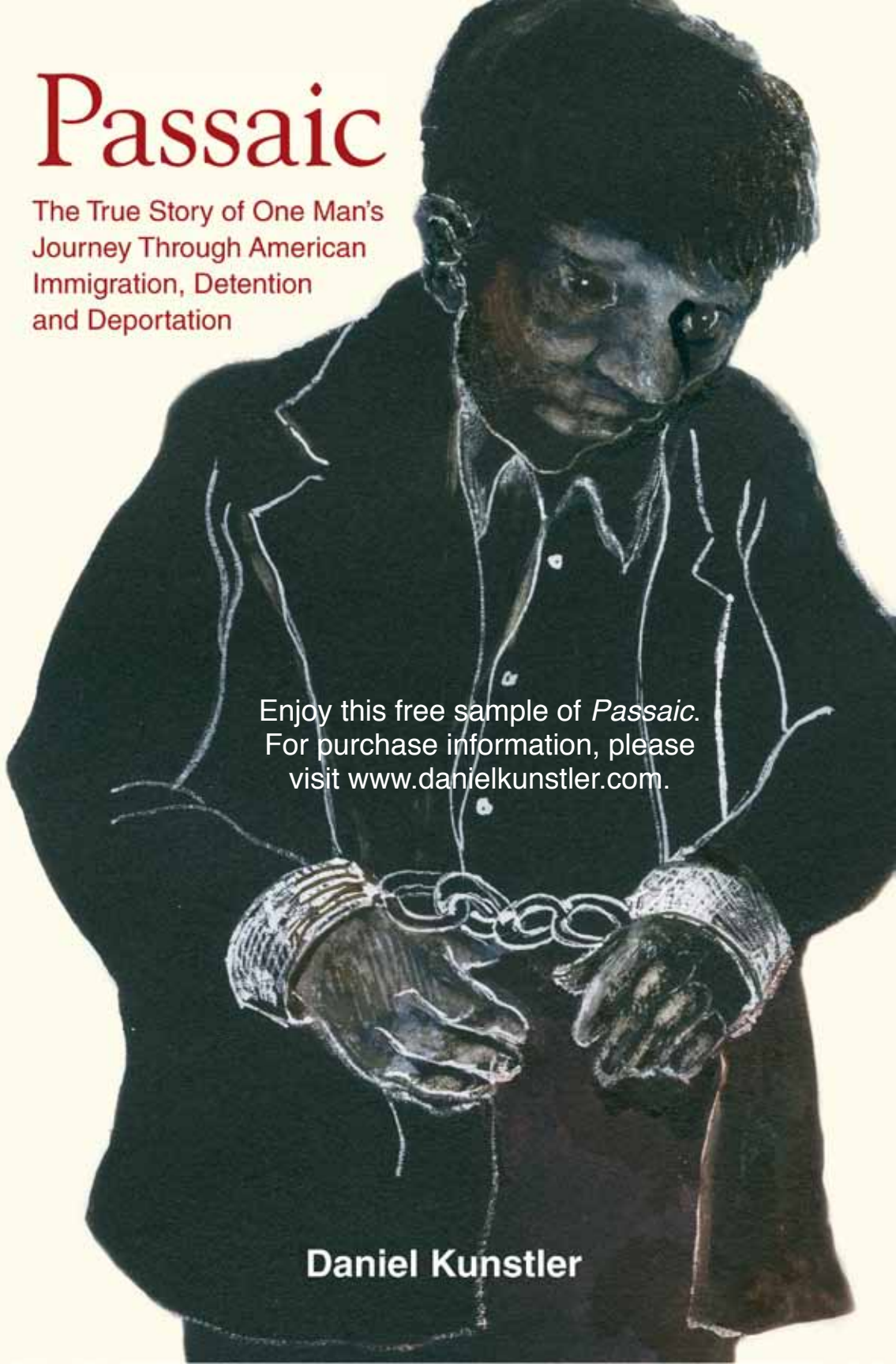


# Passaic

The True Story of One Man's  
Journey Through American  
Immigration, Detention  
and Deportation

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**Daniel Kunstler**



“I just look illegal.”

*Inscription on the T-shirt worn by San Francisco Giants  
closing pitcher Sergio Romo at the team's public celebration  
of its 2012 World Series victory*

## PRAISE FOR *PASSAIC*

“This book uncovers the human tragedy that all too often results from the U.S. immigration system. Superbly written and compellingly told, Kunstler’s book should be read by all who care about justice in our nation. Debate about immigration reform must address the detention and deportation practices Kunstler describes. This book inspires a way forward to restore pride in America’s image at home and abroad.”

