and elected officials had not been aware of it, and had not gotten involved? I suspect the individual would have been deported, even though their only offense was listening to the advice of an immigration official.

Meanwhile, the outcome of the Sonam case remains unclear, and unless the DHS acts, she can expect to spend most if not all of 2004 behind bars.

There are probably dozens, if not hundreds of other cases, of would-be immigrants and asylum seekers that do not have happy endings that we do not know about. Even one case like this is too many. Immigrants are responsible for the diversity of cultures, ideas, and practices that make up our society. We have an important responsibility to help those attempting to come to this Nation legally.

Equally important, we have an interest in treating immigrants fairly and with respect. Poor treatment of legal immigrants squanders goodwill that the United States spends billions of dollars each year—through foreign aid, international exchanges, and public diplomacy programs—to cultivate.

To be sure, we want our DHS officials to do their jobs effectively. We have to make sure that people entering this Nation are doing so legally, and are not a threat to the United States. But, we also have to make sure that DHS officials act in a fair and professional manner.

I hope that the DHS is reviewing what went wrong in these cases, and taking whatever steps are necessary to prevent it from happening again. I ask unanimous consent that the New York Times and Washington Post articles be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 21, 2004]

TRIP HOME FROM EUROPE BECOMES
KAFKAESQUE ORDEAL
(By Nina Bernstein)

A German woman married to a Brooklyn schoolteacher had been told that she had all her papers in order when she took a quick trip to show off her infant daughter to her parents in Germany.

But her return home in late December turned surreal and terrifying when Homeland Security officials at Kennedy Airport rejected her travel documents, confiscated her passport, then detained her and the 3-month-old overnight in a room with shackled drug suspects. They let her go only after ordering her to leave the country no later than tomorrow.

After a month of desperate efforts by her American husband, their lawyers and legislators, late yesterday a spokeswoman for the Homeland Security Department said that the woman, Antje Croton, 36, would be granted a last-minute reprieve. But Mrs. Croton said she had received no written notification.

"I'm in a nightmare," she said as she packed yesterday afternoon, having abandoned hope of straightening out the problem. "I feel like I'm in the wrong movie."

Her husband, Christopher Croton, said the couple was not convinced their ordeal was over. "The experience has been like trying to open a door to a room that does not exist," Mr. Croton said. "That's the irony here. My German-born wife has to come here to experience this wall of, just The State."

He pointed out that other foreigners with fewer resources have been caught in the same kind of bureaucratic confusion ever since the Immigration and Naturalization Service was absorbed by the Department of Homeland Security last year.

Mrs. Croton has lived in Park Slope for five years, and her application for a green card has been pending for nearly two. When her sister urged her to visit Germany, she wanted to take no chances. So in October, she said, she asked immigration officials at 26 Federal Plaza about getting a new travel permit.

According to her account, an immigration official, C.E. Hernandez, insisted that her old permit was still valid, though it had a July expiration date, because it bore a stamp saying "April 2004." Reassured, Mrs. Croton departed on Dec. 9. "I did everything by the rules," Mrs. Croton said.

But on Dec. 22, when she returned to Kennedy Airport at 9 p.m., exhausted after a 10-hour trip alone with her baby daughter, Clara, front-line border security officers barred her way. They said the immigration official had been wrong: the July 2003 expiration, not the April 2004 stamp, applied, and she could not enter the United States.

They interrogated her until 2 a.m., she said, as she wept, tried to nurse her baby and pleaded with officials to call her husband, who was waiting without word in the terminal.

Mrs. Croton, who has worked for an ad agency in Hamburg and as a journalist in New York, and who recently started her own Internet business as a handbag designer, said she was astonished that the official questioning her had to struggle to enter her replies in an archaic computer, hunting and pecking and calling for help to save the document file.

"Then this man says, 'We are going to put you on the next plane going back home.'"

"I said, 'This is my home,'" recalled Mrs. Croton, who has lived in the same apartment with her husband since before they were married in 2001.

