

Defending the Unpopular Immigrant



PHOTO COURTESY OF THE CABRAL FAMILY

Defending the Unpopular Immigrant

BILL ONG HING

Undocumented immigrants and immigrants convicted of crimes have never been very popular. I recall an old book titled *Attorney for the Damned* about the famous courtroom attorney Clarence Darrow, who represented some very unpopular people during his career. I'm certainly not a Clarence Darrow; however, over the course of my career, my time in immigration courts has been spent representing and working with individuals and families that are among the most unpopular groups in the United States today — undocumented immigrants from Mexico and legal residents (“green card” holders) who have been convicted of crimes. We are a nation of immigrants, yet we are also a nation that goes through evil cycles of anti-immigrant fervor. But even in the best of times, the so-called “illegal” immigrants and criminal aliens don't have much support in the eyes of the public.

La Migra Bangs on the Door at 4 a.m.

The Cabral family moved to San Jose, California, in 1974 from Mexico, about the time I was graduating from law school. The father of the family, Felipe, was a baker in a local panaderia, a Mexican pastry shop. Lucrecia, the mother, was a stay-at-home mom, and they had four children — two daughters and two sons. The family entered illegally by paying a smuggler to help them cross the border, in Felipe’s words, to seek “a better life.” But a couple years later, someone — a “friend” or enemy or neighbor or co-worker — reported them to federal immigration agents, *la migra*, as they are called in the Mexican community.

The arrest was rude. It came at four in the morning, when agents surrounded the house and pounded on the front door. After several minutes, Sylvia, one of the daughters, answered the door and denied that anyone else was home. But the agents busted in, and eventually found the rest of the family hiding under the house. Everyone was arrested and dragged into federal detention. This was on May 20, 1976, and a couple days later I met the Cabral family when I was doing my rounds as a legal services attorney assigned to interview immigrants who had been taken into custody by *la migra*. Another daughter, Maria Reyna,

who was seventeen at the time of the raid, recently told me that “the incident was the most terrifying and traumatic experience of [her] life.” For a long time, Maria Reyna “couldn’t sleep and was often depressed.”

Undocumented Under Federal Law

We have the power to exclude, to punish and to criminalize these border crossers. But that power must be implemented morally and ethically with an understanding that we are dealing with real human beings.

Unfortunately, there wasn’t a whole lot that could be asserted on behalf of the Cabral family given the lack of rights provided to undocumented immigrants under federal law. In those days, it was easy enough to convince an immigration judge to allow Lucrecia and the children out of custody pending the deportation hearing, and Felipe was also released after the family came up with \$2,000 bail. So at least, the family was out of custody as we prepared for the deportation hearing.

I remember visiting the family in San Jose on a Sunday afternoon to prepare for the hearing. They showed me around the house and the trap door that family members had used to hide under the house. They were upset about how the agents pushed their

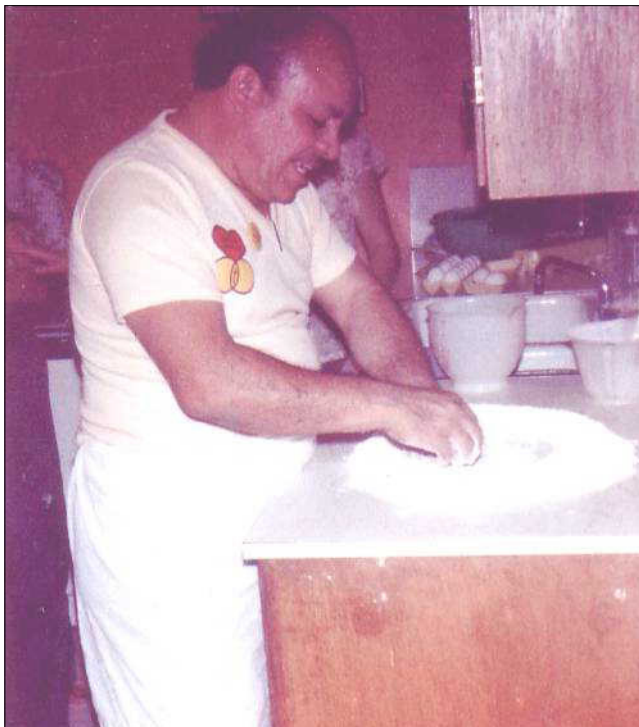


PHOTO COURTESY OF THE CABRAL FAMILY

“We are a nation of immigrants, yet we are also a nation that goes through evil cycles of anti-immigrant fervor.”

Photo: Felipe Cabral, at work at a Mexican bakery in San Jose, California.