—POLLY J. PRICE, Professor of Law, Emory University

“Daniel Kunstler’s impeccable depiction of the United State’s inhumane and irrational immigration law and detention practices as told through one man’s story is exceedingly timely. During the writing of this book, the public gradually awakened to the effects of the immigration enforcement practices described by Kunstler, once a secret known only by the jailers and those dedicated to human rights. Kunstler succeeds in taking a complex legal subject and making it a human story.”

—MARIA BLANCO, Vice President, California Community Foundation;  
former Executive Director of Earl Warren Institute on  
Law and Social Policy, University of California, Berkeley

“Daniel Kunstler’s compelling examination of Hemnauth Mohabir’s journey through the byzantine U.S. immigration system is not only an important exposé of systematic injustice, but also a compelling and eminently readable reminder of the real-life consequences of modern immigration enforcement. Kunstler’s narrative is a clarion call on behalf of the men, women and children caught up in the clutches of a broken and dehumanizing system.”

—VINCE WARREN, Executive Director, Center for  
Constitutional Rights

# Passaic

The True Story of One Man's Journey  
Through American Immigration,  
Detention and Deportation

Daniel Kunstler



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# 1

## DISBELIEF

ON THE EVE OF HEMNAUTH MOHABIR'S RETURN from Georgetown in Guyana to New York on the only aircraft operated by Guyana's short-lived and now-defunct flag carrier, both he and Rawti, his mother, had bad dreams. Rawti saw an apparition of her long-deceased husband. She took it as an omen. An omen of what, she could not explain, but she was certain the vision coincided with Hemnauth being present in her house after ten years away. The ghost stared at both of them in silence for a long spell and then left for whence he came, wherever that was.

In Hemnauth's dream, he is swimming in an ocean, far from any shore. He is fighting a seaborne wooden horse, which is trying to drown him. God, appearing sometimes as Jesus, sometimes as Krishna, arrives in a boat, with one hand raised. He calms the ocean. The horse becomes a raft and Hemnauth's salvation.

The dream is interlaced with a recurring one, the same Hemnauth had while sleeping in a Kmart parking lot on a long drive north along the eastern seaboard from Florida five years earlier, where he saw himself imprisoned for no particular offense. From the time he was a child, Hemnauth has recorded his dreams to memory and tried to interpret each of them. To this day he remains convinced that his dreams are revelatory, this latest one among them. He insists that I listen closely to his narration of them, and I comply.

It is April 2002. Mother and son are sitting in her kitchen on the morning of Hemnauth's departure, and she is giving him her parting admonishments.

Hemnauth's divorce from his wife, Rahoni, had been more bitter than it need have been, but the ex-spouses had gotten past the pain of it and are raising their boy, Kevin, together. Kevin is ten and was born an American.

"Look, son," the mother says. "I want you to go and be a good father to Kevin, and try to go back to Rahoni." Rawti's dogged attachment to matrimonial constancy had not diminished over the years of separation and upheaval that followed Hemnauth's emigration to the United States. Hemnauth may have felt warm to the idea at the time, and no doubt his relationship with Rahoni had emerged from its years in the wilderness and stepped into a brighter clearing. Yet to him that was all the more reason not to press his luck and place his bond with Kevin at risk, a bond many parents would envy. As I was later to observe, Hemnauth and Kevin resonate with one another wholly and unconditionally, and their relationship has survived circumstances that have conspired to crush it.

"Mom," Hemnauth answers, "I will go home, but I dream of shackles and chains, and I'll be a slave. I'll go and face it."

Rawti was not pleased with what she heard, and Hemnauth's dream frightened her all the more for having had one of her own. She tearfully implored her son to never speak of it again.

Hemnauth's airplane ride was uneventful. True, his dream of the previous night would not leave him as he flew north, but he did not read any immediate prediction of trouble into it. The lessons he draws from his dreams rarely flash alerts of imminent hazard, but warn him of dangers in the path of life without specifying the whens and wheres. So although U.S. immigration personnel were on high alert triggered by the still-recent September 11 attacks, Hemnauth did not suspect he would undergo particular scrutiny upon his arrival, nor did any such thought even cross his mind.

There were about half a dozen people in line ahead of him who glided through the immigration procedures without incident and advanced to the baggage claim and customs hall. When beckoned, Hemnauth stepped up to the officer's station and presented his Guyanese travel document and his green card. She took his papers and looked them over. They were unremarkable and her face registered no expression. She was all business. Then



she typed his alien registration number into her computer terminal and read the result. Hemnauth could not see it, nor was he concerned that any problematic data might show up to impede his reentry into the country. His residency papers were in order.

