

**Idaho Critical Legal Studies Journal 2018 Symposium Keynote Address  
By Idaho Supreme Court Justice Jim Jones**

One of the subjects that I have talked about a lot in my guest opinions is immigration and refugees. And of course, as Monique<sup>1</sup> said, we are a nation of immigrants; and we started our immigration to this country about seventeen-thousand years ago, give or take, at which time we didn't having rising seas. People came over from Asia across the bearing straights and settled in here. From that point forward, everybody that has arrived here has immigrated [] from some place. And, one of the things that I have always loved is the poem or sonnet that Emma Lazarus wrote back in 1883, "The New Colossus," and what she said: "Give me your tired, your poor, / Your huddled masses yearning to breathe free, / The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, / I lift my lamp beside the golden door!"

You know, that was written at a time when America had just come out of the Civil War. We were climbing to greatness, and since that time we have become a moral beacon to the world. We became the economic power-house of the world, and we are envied, or at least we were, by many nations. And the reason we reached that pinnacle is because of the work of immigrants and their descendants. We need to keep that tradition going because we are also becoming an aging nation. We have the lowest birth rate that we [have] ever had in the nation's history. People are getting older, and there are about six persons contributing to social security for every one that was receiving benefits. In 2035, there will be two people contributing for every person receiving benefits, and we can't do it.

Congress is not going to take care of it. Congress is not going to fix Medicaid or Social Security, so we have got to have more people coming into this nation or we are going to stagnate

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<sup>1</sup> Monique Lillard, Professor of Law at the University of Idaho College of Law. Professor Lillard gave a brief speech to introduce former Chief Justice Jones as the keynote speaker.

just like Japan. We have got to have people coming in. We certainly can't have people being thrown out because we need the population. We also need the thicker, new blood that people bring into this nation. Just look around at some of the people here in our little old state who have benefitted from immigrants. We have Hamdi Ulukaya. If you are a yogurt fan, you would know [that] he is the person that set up Chobani yogurt down in the Magic Valley, bringing jobs for immigrants, refugees, and good-old-down-home Magic Valley folks.

The CEO of Micron, Sanjay Mehrotra, [] is from India. He had previously set up a company called SanDisk with an immigrant from Israel and an immigrant from Taiwan. That company employed a lot of people. It was an \$18 billion company when they sold it. These are the kind of people that we're bringing in. You may not have heard this name, but there's a lady, Mona Hanna-Attisha—a refugee from Iraq. She is a medical doctor and was in a little town called Flint, Michigan when she started seeing something that she didn't like. Kids were having problems, and all the local, home-grown people said, "Not a problem." She said there is a problem. We've got to find out what the problem is. She was the one that discovered that the kids were ingesting lead every day in that little town. And if it weren't for her, the problem may not have ever been turned up, and action may have never been taken to solve it.

It's not just those people. I was looking at some statistics on some of the other people that have come into the country. Did you know that of the seven Nobel Prize winners here in the United States in 2016, six of them were immigrants? [Of] the kids that are getting the Junior Nobel Prize, the Intel Science Talent Search,<sup>2</sup> 17 percent of the winners in 2016 were American. The rest were immigrants. The MacArthur Fellowships started in 1981. Of the 968 winners since that time, 209 were born outside of the United States. These people bring in innovation, new blood, and they help

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<sup>2</sup> Now known as the Regeneron Science Talent Search.

keep our economy going. And we don't need people who just have high skills, we need people who will come and do our work for us. And those people will have kids who are highly-skilled themselves. You know, down in the Magic Valley, the dairy industry supports direct sales of \$10 billion per year. Ten billion dollars . . . About a quarter of that is for the raw milk, and the rest of it is for products like cheese, yogurt, that kind of thing. Eighty percent of the people that work in the dairy industry are immigrants, and the biggest part of them are undocumented. And, if it were not for those people, the dairy industry would have a hard time making a go of it because they can't get home-grown Americans to do the work.

