

the name of good public policy would undermine the nation's equally important commitment to preserving competition and to maintaining a level playing field for small businesses. The law established an analytical framework in which regulatory agencies were directed to consider the impact on small businesses of their regulatory proposals and consider alternatives that would have a more equitable impact without compromising public policy objectives. The Reg Flex Act had bipartisan support, as well as the support of the small business community.

In 1996 the Senate Small Business Committee led the effort to strengthen the Reg Flex Act with the passage of the Small Business Regulatory Enforcement Fairness Act. Under SBREFA, for the first time, the courts were given jurisdiction to review agency compliance with the law and impose remedial action where necessary. This and other changes have truly altered the culture within regulatory agencies. Federal government agencies are learning that they must balance diverse public interest concerns when developing regulations and they must ensure that their actions do not adversely affect small businesses and competition. Nearly every regulation is now examined for its impact on small businesses. Although they may never know it, small businesses have saved billions of dollars and countless work hours thanks to agency compliance with the Reg Flex Act.

Mr. President, the Reg Flex Act clearly helps small businesses every day by compelling agencies to reduce their compliance burdens. The Senate should take pride in the innovative Reg Flex Act, which has helped to create the best climate in the world for small business growth and prosperity. As the Ranking Member of the Senate Committee on Small Business, I am pleased to have played a key role in strengthening this legislation and ensuring its effective application for the benefit of our nation's small businesses.

#### DOMESTIC VIOLENCE CASES IN THE ASYLUM PROCESS

Mr. LEAHY. Mr. President, I would like to speak today about two critically important immigration issues—expedited removal and the treatment of domestic violence victims in our asylum process. They both arose in a case recently brought to my attention. Two months ago, Ms. Nurys Altagracia Michel Dume fled to the United States from the Dominican Republic. She was fleeing from the man with whom she had lived for the past 11 years, a man who had raped her numerous times, forbade her even to leave the house, and, shortly before she left, bought a gun, held it to her head, and threatened to kill her. This was not the first time he had threatened her life.

She arrived here on July 17, and she was subject to expedited removal because, in her haste to escape from her

abusive partner, she traveled without a valid passport. She expressed her fear of returning to the Dominican Republic. After three days of confinement, she was accorded a credible fear interview. At this crucial interview, at which she would have to discuss the fact that she had been raped, she was interviewed by two male employees and was not represented by counsel. Under their narrow interpretation of what may constitute "credible fear of persecution," based on their interpretation of a Board of Immigration Appeals decision, *Matter of R-A-*, the INS took the position initially that Ms. Michel should be sent back to the Dominican Republic. Under their interpretation any asylum claims based on a fear of domestic violence would be barred. So even though they believed that Ms. Michel's partner might kill her if she were forced to return to her native country, they nonetheless made a legal judgment that her claim was invalid.

I cannot believe that even those supporters of the expedited removal process who forced it into law in 1996 could have intended for this matter to be resolved in this way or for questions of law to be resolved in INS officers at a credible fear hearing. I brought this case to the attention of the INS by way of a letter on August 28. The Lawyers' Committee for Human Rights, Congresswoman CAROLYN MALONEY, and others wrote, as well. I am glad to report that Ms. Michel was accorded a second credible fear interview. At this second interview, Ms. Michel was found to have a credible fear of persecution, and will now have the chance to raise an asylum claim.

Despite this reprieve, however, Ms. Michel's case reveals yet again the serious flaws in expedited removal. A woman who told a compelling history about the danger she faced if returned to her country was only able to receive an asylum hearing after the intervention of highly capable counsel and Members of both Houses of Congress. That it is not an effective or just system. If Ms. Michel's case had not come to the attention of the Lawyers' Committee, she would likely already be back in the Dominican Republic. If she had been forced back, I shudder to think what might have happened to her.

People who flee their countries to escape serious danger should be able to have asylum hearings in the United States without having to navigate the procedural roadblocks established by expedited removal. I, again, call upon the Senate to consider S. 1940, the Refugee Protection Act, a bipartisan bill I introduced last fall with Senator BROWNBACK and five other Senators of both parties. This bill would restrict the use of expedited removal to times of immigration emergencies, and include due process protections in those rare times when it is used.