Nevertheless, an alert must have popped onto the screen, for the officer told Hemnauth he would have to go to another room. She gave the room a name and pointed, but Hemnauth has forgotten what she called it. By all indications, it was the holding and processing area for travelers and returning residents for whom further clearance was required. The officer called a uniformed security guard to escort Hemnauth, lest he stray, although the escort was presented to him as a courtesy rather than a security precaution. The guard neither touched nor addressed him. Hemnauth's documents were placed in a large brown envelope that he carried himself.

The room was a secondary inspection area operated by U.S. Customs and Border Protection (CBP). It divided into two halves, with airport-style seating: benches secured to the floor and divided into individual spaces. Half of the room's occupants had free limbs, the other half were restrained. Hemnauth recalls chains secured to the benches. CBP has since claimed that they use only ankle bracelets.<sup>1</sup> In any event, Hemnauth was not cuffed when he first entered the room, and he took a seat among the unrestrained, assuming that there was some minor administrative mix-up that would be quickly resolved. For instance, it happens that a visitor may have qualified for multiple visas and that a decision must be made in secondary inspection as to which one applies. The cases requiring the restraints often involve document fraud or other criminal violations directly related to an individual's attempt to enter the country.<sup>2</sup> These can trigger a prosecution by the criminal justice system. Hemnauth had a green card, valid and current, right there in the big brown envelope.

Yet, after about a half an hour, Hemnauth noticed that a group of immigration officers had gathered in conference about his case. They were casting occasional glances toward him. Finally one of the officers approached him and recited his script: "You have violated immigration law. You will need to see an immigration judge." He did not volunteer any further explanation — none was in the script — until Hemnauth asked for one, nor did

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1 Shea, "CBP Inspections at JFK."

2 Shea, "CBP Inspections at JFK."

he attempt to shield the discussion from onlookers.

An old misdemeanor charge had come back to bite him, for a petty offense that had occurred fully six years earlier. The officer told him that the specifics of the charge, possession of a controlled substance in the seventh degree, made him inadmissible. Period. Hemnauth immediately perceived the double jeopardy. "I already paid a fine," he told the officers, quite truthfully. A New York State jury and a judge had estimated his debt to society at \$250, which he had long settled, along with a short suspension of his driver's license, and nothing more. He had been duly acquitted of other, more serious charges — felonies — by the same jury. At trial he had rebuffed all suggestions of a plea bargain, so there was no suggestion that he had gotten off lightly in exchange for testimony against another party.

What Hemnauth did not know was that immigration violations fall within the realm of civil code and redress is extracted separately from any criminal penalty, as a collateral consequence. So, in the eyes of the law, there is no double jeopardy implicit in exiling an individual from U.S. territory and away from his family, any more than there is against a reckless driver who has been fined and subsequently denied auto insurance. This is not to dismiss the reality of the double jeopardy imbedded in the deportation process, far from it: Deportation, particularly in the case of one whose criminal offense, long past, was trivial by the government's own tally, piles on the infinitely more severe penalty of exile, with forced separation from family and livelihood. It is punishment upon punishment regardless of the evasion of that fact in the text of the legal statutes. Hardliners might point to other instances where the collateral consequences of a conviction are deemed legally permissible, such as the eviction of a tenant from public housing pursuant to even a minor criminal offense. Such instances might appear equally troublesome as deportation viewed through a moral lens, since both imply official retribution beyond that imposed by a court of law; however, exile according to recognized norms of civilization we profess to defend stands apart for its severity.

Regardless, compared to the treatment consequent to stages of the process that were to follow later, the double jeopardy Hemnauth imagined at the time was but the tip of the iceberg. In the immediate, the position of

his captors was that he should tell it to the judge. The immigration judge, that is.

Hemnauth looked toward the shackled side of the room. He had a lot of questions to which the officer had no answers, at least none they were willing to share spontaneously. Finally, Hemnauth asked, "What are you going to do with me? Are you going to lock me up?"

"We don't know. That's up to the officer." Hemnauth took that for a "yes."

The next officer was among a series of many, between varying stations in the chain of command and shift changes in CBP's holding facility at JFK. Apparently Hemnauth was to be assigned to a specific custody official, at least for the duration of the shift currently on duty. He would determine whether Hemnauth was a candidate for detention, unless there was some further procedural reason to defer a decision and carry it over to the next shift. No one had directly spoken of an arrest, but it seemed clear to Hemnauth that this is what was being arranged. The interminable wait, colorless bureaucracy and lumping amid dejected men, some shackled, were simply a means of softening him up and deflecting any resistance. Hemnauth ended up sitting through three shift changes.

