

This article highlights the level of "push" pressure for migration. Can you imagine yourself sealed into a freight container, not knowing when or where you will end up? This reprint is by permission from Professional Mariner, 207-772-2466, Issue #8, August/September 1994.

Stowaway Problem in the U.S.

Coming to America as a stowaway aboard ship has never been easy, but lately this rather desperate form of illegal immigration has become dangerous, degrading, and an international political problem.

Long a volatile social issue in the U.S., the stowaway problem has recently come to a boil as shipping companies are complaining about punitive government policies, and the plight of unfortunate but often unwanted stowaways has caught the public eye.

Numerous stowaways have died recently while attempting to hitch a ride to the "land of the free," including those who have been forced to jump overboard, or who chose to jump overboard, and others who have died in sealed containers during transit.

Government requirements regarding the handling of apprehended stowaways are costing shipping companies tens of thousands of dollars for individuals discovered aboard ship. At least one European nation has complained bitterly that its citizens have been retained for long periods as chained and manacled "political prisoners." Indeed, a spokesman for Amnesty International charged in May that treatment of stowaways arriving in America is "outrageous" and suggested that most stowaways should not even be detained. United Nations officials also joined the chorus of complaints in early June.

The New York Association for New Americans, meanwhile, has complained that stowaways are being treated like criminals, particularly a group of 20 Rumanians who were taken off a Sea-Land containership on the East Coast. Members of that group, which included a number of teenagers, were confined in manacles in a hotel in Newark, N.J., for a month before being transferred to a Pennsylvania state prison. Prison officials felt obliged to have them locked in cells and denied normal prison privileges. A number of the stowaways started a hunger strike in June.

Meanwhile, a new wave of questions regarding existing liability laws has sparked lawsuits, led to the

clarification of government policies, and has even prompted Congressional hearings on the treatment of stowaways.

The large number of stowaways arriving from eastern European, African, and South American countries in recent months has become increasingly frustrating to many in the financial departments of commercial shipping companies, due to the strict laws that make those companies responsible for stowaways arriving on their vessels. Although the Immigration and Naturalization Service reports that the number of stowaways has been fairly steady recently, some shippers claim that is not true.

"We unfortunately do not have a handle on the overall numbers, but they seem to be growing," says Bill Summers of the New Jersey-based Sea-Land Service, one of the largest worldwide container shippers. "We only keep track of the ones entering on our ships. Yet we feel the number has been on the rise for the last several years."

"The numbers we have say that the trend has been fairly steady at 800 to 1,000 stowaways entering U.S. ports a year," rebuts Michael Jaromin of the INS. "The carriers say that these figures are low, but they have not been able to show us any hard numbers. We have asked for more information from the maritime industry, but we have not gotten anything back."

The *New York Times* reported that as many as 3,000 to 5,000 stowaways might have tried to enter the U.S. last year by ship, saying the numbers the INS compiled probably "count mainly those who also applied for political asylum."

"People stow away on ships for many different reasons," said Jaromin, an assistant chief inspector at the INS headquarters in Washington. "Of course, for the most part, we can only grant asylum to people requesting it on political grounds. Many would rather go back to their country to try again, because they know they do not have a valid asylum claim."

"Clearly, it's a problem," said another INS

spokesman in Washington. "It is in our interest and in the carriers' interest to work together to find a solution that works for both of us."

Several cases involving ships entering U.S. ports with aliens aboard have been highlighted in the news of late. In mid-April, 20 stowaways from Romania arrived in the port of Boston on board the containership *OOCL Innovation* (operated by Sea-Land service), which had sailed a week earlier from the port of Le Havre, France—a frequent port of embarkation for stowaways. All 20 stowaways had hidden themselves in a number of containers aboard the vessel. Twelve of the 20 had been able to break out of their containers and were discovered several days into the Atlantic crossing, while eight more remained trapped until the vessel sailed into Boston. All the containers used by the stowaways were owned by Orient Overseas Container Line, which led officials to believe that perhaps the Romanian stowaways were part of a long-suspected smuggling operation out of the port of Le Havre.