Expedited removal was originally instituted in the 1996 Anti-Terrorism and

Effective Death Penalty Act (AEDPA). Under expedited removal, low-level INS officers with cursory supervision have the authority to "remove" people who arrive at our border without proper documentation, or with facially valid documentation that the officer simply suspects is invalid. No review—administrative or judicial—is available of the INS officer's decision, which is rendered after a so-called secondary inspection interview. "Removal" is an antiseptic way of saying thrown out of the country.

Expedited removal was widely criticized at the time of its passage as ignoring the realities of political persecution, since people being tortured by their government are quite likely to have difficulties obtaining valid travel documents from that government. Its adoption was viewed by many—including a majority of this body—as an abandonment of our historical commitment to refugees and a misplaced reaction to our legitimate fears of terrorism.

When we debated the Illegal Immigration Reform and Immigrant Responsibility Act later the same year, I offered an amendment with Senator DEWINE to restrict the use of expedited removal to times of immigration emergencies, which would be certified by the Attorney General. This more limited authority was all that the Administration had requested in the first place, and it was far more in line with our international and historical commitments. This amendment passed the Senate with bipartisan support, but it was removed in one of the most partisan conference committees I have ever witnessed. As a result, the extreme version of expedited removal contained in AEDPA remained law, and was implemented in 1997. Ever since, I have attempted to fix the problems with expedited removal.

The Refugee Protection Act is modeled closely on the 1996 amendment that passed the Senate, and I have been optimistic that it too would be supported by a broad coalition of Senators. It allows expedited removal only in times of immigration emergencies, and it provides due process rights and elemental fairness for those arriving at our borders without sacrificing security concerns. But even as the Refugee Protection act has gained additional cosponsors during this session, it has been ignored by the Senate leadership. Indeed, despite my requests, the bill has not even received a hearing.

Meanwhile, in the three and a half years that expedited removal has been in operation, we already have numerous stories of valid asylum seekers who were thrown out of the country without the opportunity to convince an immigration judge that they faced persecution in their native lands. To provide just one example, "Dem," a Kosovar Albanian, was summarily removed from the U.S. after the civil war in Kosovo had already made the front pages of America's newspapers. During

his interview with the INS inspector who had unreviewable discretion over his fate, he was provided with a Serbian translator who did not speak Albanian, rendering the interview a farce. Instead of being embraced as a political refugee, he was put on the next plane back to where his flight had originated. We only know about his story at all because he was dogged enough to make it back to the United States. On this second trip, he was found to have a credible fear of persecution and he is currently in the midst of the asylum process.

One of the most distressing parts of expedited removal is that there is no way for us to know how many deserving refugees have been excluded. Because secondary inspection interviews are conducted in secret, we typically only learn about mistakes when refugees manage to make it back to the United States a second time, like Dem, or when they are deported to a third country they passed through on their way to the U.S. This uncertainty should lead us to be especially wary of continuing this failed experiment.

And now we must even be concerned about the conduct of credible fear interviews. When aliens subject to expedited removal express a fear of returning to their home country, the law requires that they be referred for a credible fear hearing. If their fear is found to be legitimate, they are then allowed to make a claim for political asylum. These interviews are not designed to make judgments about legal questions, but simply to determine whether a person may have a valid asylum claim. This process failed Ms. Michel, and we must now worry that it is failing other refugees.

I am also concerned about the underlying legal issue in the case of Ms. Michel and other victims of domestic violence. Last year, the Board of Immigration Appeals denied the asylum request of a Guatemalan woman who faced likely death at the hands of her husband if she were forced to return home. In that decision, *Matter of R-A-*, the BIA decided that victims of domestic violence did not qualify as a "social group" under our asylum laws. The Attorney General currently has this very decision under review. It is my hope that she will reverse it.

Last year I sent a letter to the INS Commissioner supporting the asylum claim of Ms. R-A. In that case, the INS did not dispute her account of horrific abuse, including her claims that her husband raped and pistol-whipped her, and beat her unconscious in front of her children. Nor did the INS dispute that law enforcement authority in her native Guatemala told her that they would not protect her from violent crimes committed against her by her husband. Based on this evidence, an immigration judge determined in 1996 that she was entitled to asylum, but the INS appealed that ruling and convinced the BIA to reverse it. That decision is currently on appeal in the Ninth

Circuit Court of Appeals, but that court has stayed its consideration of the matter pending the Attorney General's own review.