After what seemed like an eternity, another man arrived and took Hemnauth to a separate side room. It was now getting late in the evening. Rahoni and her sister, who had come to the airport to greet him, would have been waiting ever more frantically as the hours passed. That was of no concern to the officer, with whom Hemnauth was now alone. The man interrogated Hemnauth in a cynical tone designed to diminish him. "He was unfriendly in a smiling way." Hemnauth began to feel like a terror suspect and the effect was crushing: "I was suffocating." The officer bombarded him with questions focused on the history of his whereabouts and associations, particularly with organizations.

The line of questioning might have been understandable, perhaps even justified, had there been any debate or ambiguity as to why Hemnauth had been detained in the first place, any suspicion of violent associations or even the most casual encounter with persons or ideology hostile to the country. There was nothing of the sort. Simply an old — very old — drug-related misdemeanor had triggered a provision of immigration law that stipulated that Hemnauth be detained and tagged for removal. Period.

Every detail of the misdemeanor was immediately available to the immigration officers handling Hemnauth's situation. Hemnauth interpreted the stew of indifference, disdain and suspicion being fed to him plainly as a process of repeat criminalization and dehumanization. As we examine the process in retrospect, it is very hard to disagree. And what he went through at Kennedy Airport was but a mild foretaste of what was to come.

With another shift change, after midnight, Hemnauth was assigned to another CBP officer who first put him through the same wringer of questions, but then focused on the misdemeanor charge. Hemnauth explained what had happened, that it was a "really stupid thing." His explanations fell on deaf ears. Deaf ears are exactly what the law prescribed in his case. The questions were perfunctory and did not invite any defense, explanation of the circumstances or, for that matter, any latitude at all in the exchange between Hemnauth and his CBP captors.

Hemnauth asked the officer if someone could find out if this were indeed the case — that he was to be "locked up" — and turn his luggage over to his family. He was told that the rules did not provide for assistance with luggage or concern themselves with anyone who might be worried about a detainee's whereabouts. Still, the officer, of his own volition, did send a subordinate to collect Hemnauth's bags and call Rahoni on her mobile phone for her to retrieve them. However they offered her no further information on where Hemnauth was to be taken once they were through with him at the airport, let alone what was to ultimately become of him.

With the latest set of interrogations completed, Hemnauth was brought back into the larger holding space. He was told to sit on a bench among men in shackles. Eventually they give him a bologna sandwich — which his religion forbids him to eat — and a carton of fruit juice. The atmosphere was "already [that of] a prison."

There was another shift change in the early morning hours and, finally, the charges against Hemnauth were printed from a computer. An officer from the new shift walked over to Hemnauth and handed him a copy of the document with the charges stating a violation of immigration law. At this point, Hemnauth had been officially charged, and it was time to move to the next procedural directive. He had stopped counting the hours since he had stepped up to the booth of the agent clearing incoming passengers. The present officer in the relay sequence summoned a guard who now

cuffed Hemnauth and shackled him to the bench. He was to be turned over to an INS officer assigned to accompany Hemnauth to wherever the Immigration and Naturalization Service meant to take him. Meanwhile he would wait, shackled to the bench.

“Am I going to jail?” Hemnauth asked.

“Yes,” came the solemn response. “You are a detainee.”

Among the immigration and detention personnel Hemnauth would encounter over the course of his two-year ordeal that was just commencing, several would display genuine empathy. Some understood, quickly and at a gut level, that Hemnauth was being subjected to treatment he did not deserve because of the mechanical rigidity of the then- (and still) current immigration statutes and the recipes of their enforcement. The officer who ordered the cuffs and shackles was the first among them. He actually encouraged Hemnauth to fight the charge and thought he could prevail. “Don’t worry,” he told Hemnauth. “You can win this.” He added, “It’s a procedure. I’m just doing my job.” The interesting phenomenon, and one that would recur, is that over the course of Hemnauth’s ordeal, many personnel assigned to apply the immigration statutes and standards deplored their use in this instance. They ranged from the first officer to cuff Hemnauth, to the judge who signed his deportation order, to the transit agent who delivered him to his exile two years later — and actually removed the cuffs earlier than prescribed in order to grant Hemnauth a measure of dignity as he took his last steps on U.S. soil.