The construction industry here in this state, and around the country, [is] supported by people who may or may not have documents. The hospitality industry [and] the homecare industry—and believe me the homecare industry is going to be growing . . . when the baby boomers [] retire[] and so on []—are going to need people to help. And immigrants furnish homecare at a higher rate than home-grown Americans, so we need these people.

Periodically, America turns inward, and that's unfortunate but that happens. It's either out of fear, anxiety, or just a grievance against certain people having certain rights, and they don't like it. And when you get a demigod who comes in and says, "These people are taking your jobs, these people are making life miserable for you. They're getting preferences to get into college, and if it weren't for them you'd be doing a whole lot better." And it's happened, you know when the Irish had the potato famine back in 1845 and 1852, everybody was talking about these people coming in and taking our jobs, [] being drunkards, and being a blight on society. Just a few years later those very same Irish folks were fighting on the Union's side in the Civil War, and they had a distinguished record. And people said, "Gee, maybe they aren't so bad after all."

They couldn't find anybody to build the western section of the Transcontinental Railroad because it was cold, and it was dangerous work. And so they said, "Let's have Chinese workers come over here and do this." A lot of them died, and they settled down, and people said, "They are taking our jobs. We don't want them in the mining camps up here in Idaho and we don't want them elsewhere." And so they prevailed on Congress to pass the Chinese Exclusion Act in 1882 and got rid of them. Later on, people said, "Gee, that wasn't very nice. We shouldn't have done that." In 1924, there was concern about people from Italy. It was stoked up by the landlords in Italy who didn't like the fact that they were putting upon their laborers, which made them want to migrate to the United States. And so they got a eugenics expert to say Italians climb toward crime, they're bad people, [and] we don't want them. So Congress passed the 1824 Exclusion Act which excluded about ninety million of the Italians, [ ] Eastern European Jews, and East Asians.

A few years later, people said, "My God, what are we going to do for pizza?" They said, "We made a big mistake. We shouldn't have done that, we're sorry." Of course, in [ ] February 19, [1942], the president signed an order calling for the internment of Japanese Americans, and they were rounded up. I grew up just five miles from the Hunt, or Minidoka, Relocation Camp. "These are bad people, you can't trust them." But of course a lot of those people signed up for an outfit called the 442 Infantry Regiment which went to Italy, and a lot of them died. Twenty-three of them got medals of honor, and one of them, when I was growing up in Eden, signed up for the Army, went to Italy and died in 1944. His name was William Nakamura, [and he] got the Congressional Medal of Honor. The only thing is, he got it fifty-six years late. But these people were good American citizens. They didn't deserve to be put in a concentration camp. And later we said, "Gee, that wasn't very nice. We shouldn't have done that."

I served in Vietnam when that country fell to the communists in 1975. And a lot of people jumped in boats because they were going to be persecuted. We had a lot of people saying, “We don’t want those people here. They’ll bring disease. They’ll be a blight on society. They’ll be infiltrators.” And years later their kids are getting some of the awards for scholarships in the schools. They’ve been good citizens, and people said, “Gee, maybe they are alright people.”

The thing is, we can’t be driven by fear. We’ve always regretted it, and what we see now, I think, is one of those phenomena where we are going through one of those fear-driven cycles. We’ve got the president who has done everything he can to cut down on immigration. His plan is to cut immigration from around a million people per year down to about five hundred thousand. Congressman Labrador has legislation in with the intent of cutting it down by about 25 percent. It’s stupid, it’s wrong, and it’s going to hurt our national interests.