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In a frighteningly similar incident that occurred only weeks later, 20 Rumanians and one Bulgarian arrived at the port of Montreal from Le Havre in early May aboard the containership *Can Mar Spirit*, owned by the Canadian company Canada Maritime. Police in Le Havre report that they have since discovered two separate groups of people helping Rumanians to gain access to vessels in exchange for payment of some kind.

"Finding a stowaway in the port is a bit like finding a passenger on a train who has not paid the fare," said a police official in Le Havre. "Rumanians are frequently seen around the port and need only to look at the ship cards to see where a ship is headed." The board of directors at the port of Le Havre has approved a \$4.1 million plan to tighten security

within the port by installing fences around terminals and putting in place an electronic badge system to limit access to the port.

East coast ports of Canada have reported similar problems with stowaways over the last few years. The number of stowaways arriving at Montreal, Halifax, or other east coast ports of Canada climbed from 100 in 1991 to almost 400 in 1993. However, while shippers in the U.S. claim an increase in stowaways this winter, several in Canada report a slight decrease, with only about 50 arriving in the first three months of this year, compared to 118 during the same period in 1993. That compares to 497 stowaways that arrived in U.S. ports between October and March. Although there are no clear reasons for the drop in stowaways arriving in Canadian ports, officials point to the particularly harsh winter sustained in Canada and tightening of security in eastern European ports. Canadian ports may be a favorite for immigrants due to Canadian immigration law, which allows stowaways who do not show violent tendencies to be released on their own recognizance until an asylum hearing is scheduled. They are also eligible for health care and other national welfare benefits.

At around the same time that the 20 Romanian stowaways arrived in Boston, eight South African citizens arrived at the port of Dunkirk, France, on a German vessel. While it is possible they targeted France as their next home, the case points out the situation stowaways face when sneaking aboard a ship or climbing into a container. The fact that the 20 stowaways discovered aboard the *OOCL Innovation* en route to Boston were found in containers scattered in different places on the deck, only some of which were scheduled for discharge in Boston, indicates that many stowaways have no clue as to their next destination.

Although many stowaways make it to the U.S., are granted asylum hearings, and then are either admitted or repatriated, many more are not so lucky. Three stowaways from Colombia died of asphyxiation and dehydration in a container packed with coffee beans after the container failed to be unloaded in Florida, the ship's first stop. Four men boarded the freighter *Sea Wind* in Buenaventura, Colombia, with an ample supply of cheese, water and crackers for the trip to Florida. However, despite their screams and pounding against the container walls while containers all around them were unloaded in Florida,

dockworkers did not hear them, and the ship sailed on to Philadelphia. Three of the four men died during that trip, and the one who survived reportedly was only able to do so by drinking his own urine and gouging an air hole in the side of the container. The survivor, along with the bloated bodies of the three dead men, was later flown back to Colombia at the expense of Crowley American Transport, owner of the ship.

A similar case saw three Romanians die in a container on the short trip across the English Channel from Le Havre to Felixstowe, England. Apparently, the container had just been fumigated before the voyage, unbeknownst to its passengers. One man barely survived and was rescued when dockworkers heard him knocking feebly on the container's walls.

Four stowaways from the Pacific island of Fiji died when they jumped off a freighter as it entered Puget Sound in northern Washington in March (*Professional Mariner*, Issue #7). The four men are thought to have jumped into the frigid waters in order to avoid almost certain repatriation upon arriving in Seattle. Although immigration officers met the ship after docking, the four men were not aboard. Their bodies were found several hours later, floating in the 40°F water. They had been contained in a locked cabin after the ship's crew discovered them several days out of Fiji, but they were then able to break out of the cabin without alerting the crew.

Another case involved stowaways from Guyana, who jumped off a grain barge as it entered Tampa Bay last May. Their voyage ended with deportation when the men were picked up by a passing boat.