Hemnauth sat around for another four hours in his shackles. The bologna sandwiches he could not eat and the juice boxes kept on coming. Hemnauth did not speak to anyone, partly by choice, partly because the people around him, most or all of apparent Middle Eastern origin, were speaking languages he did not understand and could not identify. I asked him if any of the detainees were white. None were.

Finally, two INS transit agents in green uniforms arrived. Hemnauth describes them as stocky “tough cop” types. They were cordial to the extent they were benignly indifferent to the people in their custody and did not care enough about them to be unpleasant. “Like they were picking up a box [they needed] to deliver and take it to a warehouse. They didn’t seem to care about what they were doing.” One does not bother to harass packaged merchandise or, for that matter, engage it in any way.

**U.S. Department of Justice**  
**Immigration and Naturalization Service**

**Notice to Appear**

**In removal proceedings under section 240 of the Immigration and Nationality Act**

File No: A 44-267-779

In the Matter of:  
Respondent: MOHABIR Hemnauth  
A/K/A MOHABIR Hemnauth currently residing at: \_\_\_\_\_

\_\_\_\_\_  
(\_\_\_\_\_) (Number, street, city, state and ZIP code) (Area code and phone number)

☒ 1. You are an arriving alien.  
☐ 2. You are an alien present in the United States who has not been admitted or paroled.  
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

**1. You are not a citizen or national of the United States.**  
**2. You are a native of** Guyana **and a citizen of** Guyana

**SEE ATTACHED I-831 FOR CONTINUED ALLEGATIONS.**

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

**SEE ATTACHED I-831 FOR CHARGES**

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: 8 CFR 208.30(f)(2) 8 CFR 235.3(b)(5)(iv)

**YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:**  
The Office of the Immigration Judge Executive Office for Immigration Review

\_\_\_\_\_  
(Complete Address of Immigration Court, Including Room Number, if any)


\_\_\_\_\_  
to show why you should not be removed from the

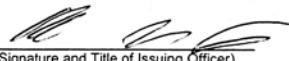
(Date) \_\_\_\_\_ (Time) \_\_\_\_\_  
United States based on the charge(s) set forth above.

Date: April 21, 2002

Form I-862 (Rev. 3/22/99)

*Cal 7/12/02*



  
(Signature and Title of Issuing Officer)  
Il. A. Steinborn  
NYCJFKIA, NEW YORK, NEW YORK  
(City and State)

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INS Form I-862, dated April 21, 2002, officially tagging Hemnauth as removable and ordering him to appear before an immigration judge. There is no hearing date set.

Form I-831 Continuation Page (Rev. 4/1/97)

**U.S. Department of Justice**  
Immigration and Naturalization Service

Continuation Page for Form **NTA**

Alien's Name	File Number	Date
MOHABIR Hemnauth	A 44-267-779	April 21, 2002

**CHARGE(S)**

**Section 212(a)(2)(A)(i)(II)-Controlled Substance**

Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, as amended, as any alien who has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of, a violation (or a conspiracy or attempt to violate any law) or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802)) is inadmissible.

**U.S. Department of Justice**  
Immigration and Naturalization Service

Continuation Page for Form **NTA**

Alien's Name	File Number	Date
MOHABIR Hemnauth	A 44-267-779	April 21, 2002

**ALLEGATIONS**

3 You applied for admission to enter the United States at or near New York, New York on or about April 20, 2002.

4 At that time you applied for admission as a returning Lawful Permanent Resident presenting I-551 A 44-267-779.

5 You were convicted of the crime of Criminal Possession of a Controlled substance in the 7th degree in violation of section 220.03 of the New York State Penal Code, pursuant to a judgement entered on or about September 16, 1997 by the Queens County Supreme court of the State of New York, under indictment number 20423928K, paid a fine of \$250.00 and had your license suspended for six months.

Signature \_\_\_\_\_ Title \_\_\_\_\_

IMMIGRATION INSPECTOR  
PAGE #

12/19/1993  
1993  
2000

INS Form I-831 specifying allegations and charges against Hemnauth. The invoked section of the immigration statutes, 212(a)(2)(A)(i)(II), would prove to be relentlessly rigid.

One of the agents unclipped Hemnauth from the bench and removed the shackles, but not the handcuffs. The reprieve was short. His escorts took him to a kind of storage room where the restraining irons were kept. The agents then uncuffed him and tossed the manacles and shackles into a box, only to pick out another set of restraints from a different bin. Apparently the INS transit agents have their own gear, which they must keep separate from what belongs to the airport crew and cannot be taken from the airport's premises. Or perhaps the new set was more elaborate. The agents placed the shackles around Hemnauth's ankles, as before, but the handcuffs came prefitted with chains; they wrapped them around his torso, keeping his hands up to and against his chest. They also confiscated the contents of his pockets and his handcrafted beret. The frog-walk they were dressing him for required the proper costume.