She was then taken from the airport's terminal 1 to terminal 4, she said, to a fluorescent-lit room where a dozen detainees included a man who had been carrying an illegal gun and several suspected drug couriers in shackles.

"I couldn't even spell my name anymore," Mrs. Croton said. "Nobody who hasn't had a little infant and traveled on a long-distance flight can understand. I said, 'I need to lie down. I'm shivering, I'm exhausted, I'm nursing.'" But she said an officer retorted: "Stop crying. There were other people here with kids, and it's not going to get you anywhere."

The most humane response, Mrs. Croton added, came from the low-level worker who had driven her from one terminal to the other. Learning that the mother had no diapers left for her baby, the driver returned with three toddler-sized disposable diapers, the only ones she could find.

In the morning, a supervisor told Mrs. Croton that she had to board a plane to Germany, but she refused, fearing for her health and the baby's. She was then offered another option: to buy a ticket for a flight to Germany leaving within 30 days, with no guarantee she could ever return.

The couple hoped to straighten out the mess before her forced departure, but the red tape seemed impervious. Two weeks ago, the couple went back to see Ms. Hernandez at Federal Plaza, and she again told Mrs. Croton that her travel document was still valid until April.

When told what had happened at the airport, other officials said that without Mrs. Croton's confiscated passport and file, their hands were tied. They were at an impasse until an inquiry by a reporter for The New York Times to Janet Rapaport, a spokeswoman for the Border Security section of Homeland Security.

That resulted in a flurry of activity. Ms. Rapaport said yesterday that a decision had been reached by Susan T. Mitchell, director of New York field operations for Customs Enforcement and Border Security, based on a review of Mrs. Croton's file. Mrs. Croton would be allowed to stay and pursue her green card application. "I guess for humanitarian reasons," Ms. Rapaport said.

"I want to believe it," Mrs. Croton said. "But they tell me I can stay, and then I stay, and then what if they tell me I'm a real law-breaker?"

[From Washingtonpost.com, Jan. 27, 2004]

GRANTED ASYLUM, NUN HELD IN VA. JAIL
TIBETAN ENTANGLED IN POST-9/11 CAUTION
(By David Cho)

HOPEWELL, VA.—Sonam always feared her devotion to Buddhism would land her behind bars in her native China. As it turns out, she is serving a long term in jail—not in East Asia but in central Virginia.

The 30-year-old Buddhist nun, who grew up in a Tibetan village near the foot of Mount Everest, fled to the United States in August after family members had been tortured and friends jailed for their faith, she said. But when she arrived at Dulles International Airport and requested asylum, federal immigration officials detained her and placed her in the local jail in this small city outside Richmond.

Sonam, who is known by that one name, has been here ever since except for a brief visit in November to a court room in Arlington where a federal immigration judge granted her asylum. But even as she was hugging her attorney in celebration, the lawyer from the Department of Homeland Security announced that she was appealing the case.

Sonam was then shackled and returned to her cell, where she waits for their next court date, which is likely to be in the fall at the earliest, her attorney said.

Sonam is among thousands of asylum seekers who have fled persecution in their homelands only to be jailed in the United States, a new report by the New York-based Lawyers Committee for Human Rights shows.

By law, the Department of Homeland Security detains all asylum seekers who arrive without proper documents. But since the Sept. 11, 2001, terrorist attacks, federal immigration officials have also been denying parole to those immigrants and appealing rulings in their favor, a practice that can keep them locked up for years, according to the report, which monitored the department's activities for a year and details scores of cases, including Sonam's.

Homeland Security officials deny they are trying to keep asylum seekers behind bars, although they acknowledge that long incarcerations occur. They say they are reviewing their practices in responses to the report and are tallying statistics on how many asylum seekers have been detained, refused parole or seen their cases appealed.

"Even a well-balanced policy can get out of kilter on an individual case because someone

has exercised poor judgment," said Asa Hutchinson, the Homeland Security Department's undersecretary for border and transportation security.