We’ve had discussion about DACA.<sup>3</sup> I have to admit I really like Lawrence,<sup>4</sup> he’s such a good guy. I hired him back in the ’80s, and we disagree though. I think number one the point was made that we were not naturalizing the DACA folks, so that’s a difference. Number two, prosecutorial discretion, you can’t do it in a hatchet way. Well, we have this thing called the Unfair Sales Act that says that the Governor and the Attorney General have the responsibility of keeping people from selling their product for less than cost. It’s a Depression-era statute that was designed to protect little people. But I can tell you this, if you enforced it, it would take about all of the time of your department. The Attorney General’s Office has always said we do not have to enforce that statute because we don’t have the funding for it. I said it, my predecessors said it, my successors have said it, and it’s the way the world works here in Idaho.

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<sup>3</sup> Deferred Action for Childhood Arrivals.

<sup>4</sup> Lawrence Wasden, Idaho Attorney General who served as a panelist at the symposium.

The government has the responsibility that it shall be enforced, but we don't do it. I can tell you something else about that, the DACA program: if it is illegal, why was it extended for six months, and why did the president say he was going to extend it further if necessary? Have you ever played poker, and you had a real strong hand? You're not going to throw it in. You're going to ring it for everything you can get out of it. And that's exactly what the president is doing. The DACA folks, those eight hundred thousand, are the poker chips on the table. He's not going to stop them, he's not going to throw them out of the country because that's how he's going to get his wall. And that's how he is going to do away with what he calls "cheap migration"—bringing your family members. It's a good thing that Melania got her folks over here before that happened.

So, he's not going to throw in his cards. Now, he may torture people a little bit and throw some people out, but that's a strong card that he's got in his hands and he's not going to give it up for nothing. Let me talk about another subset of immigrants, and I've alluded to them already—the folks that came over from Vietnam after the Communists took over the country. Incidentally, I just went back to Vietnam for my first visit in fifty years. I can tell you that the people went through some really hard times right after 1975, but the country is growing. The people are optimistic. I think they are fairly happy. They don't have all of the rights that they may like, such as being able to speak their mind and demonstrate and that kind of thing, but I think things are a lot better than they were.

Anyway, these are people, [and] refugees in general, are people that to a degree are regular immigrants. But they are also people that are fleeing their country because they are in danger, they've been threatened, and they need some place to hide. We really have a responsibility to give them safe harbor here in this country. We don't have any hard and fast obligation under

international law to do it, but it's always been understood under various conventions that each country should do whatever it can to help these folks out.

I hate to say this, but a big part of the refugee problem: there's about twenty-five million around the world. A big part of that problem is the direct or indirect responsibility of the United States of America. We're one of the greatest refugee producers of any country in the world, and I think that's really not a proud legacy. We invaded Iraq for absolutely no good reason, and created a massive refugee crisis from that country. There are, as we speak, fifty thousand Iraqis who want to get into this country. There used to be a special program for giving special visas, but that program was phased out, and they have been put into the refugee category. Fifty thousand people who helped American troops as interpreters and guides are waiting to be allowed through the refugee program into this country. I think it's a travesty.

I know people. I served with the Vietnamese, and I lived with the Vietnamese when I was serving there. I made a lot of good friends (interpreters [and] other Vietnamese officers), and it just pains me to know that a lot of those people did not get out. And to leave these Iraqis hanging there in danger is a moral failing of this country of great magnitude. And not just that, we've supported the Saudis in the war in Yemen, which I think is stupid. We've created refugees there, we've been fighting in Somalia. We indirectly caused one of the main factors that played into the war in Syria. And, of course, we started the war in Afghanistan. Maybe that was justified, but that produced refugees. From the Obama Administration, there were about 110,000 refugees. It was cut down dramatically last year, and the projection for this coming year is... well the president put the cap at forty-five thousand, but it's probably going to be less than half of that, that is actually allowed into the country.

I think it's really something that we can't take a lot of pride in. If you look at some of the other countries, Syria has produced about 5.5 million refugees. Turkey has taken in 3.5 million. Lebanon has taken about 990,000. Jordan has taken in about six hundred thousand. Iraq took in over one hundred thousand. We simply haven't been doing our share, and we really have to do a lot better than that if we are going to hold our heads up in the international community.

