



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

Men Without a Country **by James Ottavio Castagnera**

19th-century writer, Edward Everett Hale, once published a story called “The Man without a Country.” The protagonist is Philip Nolan, a young U.S. Army officer who unwisely deserted to join the ill-fated effort of Aaron Burr to establish an independent empire west of the Mississippi. In Hale’s yarn, during his court martial for treason Nolan shouts, “Damn the United States! I wish I may never hear of the United States again!” The shocked presiding judge obliges, handing down the following sentence on September 23, 1807: “Prisoner, hear the sentence of the Court! The Court decides, subject to the approval of the President, that you never hear the name of the United States again.” And for the next half century Nolan lives out his life on board one U.S. Navy ship or another, never permitted to read an American newspaper or see his native soil — the man without a country.

Two hundred years later, life is emulating art. Last week the U.S. Supreme Court heard the appeal of Daniel Benitez, a 45-year-old Cuban immigrant, who has been held in federal custody since 2001. Benitez, a Cuban national, was among the thousands of “Mariel boat people” who sailed from that Cuban port in 1980, when Fidel Castro temporarily opened his island fiefdom to emigration.

Granted an immigration parole shortly after landing on a South Florida beach, Benitez was convicted of second-degree grand theft in 1983. When he was released from prison he applied for permanent residence in the United States. The Immigration and Naturalization Service denied his application on grounds of moral turpitude, citing the 1983 conviction. Benitez remained in migrant limbo until 1993, when he pled guilty in another Florida courtroom to a laundry list of felonies, including armed burglary and illegal possession of a firearm. The plea brought a 20-year sentence down on him.

This time around the INS ruled that continuation of Benitez’s immigration parole was “against the public interest.” And so the agency revoked it. In 2001 he was released into federal custody. The agency’s Cuban Review Panel at first found him releasable, when a suitable halfway house could sponsor him. But in 2003, the U.S. Citizenship and Immigration Service, a successor

to the INS under the Department of Homeland Security, revoked the Notice of Releaseability, on the basis of an allegation of a planned escape from jail. USCIS reached this decision without a hearing. Bottom line: Benitez is an inadmissible alien so far as the United States is concerned.

Now here's the catch: although Benitez is a native Cuban and still technically a Cuban citizen, Cuba, like Uncle Sam, wants no part of him. The Cuban government will not take him back. He is, quite literally, a man without a country.

Daniel Benitez is not the only immigrant enduring indefinite U.S. incarceration. The immigrant-advocacy group Human Rights First estimates that more than 2,000 "Philip Nolans" from around the world are in the same spot. And the federal courts are divided about how all these cases should be handled. Consequently, the Supreme Court consolidated two such cases from federal courts of appeals into *Benitez v. Wallis*. In an amicus curiae brief, Human Rights First, Amnesty International, and Human Rights Watch wrote,

No misuse of government power is more clearly established as a violation of international law than the practice of prolonged arbitrary detention. The right not to be unjustly detained, so central to our concept of ordered liberty, is articulated in the earliest documents on personal liberty as well as in the declarations, covenants, treaties, and constitutions that embody modern international law and the laws of free states. Indeed, the right is universally recognized among the democratic nations and among the international bodies that represent the nations of the world.

Nobody is suggesting that Daniel Benitez is a martyr or a saint. Like Hale's Philip Nolan, he is a criminal whose ill-considered words and deeds made him deserving of punishment. But once having paid his debt to our society, should he languish in prison for another 20 or 30 years — at our expense, fellow taxpayers — because neither America nor Cuba wants him walking the streets?

In the overcrowded, underdeveloped world in which most members of our species struggle to survive, America remains what Thomas Jefferson called our country — the last, best hope of the world. Since 9/11, we are much more reluctant to play that role. But it's one which we should not avoid. *Benitez v. Wallis* well may be a litmus test of how history will remember us. Will ours be the era in which America's dedication to liberty, due process, and the rule of law were relegated to history's dustbin for the sake of an illusory sense of security?

I hope not.

James Castagnera, a Philadelphia lawyer and writer, is the associate provost at Rider University and president of the Pinnacle Employment Law Institute.

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