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Seized With Heavy Hand at Border, for Paperwork Errors

By [NINA BERNSTEIN](#)

One is a second grader in Manhattan. Over the protests of his American mother, immigration officials have been trying to deport him ever since he returned from a brief visit to his native Canada without the right visa. Another is an Irish professor of literature invited to teach at the University of Pennsylvania last month. He was handcuffed at the Philadelphia airport, strip-searched, jailed overnight and sent back to Europe to correct an omission in his travel papers.

Then there are the seven Tibetan monks who were visiting Omaha two weeks ago. After their church sponsor abruptly withdrew its support, their religious visas were revoked and a dozen immigration officers in riot gear showed up to arrest them.

The details in these cases vary, as do the technical visa infractions committed by each of the foreigners. But they all testify to a larger issue looming on the front lines of immigration enforcement: how low-level gatekeepers and prosecutors in the customs and immigration system are using their growing discretionary power over travelers who pose no security risk.

Officials of the Department of Homeland Security have acknowledged that intensified efforts to keep out terrorists since the 9/11 attacks have sometimes led to the heavy-handed treatment of foreigners whose only offense was an inadvertent paperwork error or being caught in a bureaucratic tangle. In memos issued in 2004 and 2005, agency officials encouraged officers to use discretion and legal shortcuts to resolve such cases quickly, saving resources for more important tasks and showing the world a more welcoming face.

But immigration lawyers say the effort is not working. Though there are no statistics on such cases, the lawyers say they are seeing harsher treatment in situations involving paperwork errors or minor infractions. A political climate more hostile to foreigners, fears of being faulted for leniency and a lack of coordination among immigration agencies, they say, are leading officers to go overboard in cases that fit the government guidelines for prosecutorial discretion.

"I'm desperate," Emily Arroyo, the mother of the second grader, said last week, after prosecutors refused an immigration judge's suggestion that they drop the two-year-old deportation case against her son, José Arroyo Rodas. Instead, they demanded that she buy him a one-way ticket to Canada by next week.

"I'm American — they're making me leave my country, too, because of course I'm not going to let him go alone," said Ms. Arroyo, a hairstylist raised in Guatemala, who calculates that she has spent \$10,000 in legal fees trying in vain to fix José's paperwork problem. But on Wednesday, hours after this reporter asked United States Immigration and Customs Enforcement officials in Washington for comment about the case, an agency spokesman, Marc Raimondi, said that prosecutors reviewing the matter had found that it met the guidelines for prosecutorial discretion. "A dismissal recommendation to the immigration judge is planned," he said.

Kelly Klundt, a spokeswoman for Customs and Border Protection, which is also part of Homeland Security, said that as its officers process 86 million air travelers a year and enforce 400 different laws, "there are unfortunately going to be a few instances that do not demonstrate perfect discretion."

"Achieving a balance of being a welcoming nation and keeping the borders secure is terribly difficult," she added. "We are seeking to improve the way we handle all of these types of situations."

But a case like José's only confirms that without exceptional outside attention or high-level intervention, rigidity prevails, said Diane M. Butler, a Seattle lawyer who heads the American Immigration Lawyers Association committee that works with Customs and Border Protection.

Most officers, she said, "are trying to do the right thing" but lack training in how to apply discretion. But, in some instances, she added, officers seem newly emboldened by campaigns against illegal immigration to express their resentment of foreigners by denying or delaying entry whenever possible. She said her business clients reported remarks like, " 'You're just trying to take jobs away from Americans.' "

Other immigrant advocates say that low-level employees often act out of fear. "The people on the front line are told that if they make a mistake, their jobs are gone," said Amy L. Peck, an immigration lawyer in Omaha who heads the association committee that works with Immigration and Customs Enforcement. "So that translates into this rigid — what one could also describe as extreme — policy of turning away and not using discretion in cases that scream for it."

The Irish professor, John McCourt, 40, said that on Jan. 7, an immigration officer at Philadelphia International Airport initially offered to correct a paperwork omission on the spot if he paid a \$265 fine. Professor McCourt said he readily agreed, but five minutes later, the officer returned and said she had changed her mind — "that I was a university professor and should have known better" and would be sent back the same night.

In an e-mail message, Professor McCourt, a [James Joyce](#) specialist at the University of Trieste in Italy, wrote: "I was told that if I protested I would simply be deported and never be let back."

At 11 p.m., six hours after his arrival, he was transported in handcuffs to the Montgomery County jail, along with another traveler denied entry, Kerstin Spitzl, a pregnant German woman who says that immigration officers abruptly canceled her visa, insisting that she was planning to violate its terms by working.

Worse than the cold, windowless cells at the jail, they said in separate interviews, was a sense of powerlessness. "You're scared," said Ms. Spitzl from her home in Wuppertal. "You have no rights. You cannot contact nobody, nobody can contact you."

In Italy, Professor McCourt quickly fixed his paperwork at the American consulate in Florence, and returned to start his classes at Penn a week late. But in New York last week, where he spoke at Fordham University on "Joyce and Judaism," he said his experience had confirmed his European friends' worst fears about America.

"At the moment, America is easy to hate," he said, "So people say, 'That does it for me. I'm not going to risk that happening.' "

Ms. Klundt, of Customs and Border Protection, said she could not comment on individual cases. But she quoted Robert C. Bonner, who retired as the agency's commissioner in November: "Isolated incidents of rude and hostile conduct reflect poorly on our agency and our country and they are inconsistent with C.B.P. law enforcement professionalism."

In an August 2004 memo, announcing an agency "professionalism initiative," Mr. Bonner also said: "Since the overwhelming majority of travelers pose absolutely no threat to our national security, C.B.P. will use discretion to permit entry, whenever the law allows, for individuals that have committed a technical or inadvertent immigration violation, but who otherwise pose no threat whatsoever."

Guidelines on prosecutorial discretion were also issued last October by the chief counsel to Immigration and Customs Enforcement, William J. Howard, "to reallocate limited ICE resources to priority cases by dismissing appropriate cases," like deportation proceedings against people whose applications to stay in the United States, though backlogged, were likely to be approved.

Sometimes the case for leniency is in the eye of the beholder. In the case of the Tibetan monks, Ms. Peck said they had been abandoned without money in Arizona by their sponsor, the Church of Shambhala, because they refused to recognize its leader as the reincarnation of Buddha and Jesus. They traveled to Omaha for Buddhist workshops, unaware that their visas had been revoked, she said. But Mr. Raimondi defended the arrests, saying that the monks had been notified that their visas were revoked, and became "fugitive aliens" when they left Arizona.

In José Rodas's case, prosecutorial discretion may be the only way to cut through a tangle of law and circumstance — and as of last night, the boy's lawyer, Irwin Berowitz, said he had received no word of the government's change of heart. José cannot automatically derive American citizenship from his mother because she was reared in Guatemala, and his absent father is not American.

A petition to set the boy on the road to United States citizenship has been approved, but obstacles include a two-year processing backlog, his lawyer said. And as long as prosecutors remain opposed, an immigration judge has no authority to dismiss his deportation case.

At one hearing, Ms. Arroyo said, the judge had to take a break to regain her composure after she and José both started crying. "He kept saying," Ms. Arroyo recalled, "'Mommy, I don't want to leave.' "