PHOTOS COURTESY OF THE CABRAL FAMILY

way into the house at 4 a.m. and wanted to at least develop a strategy where they could complain about that behavior at the hearing. We decided that at their deportation hearing, they would refuse to admit deportability, thereby setting up a procedure where we could object to the introduction of their statements at the time of arrest on the grounds that they were questioned during an illegal search and seizure by the agents. We knew that that wouldn't get too far, but at least the family would be able to testify and complain about the conditions of the arrests. That was important to them.

The Cabral family took me in from the start. They were like the families that I grew up knowing, loving, and respecting in my hometown of Superior, Arizona, a small copper mining community in central Arizona that is predominantly Mexican American. The Cabral family, like the dozens of other families I knew in Superior, was kind, warm-hearted, friendly, hard-working, and decent. The children were fun-loving; the parents committed to their children, neighborhood, and church. They were in the United

States to share a part of the American dream, not unlike the Gold Mountain image of America that Chinese migrants I knew had as well.

Although the immigration judge was not sympathetic and ruled against the Cabrals, the family was passionate about their plight. So much so, that over the next decade I made special motions on their behalf, filed administrative and judicial appeals (including one to the U.S. Supreme Court), and tried to get Congress interested in their case. Fortunately, in 1986, Congress enacted the Immigration Reform

Control Act, which granted legalization (amnesty) for undocumented individuals who were in the United States for at least five years, and the Cabral family was able to obtain legal status. Felipe recently passed away, but I'm still in touch with the rest of this great *familia*. Maria Reyna, who now has her own family and works full time for Chrysler, volunteers on evenings and weekends for an immigrant rights organization in Redwood City, California. This is her way of helping others who are now facing what her own family endured.



FELIPE CABRAL with daughters, above photo and with great-granddaughter, below.

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Runnin’ in Chinatown

Okay, so I really didn’t know much about San Francisco Chinatown when I started going to law school in San Francisco in 1971. Going to school at Berkeley from 1967 to 1971 helped a little because I got to know many students who grew up in San Francisco, and especially when I started dating my future wife who grew up in the Chinatown/North Beach part of town. The summer of 1972, after my first year of law school, I had the opportunity to spend all of my time in Chinatown working part time in two different places — the Chinatown YWCA kids summer camp and the neighborhood branch of San Francisco Neighborhood Legal Assistance Foundation (SFNLAF).



Photo: San Francisco Chinatown. © Russell Leong.

The work at the YWCA was especially educational for me when it came to beginning to comprehend what it was like growing up in Chinatown. While I was at the YWCA only for that summer, I had been at SFNLAF for eight years as a law clerk and attorney. Down the hall from the SFNLAF office, was the Youth Guidance Center, a gang counseling organization, so I couldn’t help but get to know the counselors and many of the young men and women who hung out in the building.

I met many young gang members in a more official capacity as a young immigration attorney at SFNLAF. One was John Suey.

Child Immigrant — John Suey

John was born in Hong Kong, one of six kids. His parents, originally from mainland China, immigrated to Hong Kong after 1949 when the Communist Party took over. From there, the family was sponsored to come to the United States by John’s aunt; John was seven years old. They settled in 1963 in San Francisco’s Chinatown, where John’s aunt owned a restaurant. John’s parents worked twelve to sixteen hour days in the restaurant, mostly washing dishes. They were grateful for the opportunity to work and earn money, but found themselves too tired to spend much time with their children. Their search for other work was limited because they couldn’t speak English.

Troubles Begin

The family was poor and the parents had to work long hours. The long working hours kept John’s parents from providing much supervision as John and his siblings faced complicated cultural and economic adjustments. John’s older siblings in high school started working part-time to help. John was the youngest boy in the family and had a lot of time on his hands. In grade school, he found companionship with neighborhood children who shared

a similar background. Their parents were also busy struggling to get by. Like John these immigrant children also faced cultural and identity conflicts. John had trouble learning English and did not have much outside support for his studies. His parents did not know about tutoring and did not have the time to provide help in school. At school, the American-born Chinese (ABCs) children would pick on the foreign-born kids. This was more reason for John to hang out with children most like him. He did okay in school, but often got into fights with the ABCs. John did not see the rivalries as a racial thing, but simply the way things were in the neighborhood in which he grew up.