In this instance, "costume" truly fits the description. Hemnauth was being detained pursuant to a six-year-old petty misdemeanor, not to a crime of violence or even unruliness. Part of the conceit embedded in immigration enforcement regulations was to magnify his criminal persona by dressing him in the feathers of a hardened miscreant. As we shall later see, the 1996 immigration statutes liberally upgrade small offenses to "aggravated felonies" or crimes "of moral turpitude," terms of art more than legal categories derived from specific state or federal statutes. All the better to conflate trivial misdemeanors with the most heinous of evils. All the better to impose terms of detention disproportionate to the risks to the public in violation of international law, as well as inflated bond requirements beyond the reach of most detainees. All the better to justify uncompromising deportations and harden public attitudes toward deportees.

The agents frog-walked Hemnauth through the crowded airport, provoking a small commotion. It was now well into the following morning, and the usual daytime hordes of arriving and departing passengers crowded the terminal. Everyone stared at the scene. The way Hemnauth was elaborately trussed, his dark complexion, and the short months since 9/11 would have had many suspect he was a dangerous criminal or, worse and more likely, a foiled terrorist. The humiliation was a crushing, unbearable agony. It played out for Hemnauth in slow motion worthy of an R-rated horror movie. He told me that he felt like dropping dead. Even days later into our session in Trinidad — where I had traveled to interview him over



five days — after Hemnauth had chronicled for me a glut of numbing accounts of mistreatment, from malnutrition to violent physical abuse and everything in between, he highlights the humiliation of disapproving stares as the source of his worst moments of suffering.

Barring death, Hemnauth suggested to his escort that they simply put him on the next flight back to Guyana. He felt he was sliding into a bottomless canyon from which he would never resurface. The sensations of irreversible doom, of being buried alive, were amplified by the intractable, just-doing-my-job indifference of a series of handlers. True, one man in the chain had suggested he fight his deportation, although the word had not yet been spoken, but even he was just a cog in a process moving inexorably forward and would be quickly displaced by the next one.

“I was begging him to put me back on the plane,” he later told me. “I had seen other people being put back on planes.” The agent told him that might have been a possibility if Hemnauth had a return ticket, but under the circumstances the decision to purchase return passage fell to an immigration judge as did, by implication, his entire fate. No one else had such authority, certainly not an INS transit officer.

It had now been over twenty-four hours since Hemnauth had landed at Kennedy. The agent sat him in a van, where he waited another hour. He was left unsupervised, but still in his restraints. I asked him if there were bars over the windows. Thankfully, there were not. (I have since observed larger carriers, converted school buses, used by the immigration authorities. They do have bars.) The van finally left Kennedy with Hemnauth as its sole passenger, bound for Middlesex County Jail in central New Jersey, near the small city of New Brunswick, home of Rutgers University. Hemnauth remembers the journey taking several hours, although the distance is fifty-five miles by road, most of it highway, and normally takes about eighty minutes using the most direct itinerary. In any event, night had fallen by the time the van reached its destination.

Hemnauth continued to seek confirmation that he was being taken to prison, although given his restraints any other outcome would have seemed far-fetched. The driver made light of it in order to deflect questions and keep a presumably terrified passenger calm, even “making jokes about the whole thing.” He had few comments Hemnauth could remember, except to repeat references to their destination as a detention center, not a jail.

“You’ll have a lot of friends there,” the driver told him, not facetiously. Getting no useful information, Hemnauth withdrew into himself, and, after a few more miles, the driver asked him what type of music he might enjoy from the radio. “I began to get the impression that, hey, this is the last I’ll be able to hear music for a long time.” He does not recall his selection.

Daniel Zwerdling is a seasoned and tenacious investigative reporter for National Public Radio. He does not have a particular “beat,” as do, say, the White House, Afghanistan or economics correspondents. His segments are not the most frequent on NPR. They often are the product of painstaking research conducted over not days but several months. His delivery on the radio is scrupulously dispassionate, and his choice of words simple and clear, scrubbed of pretense and editorial jabbing.

The facts of his story, in this instance, were straightforward enough.

