

**COMMON SENSE
for
WE THE PEOPLE**

IMMIGRATION

“And yet the same revolutionary beliefs for which our forebears fought are still at issue around the globe – the belief that the right of man come not from the generosity of the state, but from the hand of God.” – John F. Kennedy

This paper will focus on the fact that our Federal Dept. of Justice and our Immigration and Naturalization Service are operating under the "color of law"¹ and systematically denying the People of our right to the "due process of law."² Our prisons are filled with people to the point that the "land of the free" now has the highest prisoner per capita rate in the world.

We must not confuse dissent with disloyalty. We must remember always that accusation is not proof, and that conviction depends upon evidence and due process of law.

We will not walk in fear, one of another. We will not be driven by fear into an age of unreason, if we dig deep in our history and our doctrine, and remember that we are not descended from fearful men, not from men who feared to write, to speak, to associate, and to defend causes that were for the moment unpopular.
- Edward R. Murrow, 1954

Common Law crime, which requires a victim with injuries or damages, has not produced enough business for our criminal justice system. By using statutory law and hiding the necessity for implementing regulations this system has been able to increase it's number of customers by more than eight times without there being any increase in crime, as there are no additional victims (other than the person being prosecuted under the color of law.) The principle of necessity for the regulation applies to all statutory law, whether state or federal.

The following was learned from a true story of an arrest and prosecution under U.S. Code Title 8 (Aliens and Nationality). We will use this case as an example, but it is typical of many thousands of cases involving immigrants. These principles apply to all immigration cases.

The many cases were all prosecuted under the statute §1326 (Reentry of removed aliens) of the Immigration and Naturalization Act³, passed by Congress and signed by the President. The Act was codified into Title 8 of the U.S. Code of Statutes, where you can read the statutes in their entirety and learn of the penalties prescribed for violations.

It is an operation of law that statutes be implemented by regulation for general application. How do we know that? Let's check the U.S. Supreme Court for their opinion and insight into this

¹ Color of Law: The appearance, without the substance, of a legal right. An action done with the apparent authority of law but actually in contravention of law. – Law Dictionary, 4th Ed., Stephen H. Gifis.

² due process of law: Implies the right of the person affected thereby... to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

³ Act: Action of Congress that governs conduct through one or more statutes.

1960 criminal case.

U.S. vs. Mersky

The result is that neither the statute nor the regulation are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other. U.S. vs. Mersky (361 US 431,4 Led 2nd 423)(*underline added*)

In the framework of criminal prosecution, unclarity in a statute or a regulation, issued thereunder is, of itself, enough to resolve doubts in favor of the defendant. [Headnote 10, U.S. vs. Mersky (361 US 431,4 Led 2nd 423)]

Regulations promulgated by an administrative agency under an act of Congress imposing criminal sanctions upon a violation of such regulations are governed by the same requirements of definiteness as are statutes defining criminal action.⁴ Such regulations must be explicit and unambiguous in order to sustain a criminal prosecution, and must adequately inform those who are subject to their terms as to what conduct will be considered evasive so as to bring the criminal penalties of the statute into operation.⁴ Indefiniteness in such regulations cannot be cured by an interpretation by the administrative agency, so as to sustain a criminal prosecution.⁴ " [Reference 2 (96 L ed 379) of Headnote 10 for U.S. vs. Mersky (361 US 431, 4 Led 2nd 423) Anno: Indefiniteness of Penal Laws § 3. Administrative regulations.]

Is that clear enough? If so, all we need to do is locate the corresponding regulation for implementing the Statute §1326. We can then all be assured that the convictions of those many thousands of cases we mentioned earlier are in order, and that none of those people have had their "life, liberty, or property seized without the due process of law". See Article 5 of the Bill of Rights, the Fifth Amendment to the Constitution.

Do you think we will be able to find this regulation that is required by law? Do you think we would be writing this paper if there were a regulation for this statute, §1326? That's right, there is no implementing regulation for these two statutes of the Act. There never was, there isn't now, and there probably never will be. How do we know? And more importantly, how can you know? Later we will show you how to look them up, or rather look for it, as you will be unable to find it either.

