

Australia: Damning report on the illegal deportation of Vivian Alvarez

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25 October 2005

A report by the federal Ombudsman into the unlawful deportation of an Australian citizen, Vivian Alvarez, has provided another revealing glimpse into the regime set up by the Howard government to detain refugees and “suspected” non-citizens.

Vivian Alvarez, a mother of two, had lived in Australia for 20 years before she was removed to the Philippines in July 2001. Five months earlier, she had disappeared from Brisbane, in the north-eastern state of Queensland, after receiving psychiatric care. Her five-year-old son had been placed in foster care and she had been placed on police missing persons lists. In May 2001 a social worker reported her to the immigration department. She was described as visibly distressed, mentally-ill and confined to a wheelchair after being physically injured in a road accident. Immigration officials immediately assumed she was an “unlawful non-citizen” and deported her as quickly as they could.

The Ombudsman’s report found that Alvarez was deported without any proper effort to identify her. In the lead-up to her removal, she was denied essential medical care despite being obviously unwell, and bundled onto a plane amid protests by health and welfare workers that she was having fits and could not walk.

On arrival in the Philippines, Alvarez was dumped at Manila airport without any help or follow-up. For the next four years, the immigration department blocked persistent demands by her former husband, Robert Young, for inquiries to be made into her case. From July 2003, high-ranking officials in two departments, immigration and foreign affairs, deliberately covered-up her illegal deportation, until it became publicly known in April this year.

The Ombudsman’s report stated: “It is difficult to form any conclusion other than that the culture of

DIMIA [Department of Immigration and Multicultural and Indigenous Affairs] was so motivated by imperatives associated with the removal of unlawful non-citizens that officers failed to take into account the basic human rights obligations that characterise a democratic society.”

DIMIA’s “culture” was described as “dehumanized”, with officials expected to treat refugees and other so-called “illegals” with contempt and hostility. In line with this outlook, at least one official referred to Alvarez as a possible “Philippines sex slave”.

Conducted by a former police chief, Neil Comrie, the Ombudsman’s inquiry was intended to be a whitewash. Its terms of reference barred it from conducting any assessment of the general policy of compulsory detention or its enforcement by successive Howard government immigration ministers, Philip Ruddock (now Attorney-General) and Amanda Vanstone.

To some extent, the report sought to make scapegoats of three unnamed senior immigration officials—two in Brisbane and one in Canberra. It recommended that consideration be given to bringing charges against them for breaching the public service code of conduct by knowingly burying Alvarez’s case in 2003 and 2004. It quoted one of the officials, a deputy director of DIMIA’s Queensland state office, saying in September 2004: “This is terrible. Let’s not spread it any wider than it has—than it has to be.”

Yet, the report also acknowledged that the cover-up went far beyond the three officials. Numerous other immigration officers knew about Alvarez’s unlawful removal and it had been the subject of “significant discussion” in the Brisbane office. Foreign affairs officers were also involved.

The high-level cover-up was so systematic that

Alvarez's four-year ordeal only came to light last April after a public outcry over the discovery that an Australian permanent resident, Cornelia Rau, had been wrongly thrown into immigration detention and denied medical care for 10 months. The Ombudsman's report acknowledged that if not for the Rau affair, and the ongoing efforts of ex-husband Robert Young, Alvarez's plight would have remained hidden.

Howard has rejected calls to sack Vanstone or Ruddock, citing the stock-standard "Howard defence"—that he and his ministers were kept in the dark by their departments. For years, Howard has repeatedly invoked the same line—most notoriously in blaming "faulty intelligence" for his fraudulent claims that Saddam Hussein possessed "weapons of mass destruction" in the lead-up to the invasion of Iraq.

Alvarez's treatment flowed inexorably from the legal framework of mandatory detention, first established by the Keating Labor government in 1992. Section 189 of the Migration Act specifically obliges officials to detain and, as quickly as possible, remove from the country anyone they "reasonably suspect" of being an "unlawful non-citizen". It establishes a far-reaching regime of executive detention without trial.

Following the publication of the Ombudsman's report, the immigration department issued a belated apology to Alvarez. But for all the statements of official regret, nothing fundamental will change.

Many people are still being unlawfully thrown into immigration detention. Last week, the Ombudsman, Professor John McMillan, told a Senate inquiry he was investigating 221 cases of possible wrongful detention. This indicates that 20 new unlawful detentions have been notified in the past several months. McMillan also revealed that one of the detainees had been held for 1,272 days, or almost three-and-a-half years.

None of his report's recommendations—which were discussed and agreed with the government before they were released—will alter any of this. They consist merely of various organisational measures, most notably the establishment of a \$50 million "college of immigration, border security and compliance" to train officials in required procedures.

As one newspaper columnist put it: "The same department that was found to be involved in a 'dehumanised, mechanical process' with a 'flawed' culture, which paid 'insufficient attention to detainees'

welfare and care needs' will do its own training to improve its own culture. It is hard to believe."

Significantly, a recent legal ruling that the report recommends for study at the new training college is *Ruddock v Taylor*, in which the High Court overturned a false imprisonment verdict against the former immigration minister. In doing so, by a three-to-two majority, the judges dropped an earlier Federal Court stipulation, in *Goldie's Case*, that officials must make "reasonable searches and inquiries" before detaining someone.

This decision effectively gives the government and the immigration department even greater scope to arbitrarily and indefinitely detain anyone "suspected" of being a non-citizen.

The government is also moving to further restrict the legal rights of immigration detainees. Its Migration Litigation Reform Bill 2005, currently before parliament, will curb access to the courts by detained asylum seekers and financially punish lawyers who represent supposedly "unmeritorious" applicants.

Meanwhile, Howard and Ruddock are planning to expand the use of the immigration detention power. In the run-up to Howard's September 27 "counter-terrorism" summit with the state and territory Labor premiers, they outlined plans to revoke the citizenship of foreign-born Australian residents on "security" grounds. This could soon expose a wider layer of people to the denial of basic democratic, legal and human rights suffered by Cornelia Rau and Vivian Alvarez.



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