At the same time, he and others say their is concern that a terrorist could slip into the country under the guise of an asylum request.

"People who come here may have no legitimate [reason]. They are here for economic reasons or for criminal reasons and have been trained to assert asylum," Hutchinson said.

"That requires us to be careful and . . . sometimes it makes people more skeptical of asylum cases than they should be."

Last week, during an interview at the Riverside Regional Jail, Sonam spoke of her journey to the United States that began with a desperate, eight-day walk to Nepal across snow-capped mountains and ended with her first ride on an airplane, which frightened her so much she couldn't look out the window.

Sonam Singeri, a Tibetan working for Radio Free Asia who has befriended Sonam, was at the interview to translate. As soon as Sonam walked into the visitors' room and saw Singeri, she collapsed into her arms and sobbed uncontrollably.

"It's so lonely. It's so hard. Why is this happening?" she cried out, Singeri said.

Sonam told a story of flight and fear. She said her father has been jailed in Tibet and tortured with electric shock. She described hiding from police patrols as she made her way across the Himalaya Mountains to Nepal, where she lived for three years.

But even there, she said, she worried about her safety. In May, the Nepalese government began to round up Tibetan refugees and send them back to China, where they were sure to face prison and torture, she said.

Even after asylum seekers such as Sonam have convinced immigration judges that they are bona fide and pose no threat, Homeland Security lawyers continue to press appeals in many cases, the Lawyers Committee for Human Rights report says.

"They are indefinitely detaining asylum seekers who have already been granted relief, who present no risk, who have often been tortured in their home countries," said Archi Pyati, who works in the lawyers committee's asylum program.

"We are sending a message that in the United States . . . we don't hope that asylum seekers find their way here because if they do they will find themselves in a very difficult situation and in prolonged detention."

Immigrants seeking asylum in this country must prove not only their identities but also that they are in danger in their native countries.

Sonam's case was appealed because she did not have enough documentation to back up her story, according to a brief filed by Homeland Security attorney Deborah Todd. The fact that Sonam lived in Nepal for three years indicated that she could have safely stayed there and did not need to come to the United States, Todd argued in her appeal.

Asked to comment, a spokesman for Homeland Security said the department does not talk about ongoing cases.

Sonam said she had no way to get identity documents in Nepal because the government does not recognize refugees from China. She feared that she would be deported to China along with other Tibetans who were being sent back at the time. So she sought a way to get to the United States.

Using the money she had made as a seamstress before she joined her monastery in Nepal, Sonam booked a flight through Calcutta to Dulles.

After she was jailed in Virginia, her attorney, who has taken the case pro bono, twice

asked the Department of Homeland Security to release her from detention, arguing that Sonam poses no danger. But immigration officials denied both requests without much explanation, according to Sonam's attorney.

The hardest part of Sonam's life these days is that she cannot speak or understand the language of the inmates or guards. (She is also illiterate in her native Tibetan tongue.) She has not been able to have a conversation with anyone since her hearing in November and wept as she recounted her seemingly endless days of silence and isolation in jail. "I live in a prison but always in my mind, I hold onto a picture of His Holiness [the Dalai Lama] in my heart," she said. "This prison has become my monastery."

An hour into the interview, a guard tapped the window of the visitors' room. It was time to go.

Sonam shed a few more tears. It might be months before her next conversation. She hugged Singeri again and then followed the guard back to her part of the jail where she does not speak, cannot understand anyone and where she waits in her prison within a prison.

DAVID KAY INTERVIEW

Mr. VOINOVICH. Mr. President, during the past several days, there has been a great deal of discussion regarding comments made by David Kay, who until just recently led our search for weapons of mass destruction in Iraq.

There are some who have said that statements made by Mr. Kay indicate that there was no reason to take military action to address the threat posed by Saddam Hussein. I believe this is, at best, a misunderstanding of his statements. Mr. Kay clearly believes that removing Saddam Hussein from power was the right thing to do.