John gradually lost interest in school. On a typical day, he would go to school to meet his friends and cut classes. They started stealing from local stores for fun. Since his parents could hardly afford to give him any spending money, this became an easy and exciting way to get the small things he wanted. By selling what he stole, John made enough money to party, go out for dinner, and drink with his friends. Smoking, drinking and fighting became a regular occurrence in the neighborhood and John was caught participating in these activities several times. When John first started getting in trouble, his parents would hit him. It soon became clear that they could not control him, however, and they decided to allow the authorities to take John to a boys' home in Palm Springs after being sent to Juvenile Hall. He thought he would do better from then on, but John ended up in Juvenile Hall a total of eight times by the time he reached the age of eighteen, mostly for stealing, but finally for fighting.

The other kids in Juvenile Hall were of different races and bigger than John. John was forced to stand up for himself since he was constantly picked on by these larger kids. The counselors would give boxing gloves to kids who wanted to fight so they could settle their differences. By the time he was released John was tougher, and things got worse. He and his friends did not consider themselves a gang (they had no gang name and did not function like a typical gang). John only cared about having fun and making money, but his actions led to a conviction for armed robbery at

age nineteen, and he spent three years at Soledad, a maximum security state prison.

John has said, "If you're not a criminal and you're sent to state prison, you become a criminal." John found himself in a place dominated by Blacks, Whites, and Latinos. This world taught him to sell drugs and offered him a heroin addiction. In Soledad, many of the inmates were serving sentences for murder. John was new and still a teenager, but the people around him had been there for years and enjoyed seducing younger inmates. Hardened by his previous experiences, though, John held his own as a "tough guy." No matter how tough he tried to be, John still knew he needed to ally himself with a group. With the few Asians, he made friends who would watch his back even as he did the same for them. At the same time, these friends exposed John to drugs. Each racial group had an organizer who negotiated and provided whatever the group needed. John was involved in several fights and spent most of his time in lock-downs and solitary confinement. After serving three years in state prison, he was released on parole for good behavior.

John spent six months at a halfway house. He received training in electronics and got a job at General Electric. Soon he was able to move out of the halfway house and rent an apartment in San Jose. The taste of freedom was sweet and he quickly wanted more. Since his family and friends were still in San Francisco, John started commuting frequently and visiting his girlfriend. John grew bored of working and tired of commuting from San Jose to San Francisco to see his girlfriend. He knew that moving back to his San Francisco neighborhood would expose him to strong temptation to return to his old habits, but he missed his family's home cooking and the support that he could only find close to those who knew and cared for him. After his parole ended, John quit his job with General Electric and returned to San Francisco. Back in his old neighborhood, he reverted to hanging out with old friends, using drugs and getting into fights. Prison had exposed him to heavy drugs, so that was what he sought. Without someone supervising his every action, it was almost like he did not know what to

"If you're not a criminal and you're sent to state prison, you become a criminal."

-John Suey

do with so much freedom. He quit his construction job and started distributing drugs for a drug dealer to earn money. Finally, he was caught and arrested.

In 1979, just two years after being released from state prison, John pleaded guilty in federal court to possession with intent to distribute heroin and was sentenced to two years. John spent the first twenty months in rehabilitation for his heroine addiction and learned that federal prison was much different from Soledad. In federal prison, many of the inmates were educated. They had not committed violent crimes, but were instead serving time for big time embezzlement, smuggling and the other white-collar crimes. The environment in the federal prison led John to think more clearly about what he was doing and where he was headed. He completed his GED while serving time and also attended a drug rehabilitation program. John was able to meet “a lot of good people.” One of these was a 73-year-old man who became his friend and mentor. This man, an Asian minister, taught John to value his life and the life of others. John was forced to take a closer look at himself and realized the importance of self discipline. John learned of his mother’s death while he was still in federal prison. This caused him to feel great remorse for what he had done and how he had missed being with those he loved. “It hurt me a lot. I [would always] return [from jail] badder and badder.” Upon release in 1981, John, now age twenty-five, decided to do things right.

John was now married, and he was determined to stay out of trouble and to find steady work. Because he was an ex-felon, he was rejected over and over again, until an old friend helped him get a job at City Hall as a minimum wage clerk. After a year, he was accepted into a program for mechanic assistants.

Deportation Proceedings

While his life appeared to be on track, immigration officials took him into custody and initiated deportation proceedings because of John’s criminal record. John had been in the United States for more than 25 years, and he thought he had paid for his crimes by serving time in prison. “I did my time, I don’t deserve getting deported.”

John became my client at SFNLAF just the way the Cabral family had, when I encountered him in custody at the local immigration holding facility. He was able to make bail of \$5,000, and we began to prepare his case, knowing that his only chance was to persuade an immigration judge that he was now rehabilitated and deserved a second chance.

