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The New Privileges of U.S. Citizenship **by William L. Anderson & Candice E. Jackson**

Last month one of us celebrated a good friend's official swearing in as a U.S. citizen. After a decade-plus ordeal of wading through red tape and jumping through Immigration and Naturalization Services (INS) hoops, this woman exclaimed, "Thank God, I will never have to deal with the INS again!" Neither of us had the heart to break the news to her that the supposed privileges of U.S. citizenship in the midst of today's war on terror include suspicionless detainment, secret searches of your home or business by means of secret warrants, and a maze of vague, broadly applied federal criminal laws enforced at the whim of U.S. attorneys and other agency officials vested with almost unquestionable discretion.

As of March 2003, the agency formerly known as the INS operates partly under the new U.S. Citizen and Immigration Services (USCIS), partly under the new Bureau of Customs and Border Protection (CBP), and partly under the U.S. Immigration and Customs Enforcement (ICE); all three of these new agencies are part of the Department of Homeland Security (DHS).

At about the same time that our friend was popping a cork to celebrate attaining the rights and privileges of U.S. citizenship, another close family friend was being detained, interrogated, and threatened with arrest under federal law at the U.S.-Canadian border by CBP and ICE officials. This family friend, a U.S. citizen by birth and Washington state resident, was traveling back from Canada with her son's fiancée and that young woman's three-year-old child. The young woman and her child are Canadian citizens.

The three of them had made this trip together several times over the past year while our friend's son and fiancée have been making plans to marry and settle down in Washington state. Each time they have been meticulous about carrying documentation required for entry and exit, to Canada and back — proof of filing engagement papers (a Canadian requirement), the young woman's visa, court papers showing that the child is permitted to travel outside Canada (to avoid international charges of kidnapping by the little girl's biological father), and our friend's U.S. passport.

This time, after the routine border search of the car and trunk, the customs inspector ordered all three women out of the car and hauled them before ICE officials. The officials, carrying and displaying guns, separated the two adults and proceeded to accuse our friend, the U.S. citizen, of attempting to smuggle illegal aliens, a felony under federal law that carries a penalty of up to 20 years in prison. When our friend attempted to protest that all paperwork was in order showing there was no reason to believe that her two passengers were illegally entering the country or that she had any intent whatsoever to “smuggle” anyone, the ICE official retorted, “The fact that you’ve gone through such trouble to present proper documentation just proves that you’re trying to deceive us.”

Eventually the young woman and her little daughter were denied entry into the United States. Our friend was allowed to drive them back to Canada and return to the United States alone, but not before our friend’s U.S. passport was “marked” for suspicion of smuggling illegal aliens. The ICE official remarked to our friend, “We’ll let you go for now, but you’re marked now, so be prepared to be searched extensively every time you try to cross a border, and if you ever travel with a Canadian again prepare to be detained or arrested on the spot!”

These three unfortunate travelers aren’t the only ones to experience this arrogant, arbitrary wielding of government power at the Canadian border; since 9/11 thousands of U.S. citizens and innocent visitors to the supposed Land of the Free have been similarly intimidated.¹

In March, the U.S. Supreme Court approved the government’s authority to detain, search, and even seize any vehicle crossing the border using “all necessary force to compel compliance” requiring no reasonable suspicion at all.² The purpose is to allow the government total control over what and who enters the country. Earlier this year, the CBP proudly announced it was tripling the number of Border Patrol agents stationed along the U.S.-Canadian border, characterizing the step as necessary “given the continuing threat of terrorism.”³ I’m sure we all feel safer knowing that our government takes its job seriously enough to detain and threaten two women and a three-year-old girl, paying enough attention to mark their passports for future scrutiny.

At about the same time our friends were being intimidated by federal agents at the border, the Supreme Court heard arguments in a case⁴ that will have major implications for the constitutionality of the various proposed schemes for national identification cards floating around the hallowed halls of Congress. News reports speculated that the justices seemed divided on

¹ See: http://www.rabble.ca/in_your_own_words.shtml?x=29499.

² *U.S. v. Flores-Montano*, 2004 U.S. LEXIS 2548 (March 30, 2004).

³ Seper, Jerry, “Patrol tripled on Canada border.” *The Washington Times* (January 7, 2004).

⁴ The case is *Hiibel v. Sixth Judicial District Court of Nevada*, Supreme Court Case No. 03-5554.

whether to approve a Nevada law criminalizing the refusal of a citizen to give his name upon police demand.⁵ At this rate, the border won't be the only place where citizens and visitors alike will steadily become subjected to the routine demand, "Papers, please." The twist that should make all of us recoil is the federal government's creation of a new dilemma: having no papers means certain arrest and prosecution, but having your papers in perfect order only shows that you must be trying to pull a fast one on authorities.

Not long ago, a border guard making such baseless accusations against an American citizen would have been subject to discipline or even discharge. Today, had our friend filed a formal complaint, she would have been told to mind her own business, or would have faced further harassment. Were this incident to become public, no doubt a spokesperson from the CBP would have announced that the border guard had "acted properly" and was blameless in his actions that were meant to deter terrorism. Whether it is intimidating a young woman at the border or immolating women and children during a "nonassault" assault upon a religious group, as happened in Waco in 1993, U.S. agents are always portrayed as "acting properly" and upholding the policies of the government.

Marking passports and wielding the power of a gun over travelers harks back to October 5, 1938, when Jews in Germany were forced to have their passports marked with a "J" to deter them from traveling freely.⁶ While we would still prefer to live in the United States than any other country today, we fear that the inexorable trend — pursued so vigorously by the current administration — to overturn the presumption of innocence that historically lies at the heart of the American justice system can only signify "progress" along the road to serfdom, where everyone is guilty and unable to prove otherwise. Not a welcoming message to the thousands of hopefuls who, like our friend, have spent years dreaming of becoming a U.S. citizen.

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⁵ See: <http://www.washingtonpost.com/wp-dyn/articles/A16184-2004Mar22.html>; <http://washingtontimes.com/national/20040322-104302-1448r.htm>.

⁶ See: http://www.yad-vashem.org.il/about_holocaust/chronology/1933-1938.html#1938.