As to responsibility for stowaways, INS inspector Jaromin reports that it falls entirely in the hands of the ship's operator. "Simply put, our view is that they do not have to give us anything as long as they do not lose the stowaway." However, as the law stands now, the carrier is responsible for care and maintenance while an alien is in the U.S. "If the alien seeks asylum, they get an interview with an asylum officer who hears their claim and makes a decision," Jaromin explains. "If he says yes, then they're in and

they eventually get a green card; but if he says no, they can appeal to the board of immigration appeals."

After the board hands down a decision, the case enters the U.S. judicial system where it can go all the way to the Supreme Court, provided the alien has the resources to sustain his claim. During this time financial responsibility for housing, feeding and caring for a stowaway falls in the hands of the carrier. "If they lose a stowaway, it's a \$3,000 fine," Jaromin says. A criminal charge of conspiring to violate federal law could be tacked onto this fine. Jaromin added that in normal case, the initial phases of processing asylum claims take no

FIVE MORE STOWAWAYS ESCAPE FROM SEA-LAND

If Sea-Land Service didn't already have enough problems with stowaways, it does now. Five stowaways who were discovered hiding in a container aboard the *Sea-Land Performance* when it arrived in Boston on June 1st have since escaped.

A week later, 11 more stowaways were discovered and detained when the container ship *OOCL Innovation*, operated by Sea-Land Service, docked on June 8th in Boston.

The first five Rumanians, who were interrogated by INS officials in Boston and kept aboard the ship for eventual return to Le Havre, France, where they are believed to have first embarked, were reported missing from their locked room aboard the containership in Port Elizabeth, N.J. several days later. The five men are believed to have escaped, either into the water or onto a pier, on June 4th.

The stowaways indicated when interviewed that they had believed they were boarding a ship headed for a Canadian port.

The second group, also Rumanians, for the most part requested political asylum and were expected to be transported to an INS processing center in New Jersey. They, too, were believed to have been smuggled aboard at the French port of Le Havre.

less than 60 days.

All shipping companies have obvious concerns about losing stowaways, and these concerns can often lead to almost unreasonable detainment procedures. No federal regulations govern how a private company may detain the aliens, and the use of leg irons and armed guards has led to Congressional hearings into the treatment of stowaways. Although it is not yet clear when the hearings will take place, Congress will examine provisions of U.S. laws that cause carriers to

resort to such practices in order to maintain custody of stowaways. "The big question in Congress is determining what is an appropriate division of responsibility," said a Congressional aide.

No matter what methods are used, stowaways cannot always be detained, claim some companies. For example, eight Jamaican stowaways escaped from the freighter *Repulse Bay* in Tampa, Fla., despite being detained in a locked hold with a security guard, leg irons and handcuffs. Three Romanian aliens being detained in a New Jersey hotel in leg irons escaped when they were freed of their bonds to shower.

The INS, which has 32 district offices in ports all around the country as well as many smaller "field offices," claims it intends to continue enforcing all laws relevant to stowaways; but there is evidence the INS is beginning to take a more flexible approach to dealing with frustrated shipping companies. In a memo to personnel recently, James Puleo, the executive associate commissioner for INS in Washington, illustrated this new approach. He prefaced his two-page memo by saying, "One of the main criticisms from the industry is the inconsistency among ports of entry on decisions relating to the repatriation of stowaways. Flexibility must be emphasized." Puleo went on to discuss methods of repatriation, commenting that previously INS officials had been stipulating that the stowaway must go back on the ship on which he or she arrived. He pointed out that other unnecessary stipulations included imposing conditions surrounding detention, such as the necessity of an armed guard. "We should recognize that shipowners and operators often have incomplete control over the security of their vessels while in foreign ports," wrote Puleo. "There is no violation on the part of a vessel for bringing a stowaway, absent evidence of collusion."

Some companies have trouble meeting the financial responsibilities and put a lot of pressure on their captains to make sure stowaways do not arrive aboard their ships. In what has become a federal criminal case, the captain of an oceangoing tugboat was charged with attempted second-degree murder for forcing three stowaways from Guyana off the barge he was towing. The tug was several miles off the coast of Jamaica at the time (PM #6).

