

# Places We Fear, Places We Dream

Obligations of the United States and South Korea to  
Adoptee-Deportees

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**April 23, 2018**

**Seoul, South Korea**

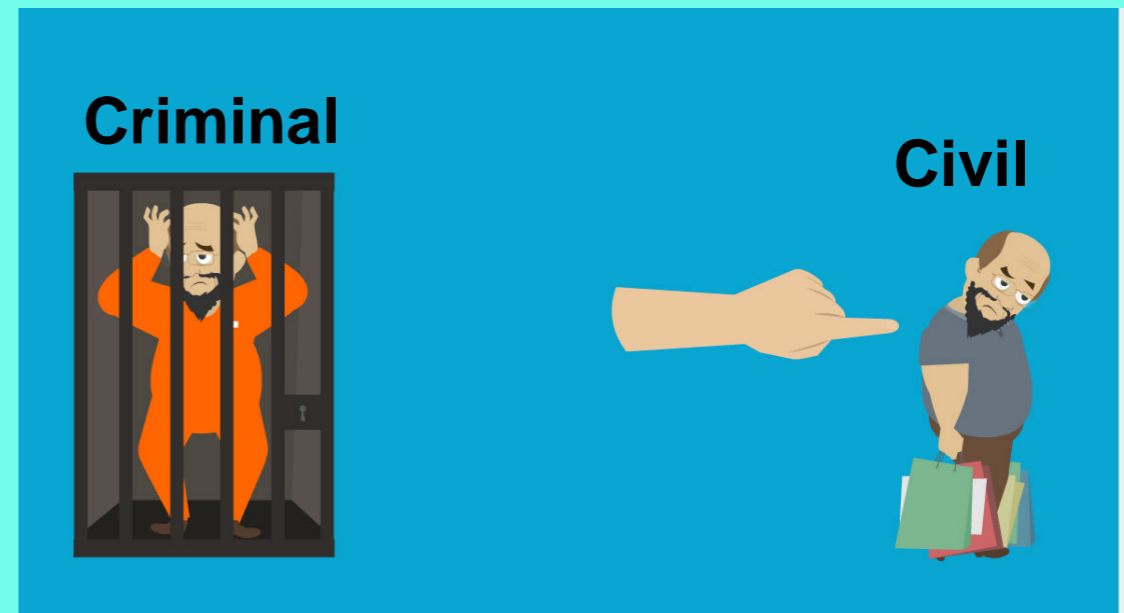
“There are places we fear, places we dream, places whose exiles we became and never learned it until, sometimes, too late.”

*–Thomas Pynchon*

# Deportation of those Convicted of a Criminal Offense is Treated as a Civil Proceeding

**Deportation is not punishment but  
“simply a refusal by the government to  
harbor persons whom it does not want.”**

*Bugajewitz v. Adams*, 228 U.S. 585, 591 (1913)



# Limited Constitutional Protection for Deportees



**Eight Amendment Prohibition against  
“Cruel and Unusual Punishment”**

**X**

**Fifth Amendment Prohibition against  
“Double Jeopardy”**

**X**

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**“inapplicable...”**

**“deportation is purely civil....”**

# Grounds to Protect Deportees Under International Law:

Balancing Right to a Family Against the State's Interest in Public Order

- American Declaration of the Rights and Duties of Man, Articles V - VII
- European Convention on Human Rights, Article VIII



“...the legitimate aim pursued has to be weighed against the seriousness of the interference with the applicants' right to respect for their family life.”

*-Berrehab v. Netherlands*, Judgment of June 21, 1988, No. 10730/84, para. 29.

# Rights to Due Process and Fair Trials

- Protected under US and international law
- Article 14, ICCPR
- Article 13 of the ICCPR provides for fair procedures before expelling aliens
- Article 6, European Convention on Human Rights
- Article 8, American Convention on Human Rights



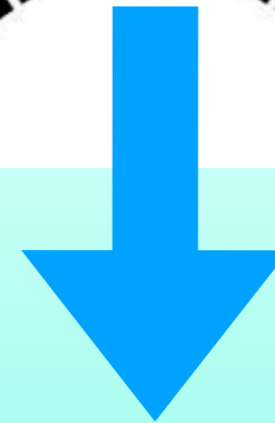
# Right to Citizenship

- Article 15, Universal Declaration of Human Rights
- Article 20, American Convention on Human Rights
- Article 7, UN Convention on the Rights of the Child provides for a right to nationality



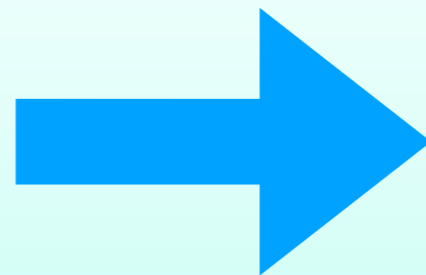
# IR 4 Visas

- Thousands of adoptees entered the United States but not all were automatically made citizens
- Some applied for citizenship
- Some did not





# Adoptees Face Deportation



- Adoptees often do not know they lack US citizenship
- “Returned” to a country with which they are not familiar

# Child Citizenship Act



- Adoptees (and other children with a parent who is a US citizen) under the age of 18 automatically becomes a US citizen
- But does not apply to those who are already 18

# Child Citizenship Act



- Effective February 27, 2001
- Adoptees (and other children with a parent who is a US citizen) under the age of 18 automatically become US citizens
- But does not apply to those who were already 18 as of the effective date

# Adoptee Citizenship Act of 2018



- Intended to close the loophole of the Child Citizenship Act
- Requires criminal background checks to ensure no unresolved criminal activity
- Would not grant citizenship to adoptees who were deported after being found guilty of crimes involving the use, attempted use, or threatened use of physical force

# South Korean Response



- High profile cases have generated attention
- Much of the work to receive deportees appears to be assigned to Korea Adoption Services (KAS)
- Does KAS have the ability to meaningfully assist deportees?

# Obligations to Deportees

- Adoptees are not at fault for “failing” to apply for citizenship
- Arguably, both South Korea and the United States failed to properly advise adoptees of risks they faced
- Deportation in this context is punitive and unfair to those expelled and their families
- Both countries should recognize post-deportation rights of the affected persons
- Until the situation is resolved, the United States and South Korea should cooperate to insure that English speaking, properly trained staff assist deportees so that they can adjust to South Korea
- This may provide South Korea with an opportunity to revisit the issue of international adoption
- And may provide South Korea with an opportunity to take the lead on insuring fair procedures for aliens facing expulsion