At the time of this writing we know of six defendants who have moved in Federal Court for the U.S. Government to bring forth the regulation(s) for 8 USC §1326 or have the court dismiss the case. No hearings have been held regarding these motions. Do you wonder why no one (except the defendants) wants to discuss the regulations or the lack thereof?

⁴ M. Kraus & Bros. V. United States (1946) 327 US 614, 90 L ed 894, 66 S Ct 705.

In the Immigration and Naturalization Act, Congress states the powers and duties of the Attorney General in §1103(a) to include:

(3) “He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter.”

(5) “He shall have the power and duty to control and guard the boundaries and borders of the United States against illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the service as to him shall appear necessary and proper.”

The law requires that an administrative agency be clear about how the statute will be implemented and who is subject to regulatory police powers. That is why the regulation is needed. The Dept. of Justice and the Immigration and Naturalization Service are administrative agencies.

According to the Administrative Procedures Act found in Title 5 U.S. Code §553, the regulations promulgated by the Attorney General under the Immigration and Naturalization Act must first be published in the Federal Register for public comment and debate by interested persons. Once the rulemaking process is lawfully finished, the regulation is listed in the Code of Federal Regulations (CFR). Looking in the Parallel Table of Authorities and Rules we first checked from the beginning of Title 8 if there were any range of statutes that included §1326, and found none. We then found the regulations for the Title 8 statutes from sections 1322 to 1330, in the following table:

Excerpt from the Parallel Table of Authorities and Rules	
STATUTES IN TITLE 8	IMPLEMENTING REGULATIONS IN
U.S. CODE SECTION	CODE OF FEDERAL REGULATIONS (CFR)
1322.....	8 Part 280
1323	8 Parts 273, 280
1324	8 Part 274, 28 Part 9
1324a-1324c	28 Part 68
1324a	8 Part 274a
1324b	8 Part 3, 28 Part 44
1324c	8 Part 270
1330	8 Parts 241, 280

In the above table Statutes 1322 through 1324 all have implementing regulations as required. They have been implemented into law and have force and effect of law. The regulations tell whom the statute will apply to and the administrative procedures to be followed. Do you see Statute §1326? They do not appear in the tables as they are without regulation. To confirm the requirement for regulation within government agencies let’s look at another U.S. Supreme Court ruling.

California Bankers Association vs. Schultz

Under the Act, the Secretary of the Treasury is authorized to prescribe by regulation certain record keeping and reporting requirements for banks and other financial institutions in this country. Because it has a bearing on our treatment of some of the issues raised by the parties, we think it is important to note that the Acts civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing the Act itself would impose no penalties on anyone. *California Bankers Association vs. Schultz* (416 US 21, 39L.Ed.2d 812, 94 S Ct.1494) (*underlines added*)

In the past we thought the laws had been corrupted, but after looking up statutes and regulations everything makes sense. You must have them both. The concept is almost too simple to grasp. This is how the Inalienable Rights are protected, and how the “ Due Process of Law “ works within Administrative Agencies.

Some people think the lack of regulations, (usually this only occurs where prison sentences are involved), is an oversight. Others think in this case the Attorney General (since 1952) has been derelict in his duty to bring forward the regulation. We don't think so. Publishing a regulation would confirm that these are administrative issues for people involved within the agency, (those registered with the I.N.S.), and that they are not a criminal matter, as pretended, since there is no victim with injuries or damages. If the principle of regulation was understood this would result in our government being unable to enforce the scheme of casting immigrants and migrants into our prisons at the People's expense for years on end (currently the maximum penalty is 20 years).

If this principle of regulation was known and stopped, the result would be a shrinkage of our huge prison industrial complex, which is now set to at least double every 8 to 10 years at our expense. As our country's corporations continue to move manufacturing jobs offshore and out of the United States, the Prison Industry is set to grow quickly, as business is very good right now. In January 2000 the I.N.S. estimated that there were seven million illegal aliens in the United States. I wonder how many of them know their future may be under the supervision of the Bureau of Prisons in a Federal Penitentiary. I wonder what Americans who support this scheme would think if their ancestors (most all of whom were immigrants) had been treated in this manner and where they themselves would be today.