I was just looking at some figures that the International Rescue Committee put out, saying that the number of refugees entering this country in the last fiscal year has fallen by about 94 percent. It's pretty sad. We've got legislation that will be introduced by Congressman Labrador that would establish a legislative cap of about forty-five thousand refugees per year. It would increase the waiting period to get lawful permanent residency from one year to three years. It would provide a preference to religious minorities. I don't think he thought that through very well because the people who are primarily refugees from Syria are the majority in Syria. They are Sunnis. The minority are the Shiites and Alawites. So, [the proposed legislation] would be giving the preference to the minorities who are suppressing the Sunnis, and the Sunnis would not have the preference where they are the people being put upon. It doesn't make much sense.

What can you say? The Administration has been doing all it can to slow down the process; to send people back through again. They just appointed a refugee skeptic, a friend of Stephen Miller, is the head of the refugee program and it is only going to get worse.

So, what can we do?

Well, I think we can contact our legislators and tell them that we need to have some action. That this is not good for our country, not good for our agricultural economy, and we need some action. We can publicly advocate, go out and talk about the fact that we are not doing our responsibility to the refugees, and we are not carrying out our responsibility to have a

comprehensive immigration program here in this country. Everybody recognizes the need for that, and I think that even Lawrence [Wasden] said that we need to have a comprehensive policy here in this country. We need to be thinking to the future because if we don't do something to implement a rational immigration policy—a policy to deal with refugees—our moral standing around the world will continue to decline. It's going to be bad for our economy, and if we try to throw out all of the people who are presently on the block, [] it's not just refugees; it's asylees, it's people who have come through the temporary protection program. If you look at the headlines that have just come out in recent days, the administration indicates that any acceptance of a tax or welfare benefit by an immigrant will result in possible penalties. Vietnamese immigrants have been rounded up if they have not attained permanent status, and they've got a big bunch of them in detention camps. The Vietnam agreement that we have with the ruling communists over there says that they don't have to take them. So, these people are just sitting in detention camps. We are getting ready to toss out two hundred thousand Salvadorians who came in on temporary protection status. The paper that came out yesterday said that Liberians are going to have their temporary status terminated, and it just goes on, and on, and on.

So, advocate for the refugees. Advocate for the immigrants because people need to hear about it. Letters to the editor would help. Guest opinions would help. One of the things that I have tried to do is set up a program to assist refugees, and we have expanded it to include all immigrants, with their legal problems. It's called the Equal Justice Committee. We got a website, and it needs some work, but it tells what we are doing.

Number one, we are advocating for refugees and immigrants through speaking out in public and so on. That has primarily been me, but I think other people will get involved in it. Number two, we are asking people who are members of the Bar to sign up with Idaho Volunteer Lawyer's

[Program (IVLP)] to handle refugee specific problems. I think over one hundred members of the Bar have signed up for that program so that when someone calls into IVLP, they say, “We’ve got a refugee who has a housing problem, will you take care of it?” That’s another thing we are doing: we are trying to set up education programs so that we can help refugees get the information they need to help advert problems. We’ve had support from any number of groups: [Intermountain] Fair Housing Council has been very helpful in getting the information to refugees and immigrants, and we will continue working with them; Idaho Legal Aid; [and] Concordia Law School’s program to help out with various discrete problems that refugees have. And [the Equal Justice Committee has] got a lot of lawyers who have signed up.

If you are interested, we are going to have a meeting with the refugee community on the fourth of April at the main public library building. It will be at six o’clock in the Marion-Bingham Room, which is on the third floor. You’re welcome to come. I’m baking cookies. There are things that we can do. I think that [] we [should] stand up for the refugee community and immigrant community (you know there is a great deal of fear in those communities about what’s going to happen). There are a great deal of people who have legal status and are fearful, and we’ve got some wonderful people here in this community who we need to give support to. We need to let them know that we are here and we are appreciative of them, and I think it will go a long way.