Evidence of domestic violence is sadly all too common in our asylum system. Last year, I also encouraged the INS to grant asylum to a 16-year-old girl from Mexico who sought asylum in the United States after fleeing from a father who had beaten her since she was three years old, using whips, tree branches, his fists, and a hose. Apparently, the girl attempted to intervene when her father was beating her mother. Again, local law enforcement failed to protect the girl, and she fled to the United States. As in *R-A-*, an immigration judge granted her asylum request, but the INS appealed, and the BIA reversed it.

These BIA decisions came only two years after its decision that Fauziya Kasinga—who faced female genital mutilation if forced to return to her native Togo—was protected by our asylum laws. In making this decision, the BIA found that potential victims of genital mutilation constituted a "social group." I agree with this decision, and I believe that women fearing domestic violence must certainly also so qualify. This is especially true where—as is the case for Ms. Michel and many other women—the asylum applicants come from nations where law enforcement officials often turn a blind eye to claims of domestic violence.

Of course, the problems faced by women around the world go beyond domestic violence. Another stark example of the ways in which women applicants may be insufficiently protected by our asylum laws comes from the case of Ms. A-, a Jordanian woman seeking asylum in the United States after fleeing the prospect of a so-called "honor killing" in Jordan. I wrote the Attorney General in February—along with a bipartisan group of six other Senators—to support her asylum application. Ms. A- had fallen in love with a Palestinian man who asked her to marry him. Her father forbade the marriage, however, because he was Palestinian and had a low-paying job. Ms. A- was at that point faced with the possibility that she might be pregnant and the certainty that her future husband, whoever he might be, would know that she was no longer a virgin, a fact that would bring shame and dishonor upon her family and potentially justify her murder at her family's hands under a widely-practiced Jordanian custom. She fled to the United States and married this man.

In June 1995, her sister informed her that their father had met with their nuclear family, uncles and cousins to demand that they kill A- wherever they might meet her. The State Department reported that there were more than 20 "honor killings" in Jordan in 1998, and speculated that the actual number was probably four times as high. Making matters even worse, these killings are typically punishable by only a few months' imprisonment.

Despite the very close resemblance between these facts and the facts in Kasinga, both an immigration judge and the BIA found that Ms. A- was ineligible for asylum. The INS has agreed to stay further proceedings in the case while the Attorney General reviews the matter.

The existence of these problems in our asylum system shows that there is still work to be done, both by this Congress and in the executive branch. I call upon the Senate to use some of the time we have remaining to address the problems in our expedited removal system, and upon the Attorney General and the INS to be vigilant that victims of rape and other forms of serious domestic abuse not be returned to their countries under expedited removal. And I renew my call to the Attorney General that we reevaluate our position on asylum eligibility for victims of severe domestic violence from nations that do not take domestic violence seriously. Finally, I encourage all of my colleagues to sign on to a letter that Senator LANDRIEU and I are circulating that would ask the Attorney General to overturn *R-A-* and reaffirm our commitment to human rights and women's rights.

#### HUD'S GUN BUYBACK PROGRAM

Mr. LAUTENBERG. Mr. President, in recent months, some Members of Congress have questioned the Department of Housing and Urban Development's authority to conduct gun buyback programs under the Public and Assisted Housing Drug Elimination Act. As the author of that legislation, I rise to set the record straight.

In proposing the Public and Assisted Housing Drug Elimination Act, my intent was to make our streets safer, particularly in federally-assisted and low-income housing where the federal government has a clear responsibility to protect families. And that intent is reflected in the statutory language, 42 U.S.C. Section 11902(a), which provides that HUD is to make grants available for use in "eliminating drug-related and violent crime." Certainly, violent crime includes all of the offenses involving guns, whether it is murder, robbery, or gang-related activity. In short, gun buybacks are an eligible activity under the Act, and HUD has acted properly in assisting housing authorities and local communities with this important effort.

Furthermore, HUD's efforts to combat gun violence have been very successful. HUD's Gun Buyback and Violence Reduction Initiative has taken about 18,500 guns off the streets in more than 70 cities, and this program has received strong support from community organizations and law enforcement.

Every year, gun violence claims an average of 30,000 lives and wounds another 100,000 people. Congress should support, and not impede, local efforts to get guns off our streets and reduce crime.