Many of us feel only Americans Citizens have “Rights” and anyone else should be denied the “Rights”. Most of these people have no idea of what the “Rights” are and where they come from. Many seem to think the source is our Constitution. These rights were known of long before our constitution was written. In fact the Founding Documents were based on the principle that the “Rights” are God-given to all men as equals and that they are inalienable (unalienable or inseparable), from man at birth.

As framed in our “Bill of Rights,” perhaps the most important “Right” is the “Right” to the “Due Process of Law”. Once this “Right” is gone it will be very difficult to get it back. It is just

about gone now. As this most important “Right” disappears quickly for immigrants it also disappears for citizens of this country. Our appeal is to the people living in the United States to wake up and stand for your Rights before it is too late.

In a recent settlement of a class action suit, the I.N.S. agreed to notify all arrested aliens of important due process rights, e.g., the right to speak with an attorney or representative; the right to request a list of free and low cost legal services; the right to a hearing before an Immigration Judge; the right to release from detention on bond; the right to communicate with a consular or diplomatic officer of their home country; and the possibility of relief from deportation if they are married to a U.S. citizen or permanent resident or have lived in the U.S. longer than seven years. Along with the notice, the I.N.S. must distribute a Request for Disposition, which asks arrested aliens whether they would face harm if they returned to their home country. If so, the case will go to an Immigration Judge, pursuant to the rule §17.03[2] [d] of the **Immigration Law and Procedure Desk Edition 17-12**

The following is the typical procedure for defendants charged with violating Title 8 U. S. Code § 1326 – illegal re-entry:

After the suspect’s arrest he (or she) is held without bail. Sometime after the arraignment and indictment government attorneys in the Department of Justice then offer a plea agreement of a 30-month prison sentence followed by deportation. This is passed on to the defendant by his attorney (usually a Public Defender), who tells him that it’s a “good deal and that he should take it. The attorneys then add that the only alternative is to go trial where a conviction is certain, resulting in a much longer sentence. Let’s see if this is true.

Looking in the Statutory Index of the Federal Sentencing Guidelines under Immigration, Title 8 USC §1326, it refers us to §2L1.2 of the Guidelines. The following is an excerpt from §2 L 1.2 and the Sentencing Table of the Guidelines of November 1, 2005 (Note: This guideline still stands as of August 16, 2006).

§2L1.2. Unlawfully Entering or Remaining in the United States

- (a) Base **Offense** Level: 8
- (b) Specific Offense Characteristic
 - (1) Apply the Greatest:
 - If the defendant previously was deported, or unlawfully remained in the United States, after—
 - (A) a conviction for a felony that is (i) a drug trafficking **offense** for which the sentence imposed exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense, increase by 16 levels;
 - (B) a conviction for a felony drug trafficking offense for which the sentence imposed was 13 months or less, increase by 12 levels;
 - (C) a conviction for an aggravated felony, increase by 8 levels;
 - (D) a conviction for any other felony, increase by 4 levels; or
 - (E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking **offenses**, increase by 4 levels. **§2L1.2. (b)(1)(A)**

FEDERAL SENTENCING GUIDELINES MANUAL

(as of November 1, 2005)

SENTENCING TABLE

(in months of imprisonment)

Criminal History Category (Criminal History Points)		I	II	III	IV	V	VI
Offense Level		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
Zone A	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
Zone B	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-19	39069	18-24	24-30	27-33
Zone C	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
Zone D	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125

This is a partial Table, shortened for reasons of space.
It actually continues up to Offense Level 43, which has life sentence for all categories.

The Federal Sentencing Table is used by 1) find the offense level, and 2.) read across until the proper Criminal History Category is intersected. If you have no prior felony convictions or limited misdemeanor convictions you will be Criminal History Category 1, and your charge of §1326 begins with a basic Offense Level of 8. The two intersect at 0-6 months in the Table. If you have an extensive criminal history, you need to add the additional offense levels to the basic one of 8, so the 30-month plea offer might be then be a good deal.

Does your attorney's recommendation of signing your own conviction for a 30-month prison sentence still sound like a "good deal" to you in your case? If you don't mind doing the extra two years or so, it might be a good deal as room and board are free at the Big House as well as prison uniforms. In addition you will have a lot of time to rest and relax. If this sounds good to you, say nothing and sign the deal.