Shippers complain that they often have no control over how stowaways board their freighters and often cannot find them during extensive predeparture searches. "We are pretty careful about inspecting our containers before they are loaded," reports Sea-Land's Summers. "Although stowaways might get in before a box gets to the port, it usually happens at the port. Every owner or lessor of a box is responsible for inspecting it before it is loaded on a ship." Summers added that he is pleased the issue has been elevated to a "higher profile" recently, and reports that he has been made somewhat optimistic by the fact that as of mid-May, no stowaways had arrived in U.S. ports from Europe in a month. "We hope that is the result of security measures being taken in European ports, such as Le Havre."

Bill Summers says that detaining stowaways for even the shortest time can be a fairly expensive proposition. "It certainly runs into the thousands," explained Summers, "and more, depending on how long the hearings take." Meanwhile, Mike Mahoney of TECO Transportation, based in Tampa, Fla., also estimates that costs—which could include housing, security, medical costs, food, clothing, local transportation and repatriation—can be exorbitant. "I envision easily \$10,000 for a stowaway, if you look at all the possible costs." ■

The Dilemma of Government in a Multi-ethnic State

"Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion necessary to the working of representative government, cannot exist."

— John Stuart Mill

Considerations on Representative Government (1861)

Once again the government comes in and decides to assume the costs for the stowaways who are described in the previous article. This item is reprinted with permission from The New York Times.

INS Shifts Its Policy on Stowaways

By Joseph F. Sullivan

The Immigration and Naturalization Service has decided to take custody of stowaways and parole them while their requests for asylum are being reviewed, agency officials said yesterday.

The new policy represents a significant shift for the Federal agency, which had been requiring the owners of planes and ships that inadvertently brought stowaways to the United States to pay the cost of their detention.

The policy was described by Duke Austin, a spokesman for the immigration service in Washington, as temporary while officials decide how to respond to a June ruling by a Federal appeals court, which struck down the system under which stowaways were the responsibility of the ship or airplane carriers.

The Court of Appeals for the Third Circuit in Philadelphia ruled that the old policy had not been properly adopted by the immigration service, lacked guidelines and made the shipping and airline companies liable for unlimited costs of detention.

Rethinking an Old Policy

Although the court decision only affected cases in New Jersey, Pennsylvania, Delaware and the Virgin Islands, its practical effect had been to force the immigration service to rethink the old policy, Mr. Austin said. The new interim system will be in effect until the immigration service decides what its long-term approach will be and then subjects its proposal to public hearings and formal approvals — a process that could take months.

Unlike illegal aliens who manage to enter the United States and are picked up after they have been in the country for a time, stowaways and other illegal aliens intercepted at ports of entry have been treated as if they never arrived, said Nicholas Rizza, national refugee coordinator for Amnesty International. Owners of ships and airplanes not only had to pay the cost of detaining the stowaways, but were also

responsible for their care. The companies and their security contractors were not subjected to Federal supervision or required to adhere to international standards of treatment.

The stowaways were not granted the constitutional rights given an illegal alien picked up on the street, including the right to bail or to be released on their own recognizance, Mr. Rizza said.

In one recent case, through which the immigration service's policy came to national attention, more than 20 stowaways from Romania, who arrived in Boston by hiding in huge metal cargo containers loaded onto a freighter in France, were held for several weeks in April by a shipping company in hotels in Newark, shackled together by leg irons.

The new policy, which allows stowaways seeking asylum to be paroled, brings their treatment closer to that of other illegal aliens, Mr. Rizza said.

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Mr. Austin, the immigration service's spokesman, said the agency lacks the capacity to monitor the stowaways once they are released, so they will essentially be at large while their requests for asylum are being adjudicated, under the new guidelines that were sent to all field offices last week. The new policy was disclosed yesterday by the Journal of Commerce.

"If the stowaways' asylum requests and subsequent appeals are turned down, we will have to round