It is in this context that I would like to take this opportunity to share with my colleagues an interview that Mr. Kay gave yesterday morning, in which he outlines his thoughts on the dangers presented by Saddam Hussein.

When asked whether it was prudent to go to war, Mr. Kay responded:

I think it was absolutely prudent. In fact, I think at the end of the inspection process we'll paint a picture of Iraq that was far more dangerous than even we thought it was before the war. It was of a system collapsing. It was a country that had the capability in weapons of mass destruction areas and in which terrorists, like ants to honey, were going after it.

I believe it is helpful to review his comments in their entirety, and as such, I ask unanimous consent that the following interview be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the NBC Today Show, Jan. 27, 2004]

Anchor: Matt Lauer

David Kay, former head of Iraq survey group, discusses searching for weapons of mass destruction in Iraq.

MATT LAUER, co-host. The Bush administration now says it needs more to determine if Iraq had weapons of mass destruction; this after retired U.S. weapons inspector David Kay concluded that Saddam Hussein had no such weapons.

David Kay, good morning. Good to have you here.

Mr. DAVID KAY (Former Head Of Iraq Survey Group). Good morning, Matt.

LAUER. There are some people who say you spent eight months scouring the country of Iraq for stockpiles of weapons of mass destruction, chemical, biological, nuclear, and because you didn't find them, they make a blanket statement. And that is there US administration misled the American people building a case for war. Is that a fair statement?

Mr. KAY. I think it's not fair, and it also trivializes what we did find and the problem we face. The problem we face is that before the war not only the US administration and US intelligence, but the French, British, Germans, the UN, all thought Saddam had weapons of mass destruction. Not discovering them tells us we've got a more fundamental problem.

LAUER. But if you didn't find stockpiles of chemical, biological or nuclear weapons, does that mean they never existed, or does it mean they may have been moved out of Iraq prior to the war?

Mr. KAY. Well, we've certainly dealt with the possibility of moving, and we did that by trying to look to see if there was any signs of their actual production in the period after '98. And we really haven't found that. I think they were—there's a little evidence that large weapon stockpiles were moved. A lot of other stuff may well have been moved.

LAUER. So when you heard reports leading up to the war, and it's a—unclear where the—where the source of these reports came from, but that Iraqi troops had been given chemical and biological weapons. And they were prepared to use them against advancing US forces. And they could deploy them within 45 minutes, untrue in your opinion?

Mr. KAY. There's no evidence that they are true at this point in time.

LAUER. Let me play you a clip from the president's State of the Union address a year ago.

President George W. Bush (from file footage): "Year after year, Saddam Hussein has gone to elaborate lengths, spent enormous sums, taken great risks to build and keep weapons of mass destruction."

LAUER. In technical terms, was that an inaccurate statement?

Mr. KAY. Inaccurate in terms of the reality we found on the ground now. I think it was an accurate statement, given the intelligence the president and others were begin given then.

LAUER. But also accurate in your opinion because in truth Saddam Hussein did spend enormous amounts of money to develop chemical and biological weapons, but according to your report he just didn't get what he paid for.

Mr. KAY. Well, that was in part the—true. There are a tremendous amount of con—corruption there and lying that went on there. Saddam spent huge efforts at these weapons programs, no doubt about that.

LAUER. So when you say lying, his scientists, or people were coming to him saying, "I can develop chemical and biological weapons for you for the right amount of money." They were taking the money, in your opinion, and not delivering?

Mr. KAY. And not delivering, and reporting back successes that they were not having. That was quite common down there.

LAUER. So when you spoke to Iraqi scientists, what did they tell you about the active weapons program in the year leading up to the war?

Mr. KAY. They describe from 1998 on a Iraq that was descending into the utter inability to do anything organized. Corruption was there. They couldn't get the equipment. Money was wasted. People weren't really concerned about working, they were concerned about money.