On the other hand if you prefer your liberty you might want to ask your attorney how the government came up with such figures and why he would recommend such a deal to you? If you should happen to get a coherent response to the question, please contact us so that we may know the answer as well. The only response we have heard so far is that since 9/11/01, the U.S. Dept. of Justice, under Attorney General John Ashcroft, has decided to prosecute "illegals" to the fullest extent of the law. We are wondering what law they are talking about? We are also wondering what has happened to the Due Process of Law? *

To our knowledge, these sentencing discrepancies were first uncovered in 2003 by a Mexican immigrant, who was being detained at the Federal Detention Center in Dublin, California. After arriving there he started doing some legal research in the law library. He had a prior conviction for 8 USC §1326 (a misdemeanor) and a State of California conviction for drug possession (a felony). The prosecuting attorney was calling the drug conviction an aggravated felony. Further research found federal case law saying otherwise. While continuing his research his attorney started pushing him hard to sign up for the "good deal" of only 30 months in prison, as the government was becoming irritated and would soon move to trial. This would result in him being convicted at trial and then receiving a much longer sentence. Up to twenty years is the statutory maximum, which is used as a threat to hurry up and sign the deal before the government takes the deal off the table. You see the system is based on intimidation, coercion and the denial of your right to the due process of law.

About a week later, his attorney came to see him for his last chance at the plea deal, and told him he was making a big mistake by not signing up. This is when he presented his attorney with the facts he had uncovered regarding the sentencing guidelines. A week or two later his attorney came back with a new deal the government was offering. If he would plead guilty to a violation of §1326 and agree to deportation he could go home with time already served. He signed the deal and about three weeks later (long enough to go to court and then process his release) he went back to Mexico, thus saving himself almost 2 years in prison. By the way this man had asked his attorney several times if §1326 had been implemented by regulation as required, and never received an answer. We only know of one other "illegal" who did not hurry and sign for 30 months. The last we heard of this second "illegal" was that the government would release him with time served and he would go to an Immigration hearing with the I.N.S.

In both the above cases the defendants were fluent in English. If you are not real good in English you will have to ask someone to help you. Also, when you go to court or meet with your attorney, demand an interpreter. Perhaps someone who reads this and is bilingual would be moved to translate it into Spanish for the benefit of all the immigrants yet to be arrested on immigration violations.

We would like to add that earlier in 2003 U.S. Attorney General John Ashcroft's boss, President G. W. Bush, stated that "the U. S. welcomes immigrants". We are not sure if he is aware of how the Attorney General welcomes immigrants. Perhaps he is not, as he is busy with affairs in many other countries around the world. In fact the only people we know of who are aware of current Department of Justice policy regarding immigrants are the people caught up in the system and some of their friends and family. Which brings us to the point – if we want to see real changes in these failed immigration policies it will take an organized effort by people who have knowledge of what is really happening. If you have read this paper and understand it you are one of those people who have knowledge of how the fraud works. If you have friends or family who are considered "illegal" you might want to pass a copy of this paper on to them as well as individuals or groups that support or advocate for immigrants. Even a small percent of the seven million "illegal" immigrants, who are educating and informing each other, would have a major effect on the current situation.

REFERENCES:

<http://www.gpoaccess.gov/uscode/index.html> US Code; Congress passes Acts, composed of statutes and labeled Sections within a Title, or volume, of Code.

<http://www.gpoaccess.gov/cfr/index.html> Code of Federal Regulations (CFR) implementing the statutes specifically as law.

http://www.access.gpo.gov/nara/cfr/parallel/parallel_table.pdf The CFR Parallel Table of Authorities and Rules lists implementing regulations under authority of U.S. Code (statutes) This gives information if a regulation exists for a statute, or if it applies to a specific case.

<http://www.ussc.gov/guidelin.htm> The Federal Sentencing Guidelines Manual.

NOTE:

To our knowledge the preceding information is correct and accurate at the time of this writing. If you find any errors or omission, or have comments, please contact us. For mail response include SASE.

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