Since his initial immigration to the U.S. at the age of 7, John had never returned to Hong Kong. He knew no relatives or friends there and would have an extremely difficult time adjusting. His life, his home, his work and family were in the United States. In addition, John had become the sole provider and caretaker of his elderly father. Dozens of letters supporting John came from friends, family, a supervisor, co-workers, a parole officer and a court-appointed psychologist. John was a real partner in his case preparation, coming up with ideas on who could testify on his behalf and helping to gather letters of support. In 1985, John was granted a waiver of deportation by a stern immigration judge by establishing his rehabilitation and the likely hardship to himself and his family if he was deported. He was given a second chance to establish a life in the United States.

John not only maintained his status as a lawful permanent resident of the U.S., but applied and be-



Photos, opposite page and this page: Cambodian American youth, who participated in the little league team started by Many Uch.

came a naturalized citizen as soon as he was eligible. He continues to live in San Francisco and has worked with the municipal railway as a mechanic for twenty-five years now. He is married and has three teenage daughters. His children are his inspiration — he is clean from all drugs and works daily to keep his life on track. John is eternally grateful for everyone’s help. I check in with John regularly, because he inspires me to keep battling for others who deserve a second chance.

From Pol Pot to Hot Pot

Many (pronounced the same as “Manny”) Uch is a different sort of client of mine. You might say he’s a policy client. What does that mean? Well, his case or situation represents a policy that I and dozens of others are trying to get changed. In 1996, Congress, in its wisdom, amended the immigration laws so that someone in John Suey’s situation, namely an immigrant convicted of an aggravated felony, could no longer ask for a second chance. Now deportation is essentially automatic once you’ve been convicted of anything classified as an aggravated felony.

Many is one of these poor souls who was convicted of an aggravated felony after 1996, who has a pending deportation order. I first met Many through his federal public defender in Seattle, Jay Stansell, who told me about Many and how, while he was awaiting deportation he started a Little League Baseball team for some Cambodian youth in Seattle. That piqued my interest because I grew up playing Little League Baseball summer after summer in the Arizona heat, and I sent Many a \$100 check so that he could buy some mitts for some of the young kids.

Early Life in Cambodia

At the age of seven, Many, his mother, and two older brothers came to the U.S. under horrific conditions. After their home country of Cambodia was pulled into war when the U.S. began bombing along the Vietnam/Cambodia border, the brutal Pol Pot-led Khmer Rouge regime came to power. Many’s family was captured by the Khmer Rouge army, separated from their father, and forced from their home into the jungle. There they spent almost an entire year roaming and foraging for enough food to survive. In 1980, Red Cross workers found the family among the sick and the dead and placed them in a refugee camp.

Over the next four years the family bounced around from camp to camp, uncertain of their fate or of loved ones left behind. They assumed the worst. When Many’s family made it to a refugee camp in the Philippines he began to pick up English and realized he was “a pretty smart kid.” Yet life in the camps was dreary, and they were willing to sit through incomprehensible “Jesus movies” just to take their minds off tragedy.

On April 14, 1984, Many’s family arrived in the United States as refugees. Their first destination was Richmond, Virginia, a place where nobody was like them. The family was scared and alone. In this strange new environment, they were placed in low-income housing, given a welfare check, and left to fend for themselves.

A year later Many’s family decided to move to Seattle where other Cambodians they knew had been placed. There, living in a public housing project, they sought solace among others who understood their



PHOTOS COURTESY OF MANY UCH

“As the nation reeled from the September 11 attacks, Americans regrouped in incredible demonstrations of unity and patriotism. But an ugly side to that patriotism also emerged, targeting immigrant communities of Arab Americans, Muslims, Sikhs, and Pakistani Americans.”

trauma. Though these bonds helped, they could do little to assist Many when it came to actually succeeding in America.

Refugee Status

Refugees, Many says, “face many more obstacles than immigrants who voluntarily come here to work.” Being forced from their homes to escape death, they are often unprepared for adjusting and still troubled by the nightmares of war. For Many, this abrupt move was especially tough coming from a country of very different traditions. Because his mother could not speak English and did not understand American customs, she could not advise him about school nor could she easily seek help from others. She had no formal education and most of the other elders had been farmers back home. None of them knew what dreams Many could have here.

Life at school was not much better for Many. He was placed in an “alternative school” that was completely unfit to teach him. “I didn’t learn anything there, it was just too damn easy. They didn’t expect anything from us, just to not cause any trouble.” Half the girls were pregnant and almost all the guys were involved in something illegal. “How do I fit in with that?” he questioned.