Hemnauth Mohabir was a commercial refrigeration technician by day and a performing musician by night. Guyana, his homeland, is a small country in South America measured by the size of its population. He had a green card and an American child, a son, born in New York. The government had voided his U.S. residency because of an ancient and petty misdemeanor conviction for simple drug possession. Although he had promptly paid the related and correspondingly piddling penalty — \$250, the sentencing judge’s assessment of an appropriate sanction, along with a six-month suspension of his driver’s license — unbeknownst to him, the conviction, however minor the offense, had automatically tagged him an inadmissible alien and a target for removal. He was arrested, a full five years later, at Kennedy Airport in New York, by the Immigration and Naturalization Service as he reentered the country from a brief absence abroad to visit his mother. In addition to his young son, he had a steady job to return to in Manhattan, keeping the computer control room at Madison Square Garden cool enough to function without unscheduled interruption. Instead, the immigration service jailed him for two years, one of them at the Passaic County Jail in New Jersey. Then the government deported him.

The conditions of this man’s detention and of those around him, right here on U.S. soil, were disturbingly reminiscent of Guantánamo Bay,

Bagram, “black sites” and Abu Ghraib: dogs sicced on prisoners (“detainees” in the official phraseology), beatings, guards gone wild, denial of adequate legal representation and protections, degrading strip searches, constant contempt laced with curses invoking a presumed promiscuity of the detainees and their mothers. Unlike “Gitmo,” where the Bush administration showily thumbed its nose at *habeas corpus* and other constitutional guarantees from across a body of water, Passaic dodged the attention of the broad public and, until Daniel Zwerdling came along, the national broadcast media. A dehumanizing pit, with mold saturating its walls, neglectful and incompetent medical care, unsanitary plumbing and ventilation, a diet of feedings rather than meals: Even Zwerdling, eminently versed in how to be skeptical of government conduct, later told a public radio interviewer in New York that he “didn’t believe it at first . . . I seriously did not believe it.”<sup>3</sup>

What Zwerdling learned in his investigation should not have been a secret, neither then nor now. After all, the immigration enforcement service of the U.S. government has jurisdiction over the largest detention system in the country, larger than any state or federal prison system.<sup>4</sup> In fact, it has never been a secret at all, but rather a bleak demonstration of the blindness of those who will not see.

Many who worked in detention centers around the country and who, therefore, were familiar with the immigration detention regimen spoke openly of their misgivings<sup>5</sup> and even joined street demonstrations organized by civil rights or church groups to protest conditions in the detention centers. Newspapers from the *Miami Herald* to the *Dallas Morning News* and the *Los Angeles Times* have reported on detainee abuse and on the stonewalling of prison wardens, sheriffs and immigration authorities. The *New York Times* and the *Washington Post* have featured stories on the breathtaking displays of harshness or malfeasance by an immigration enforcement network comprising federal agencies, deputized state and local authorities, and contract jailers. In 2009, Amnesty International released a full and damning report, “Jailed without Justice,” detailing the persistent lack of compliance of the U.S. immigration detention system with accepted norms of human rights and with its own declared standards. Amnesty’s findings

3 Zwerdling and Casciato, “Investigating Abuse.”

4 “TRAC Immigration: Huge Increase in Transfers of ICE Detainees.”

5 Dow, *American Gulag: Inside U.S. Immigration Prisons*.

were largely ignored by broadcast and cable media, save for an allotment of 100 seconds — I counted them — on MSNBC. Finally, in October 2011, the investigative public television journal *Frontline*<sup>6</sup> reported on the aggressive government arrests of aliens under the Immigration and Customs Enforcement's Secure Communities program and — a rare occurrence on broadcast television — emphasized instances of parents forcibly separated by the American government from their American children. Yet the extent of the roundup of immigrants and of the deliberate denial of judicial protection for them remains unknown to many.

A Google search on Passaic County Jail, where Hemnauth Mohabir was held alongside its general prison population, yields a good many accounts of abuse, subterranean standards of hygiene and safety, corruption and violence. For a while, Passaic suffered some local notoriety for the conditions within its walls, although it has since fallen off the radar once trained on it.

And yet, relatively few Americans beyond the initiated — the inmates, their lawyers, their jailers, a cadre of journalists and civil rights activists — knew the full extent of the abuse being perpetrated in their name at Passaic, mere minutes from the bustle of Manhattan, or at similar detention facilities around the country, at the time of NPR's report. Or know now that federal law, judicial doctrine and political expediency conspired to permit it.

