

mary procedures affecting stowaways under 8 USCS § 1323(d) can be reconciled by allowing stowaways hearing limited to asylum claim, followed by whatever other procedural rights other asylum applicants are afforded; limiting hearing to issue of asylum eligibility preserves basic thrust of rule under 8 USCS § 1323(d) that stowaways are not entitled to exclusion hearings. *Yiu Sing Chun v Sava* (1983, CA2 NY) 708 F2d 869.

Alien stowaway whose application for asylum is denied by District Director may renew request before IJ, since Refugee Act of 1980 established uniform procedures for handling asylum claims consistent with United States' international treaty obligations, regardless of alien's status, and government cannot single out stowaways for lesser treatment notwithstanding INA § 273(d) [8 USCS § 1323(d)], which restricts stowaways' right to appeal. *Guo-Jun Cheng v Iichert* (1988, ND Cal) 698 F Supp 825.

Resident alien who departed temporarily and was returning as stowaway to unrelinquished residence in United States was entitled to hearing before he could be deported, notwithstanding provisions of 8 USCS § 1323(d). In re B— (1954, BIA) 5 I & N Dec 712.

Summary procedure of 8 USCS § 1323(d) did not apply to alien stowaway who was ordered detained on board, where alien had effected entry into United States, although such entry was admittedly illegal, and had remained in United States for almost two years. In re A— (1961, BIA) 9 I & N Dec 356.

26. Judicial review

8 USCS § 1323 does not deprive Court of jurisdiction to review denial of alien stowaway's request for asylum, and review of such matter can be had through use of petition for habeas corpus under 8 USCS § 1105a. *Garcia v Smith* (1982, CA11 Fla) 674 F2d 838, mod on other grounds and reh den (1982, CA11 Fla) 680 F2d 1327.

8 USCS § 1323(d) does not deprive federal court

of subject matter jurisdiction to review habeas corpus petitions submitted by stowaways seeking review of denial of political asylum pursuant to § 1158(a). *Yiu Sing Chun v Sava* (1982, ED NY) 550 F Supp 90, revd on other grounds (1983, CA2 NY) 708 F2d 869.

27. Miscellaneous

Carrier on whose vessel or plane stowaways arrive is responsible for returning them to place from whence they came, as well as for cost of any detention privileges between issuance of deportation/exclusion order and actual departure of stowaways. *Dia Navigation Co. v Pomeroy* (1994, CA3 NJ) 27 F3d 918, 1994 AMC 2090.

If INS wishes to impose on private carriers costs of detaining stowaways who have applied for asylum, it must do so pursuant to notice and comment requirements of Administrative Procedures Act, 5 USCS §§ 551 et seq., since such rules are legislative in nature. *Dia Navigation Co. v Pomeroy* (1994, CA3 NJ) 27 F3d 918, 1994 AMC 2090.

INS did not conform to rule-making requirements of APA when it adopted rule making carriers liable for cost of detaining stowaways who have applied for asylum; thus rule is null and void and has no effect. *Dia Navigation Co. v Pomeroy* (1994, CA3 NJ) 34 F3d 1255, 1994 AMC 2921 (criticized in *Linea Area Nacional de Chile, S.A. v Meissner* (1995, CA2 NY) 65 F3d 1034).

Carrier's claim under APA for reimbursement from INS for cost of detaining stowaways who had applied for asylum must fail since, pursuant to § 702 of APA, money damages are unavailable under APA. *Dia Navigation Co. v Pomeroy* (1994, CA3 NJ) 34 F3d 1255, 1994 AMC 2921 (criticized in *Linea Area Nacional de Chile, S.A. v Meissner* (1995, CA2 NY) 65 F3d 1034).

Stowaway is entitled to asylum hearing conducted by immigration judge together with incidents of such hearing. *Selgeka v Carroll* (1999, CA4 Va) 184 F3d 337.

§ 1324. Bringing in and harboring certain aliens

(a) Criminal penalties. (1)(A) Any person who—

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within

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(iii) knowing or in reckless disregard of the fact that an alien has come
to, entered, or remains in the United States in violation of law, conceals,
harbors, or shields from detection, or attempts to conceal, harbor, or
shield from detection, such alien in any place, including any building
or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the
United States, knowing or in reckless disregard of the fact that such
coming to, entry, or residence is or will be in violation of law; or

(v)(I) engages in any conspiracy to commit any of the preceding acts,
or

(II) aids or abets the commission of any of the preceding acts,
shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in
respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the
case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the
offense was done for the purpose of commercial advantage or private
financial gain, be fined under title 18, United States Code, imprisoned
not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A) (ii), (iii), (iv), or
(v)(II), be fined under title 18, United States Code, imprisoned not more
than 5 years, or both;

(iii) in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or
(v) during and in relation to which the person causes serious bodily
injury (as defined in section 1365 of title 18, United States Code) to,
or places in jeopardy the life of, any person, be fined under title 18,
United States Code, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or
(v) resulting in the death of any person, be punished by death or
imprisoned for any term of years or for life, fined under title 18, United
States Code, or both.

(C) It is not a violation of clauses [clause] (ii) or (iii) of subparagraph (A),
or of clause (iv) of subparagraph (A) except where a person encourages
or induces an alien to come to or enter the United States, for a religious
denomination having a bona fide nonprofit, religious organization in the
United States, or the agents or officers of such denomination or organiza-
tion, to encourage, invite, call, allow, or enable an alien who is present in
the United States to perform the vocation of a minister or missionary for
the denomination or organization in the United States as a volunteer who
is not compensated as an employee, notwithstanding the provision of
room, board, travel, medical assistance, and other basic living expenses,
provided the minister or missionary has been a member of the denomina-
tion for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an

alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

(A) be fined in accordance with title 18, United States Code, or imprisoned not more than 1 year, or both; or

(B) in the case of—

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under title 18, United States Code, and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(B) An alien described in this subparagraph is an alien who—

(i) is an unauthorized alien (as defined in section 274A(h)(3) [8 USCS § 1324a(h)(3)]), and

(ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

(C)(i) aliens were transported in a manner that endangered their lives; or

(ii) the aliens presented a life-threatening health risk to people in the United States.

(b) **Seizure and forfeiture.** (1) In general. Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

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(2) Applicable procedures. Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code [18 USCS §§ 981 et seq.], relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) Prima facie evidence in determinations of violations. In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(c) **Authority to arrest.** No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(d) **Admissibility of videotaped witness testimony.** Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

(e) **Outreach program.** The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.

(June 27, 1952, ch 477, Title II, Ch 8, § 274, 66 Stat. 228; Nov. 2, 1978, P. L. 95-582, § 2, 92 Stat. 2479; Dec. 29, 1981, P. L. 97-116, § 12, 985 Stat. 1617;