Meanwhile in his neighborhood, Many faced the frustrations of poverty and discrimination. He always wondered why he couldn’t have the things that other kids had. Kids at school would pick on Many for being different and poor. Riding the bus home from school, they would make fun of him for getting off in the “projects.” They would also tell him to “go back to his country.” Many didn’t know how to respond, so sometimes he would get into fights over it.

In his elementary school English as a Second Language (ESL) class, Many befriended a group of guys from similar backgrounds who had similar problems. Growing up together they became very close. If other kids would pick on them, they would stand up for

each other. “If our friend got jumped, we didn’t think twice. We’d go get those guys.” Soon Many became trapped in this “tough mentality.” If he didn’t fight, the other guys might look at him as weak. Sometimes he would have to steal to prove himself. And if someone would get in trouble with the law, he would never snitch.

Many and his large group of friends went everywhere together. To him they were a much needed support group, but to police they were a gang. In the late 1980s when gang life in Los Angeles was being popularized, the label was pinned on Many and his friends. “We were never a gang, that title was given to us,” he explained.

As Many grew older, life in the street became faster paced, and he found himself doing worse crimes to get by. Fighting and stealing became a way of life; Many felt he had no other options. “You don’t really think you’re wrong ‘cause everyone in the neighborhood is doing the same things,” he explained. As his life of crime escalated, Many found himself trapped. To get the increasing amounts of money he needed, Many began to get involved with drugs and guns. When Many was 18, he was convicted of robbery and sent to prison.

Over the next six years Many was in some form of detention. He spent more than three years in prison and over two in immigration detention. Ironically, it was here he would have the opportunity to cultivate himself in a manner that he was unable to in his neighborhood. Many took advantage of the opportunity. In prison he read books, went to school, and learned the law. Later he used this knowledge to petition for his release. After a tough battle, Many eventually won his freedom.

In many ways, Many is a unique success story of a criminal justice system that has all but abandoned rehabilitation as a goal. But since 2002, when the U.S. forced Cambodia to sign a repatriation agreement, the U.S. government has deported many refugee youth like Many. He finds such damage of breaking



PHOTO COURTESY OF BILL ONG HING

*“There’s plenty of work today
and tomorrow for anyone
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Bill Ong Hing, lawyer and activist.

up families unnecessary, especially after the debt to society has been paid through imprisonment.

Many has not let this threat stop him from working to improve lives of kids from his neighborhood who might fall victim to the same troubles he did. In addition to the Little League Baseball team he started, he tutors students at a local elementary school. “I want to show them the options nobody showed me. These kids relate to me because I know what they’re going through.”

Many’s life now is quite different than it was before. He is now engaged to be married and runs his own delivery business. Growing up, Many never realized how tough life was in his neighborhood because his only other comparison was a life of war. Though he has prepared himself to be separated from his family once again, for others he says, “it would be a disaster.” That’s why he works tirelessly to help them. “I just wish someone would’ve gave me these tools back then, I really think I could have made it.”

That’s why I work with Many. Others and I continue to try to convince Congress to reinstate second chance possibilities that existed in the law prior to 1996.

The War on Terrorism

The tragic events of September 11, 2001, served as a reminder that the United States is a nation of immigrants that has grown more and more diverse since immigration laws were changed in 1965. As the nation reeled from the attacks, Americans re-

grouped in incredible demonstrations of unity and patriotism. But an ugly side to that patriotism also emerged, targeting immigrant communities of Arab Americans, Muslims, Sikhs, and Pakistani Americans. Hate speech and hate crimes directed at those groups surged, condoned largely by a governmental movement under the pretext of homeland security.

Targeting Arabs, Muslims, and South Asians in the United States began immediately after 9/11. U.S. Attorney General John Ashcroft authorized the immediate detention of 1,500 to 2,000 as “suspected terrorists,” although none were ever charged with a terrorist act. Another 6,000 from countries identified as al Qaeda strongholds were arrested for ignoring court orders to leave the country. Then in late 2002, immigration officials mandated that everyone with a temporary visa from Iran, Iraq, Libya, Syria and Sudan had to report for new registration. This led to the unexpected detention of at least 450 individuals on technical immigration violations, many of whom had nearly completed the process for legal residency. Citizens of fifteen other countries, including North Korea, Saudi Arabia, Indonesia, Pakistan and North African nations, had to register by February 2003. Many of those were held in secret without access to family or legal counsel, deported even if minor immigration violations were found. In all, officials screened about 7,500 noncitizens under this effort, with none ever being charged with terrorism.

And so it goes. There’s plenty of work today and tomorrow for anyone willing to serve as attorneys for the damned.