

Commentary

Has Our Government Lost Its Moral Compass?

Why we shouldn't prosecute immigrant parents who smuggle their children into the U.S.

By Milena A. Wilson

We applauded the heroes of the Underground Railroad that defied the U.S. Constitution and Congressional Acts by assisting Harriet Tubman and others to provide a secret passage to safety for fugitive slaves. We also applauded the heroes of German-occupied Europe that defied the then existing law of the lands by assisting Jews and other persecuted persons to hide or escape from certain death. The aforementioned are just two examples of many heroes around the world that demonstrate how people are moved to find the courage, in the face of danger, repercussions and even death, to do what is right or necessary.

These heroes understood that sometimes the law of the land must be broken due to necessity, self defense, defense of others or some other justifiable ground. These heroes were led by their moral compasses and had faith that the scales of justice would eventually tip in their favor. Their sacrifices and valor paid off for the greater good, and they serve as examples. As such, many are inspired to stand up for themselves or others when facing imminent danger. This type

Wilson is a solo practitioner and a part time lecturer at Rutgers University. She specializes in family based immigration, removal defense and humanitarian relief, and in residential real estate.

of courage is naturally found amongst the family bonds of spouses, parents and children. Unfortunately, it seems that one of our current government's intended immigration law enforcement practices will criminalize the type of valor and heroes mentioned.

On Feb. 20, John Kelly, the Department of Homeland Security Secretary, issued two enforcement guidance memoranda for the purpose of enforcing a series of executive orders that were issued by President Trump in January. Among the priorities listed in the President's executive order was the enforcement of immigration laws. In the enforcement memos that Kelly issued he stated that "the Director of ICE and the Commissioner of CBP shall ensure the proper enforcement of our immigration laws against any individual who directly or indirectly facilitates the illegal smuggling or trafficking of an alien child into the United States. [] Proper enforcement includes (but is not limited to) placing any such individual who is a removable alien into removal proceedings, or referring the individual for criminal prosecution." Two months later, on April 20, Secretary Kelly reiterated during a press conference that enforcing the immigration laws included "prosecuting anyone who pays traffickers to smuggle people into the country, especially those who smuggle in children, including family members who pay to have children smuggled into this country."

This intended enforcement policy opens the door for the prosecution of parents who paid or coordinated for their children to travel to the USA with the use of smugglers. In the vast majority of the cases that I am personally familiar with, originating in Central America, the parent's motivation in hiring smugglers was desperation. The desperation is due to the ongoing internal political corruption, chaos, lawlessness and terrorization by organized, and often highly sophisticated, gangs in Central America. In many towns, gangs own respective territories where the gang becomes a de-facto government imposing regulations, taxes and punishment, which includes torture and death.

Immigration law is highly complex because of the often arbitrary distinctions that it makes between seemingly synonymous terms that are, in fact, exclusively defined with distinct processes and consequences. For example, the distinction between "lawful status" and "legal status," and the distinction between "deportable" and "removable." This complexity is demonstrated by the government's intended enforcement. Surely, the prosecution of desperate parents trying to protect their children by having them travel to the United States to seek refuge is not an intended consequence of our immigration laws that promote humanitarian relief and family unity. In fact, our current immigration law has an exception for the deport-

ability of a person that was *convicted* of smuggling when it involved the smuggling of "a spouse, parent, or child (and no other individual)." INA §101(a)(43)(N). Despite this protection against *deportation* under the immigration law, there is no firm protection against the *removal* of a person who is seeking admission or adjustment of status and has been merely accused, or admitted to have smuggled a spouse, parent or child. In said circumstances, immigration law does permit the request of a *waiver from inadmissibility*. However, the waiver is purely discretionary and therefore not guaranteed.

In light of the natural instinct and desperation that moves family members to coordinate the clandestine travel of their loved ones, despite the inherent dangers of the journey, it is clear that criminalization of these acts is not a moral policy. Instead, our Congress should pass comprehensive immigration reform to include a safe passage and process for persons seeking asylum. Perhaps the Central American Minor Refugee program can be expanded to accommodate persons that do not have a "qualifying" family member in the USA. Until such time as our current immigration laws are updated and reformed to better protect vulnerable persons, without the need to rely on their undocumented family members reaching out to smugglers for assistance, let us hope that our government's compass and scales were merely misplaced and will soon be found. ■