Today, as so many continue to struggle astride the tail of the mother of financial meltdowns, the old adage, that what appears too good to be true probably is, has come back into vogue from its years in a wilderness of suspended disbelief and delusion. "Too good to be true" has reclaimed its rightful place in the pantheon of precious pearls of wisdom, as livelihoods we once thought secure are subject to constant jeopardy. But when it comes to threats of embarrassment to our national self-image, like the medieval treatment of immigrants in our custody or the whimsy with which

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6 Young, "Lost in Detention."

we exile them, the reverse adage might also have embedded our collective psyche. And unlike its mirror maxim, back from an extended furlough as a slogan-length explanation for the ruinous bursting of an economic bubble, it has never left: We are conditioned in our land of the free and the righteous to believe that what is *too bad to be true* probably is as well, despite contrary evidence floating around us like pollen. To our minds, American democracy, and commitment to freedom and virtue, are so superior to those of any other civilization in time or space that any violation of human rights in ours can only be the product of a rogue, not of our nation as a whole or its methods of government. Yes, indeed, Hemnauth Mohabir's story *is* too bad to be true, as are the stories others have told before and since. But true it is.

Even stagecraft can fall short in conveying the full drama of the reality unfolding in the shadows of our immigration and deportation system. *The Visitor* (2007) is an impressive and informative movie, perhaps even daring. It alerted those who saw it — a minority of moviegoers in search of enlightenment — to cruel, but lawful government policies of which they knew little. It does not sugarcoat the faceless intransigence of the INS's post-9/11 successor agency, the Bureau of Immigration and Customs Enforcement, commonly referred to as ICE. In a climactic scene, the main protagonist, a mournful and bland economics professor who has taken an accidental interest in an undocumented Syrian man facing deportation, explodes at the robotic, fluorescent-lit indifference of the man behind the reception desk at a detention center to the implications of what he does for a living, that it implicates him in the machinery of dehumanization. The deliberate anonymity of the detention facility is well conveyed: a windowless, warehouse-like structure with a single metal door in a dour Queens, New York neighborhood dominated by a mass transit rail yard.

With all this, the story unfolding on the screen, for all its drama, still understates the harshness of the system it tries to expose. The detainee portrayed in the movie is removed after ten days or so in captivity, not the months to years that people like the subject of this book have endured. And while the scenes of *The Visitor* shot in the detention center highlight the grimly featureless waiting room and automaton employees who point to a call center number posted on the wall in response to every query, we do not observe what goes on in the detainees' quarters. They are hidden from

us. The imprisoned man tells of the despair he faces there. We do not witness it. *The Visitor's* main protagonist, as heroic as he is, resides on the safe side of our immigration law's robotic lack of compassion and intransigent enforcement. We do not see attack dogs lunging at inmates.

The enforcement apparatus summarily sketched in *The Visitor* has become so entrenched that the Obama administration's desire, muted as it might be, to bring it to acceptable standards of human decency has required substantial commitments of political will in the face of restrictionist opposition to any immigration reform that mitigates the intransigence of the system's enforcement provisions, and to funding immigration policy prerogatives other than militarization of the southern border. And that is even before the most egregious flaws of the body of law regulating detention and deportation — a creation of the U.S. Congress that, ultimately, only it can adequately correct — even begin to get addressed in earnest.

When I first heard Hemnauth's story on the radio, my disbelief yielded quickly to the simple thesis that his substantive rights had been violated, that these rights were entitled to federal protection under the law, and that relief, if not for him at least for others in similar predicaments, would be expeditiously granted. If not immediately as a result of Daniel Zwerdling's reporting, later, once a more principled cadre of American leaders had replaced the then-current one. My faith in basic constitutional safeguards convinced me that Hemnauth's case raised such glaring issues of denial of rights and due process that a remedy would eventually be ordered by a contrite government or the Supreme Court, even one with Antonin Scalia as the Pied Piper of its majority. Hemnauth's imprisonment at Passaic also raised a legitimate concern about the anti-constitutional practice of cruel and unusual punishment by a state-sanctioned prison system. Its practitioners would surely face censure, sooner or later. In other words, Hemnauth's treatment was all a huge mistake, not a systemic practice.

This was all rather wishful thinking on the part of one caught in an idealistic crouch. As I gathered and asked my many questions in order to hone my understanding of how Hemnauth's ordeal could have conceivably been permitted under the rule of law, I confronted a web of legalistic rationale

and administrative guidelines that confirmed that, yes, indeed, the disposition of his case by our immigration enforcement system was permissible under federal rules and statutes, judicial doctrine and Supreme Court precedent, however dated and misguided. Except maybe for the dogs, but Passaic had discontinued their use in an effort to deflect further scrutiny. Even a swaggering county sheriff can bear only so much comparison of his jurisdiction to Abu Ghraib before altering his behavior. Although, on second thought, if the more recent actions — and reelection — of Sheriff Joe Arpaio of Maricopa County in Arizona are any indication, even that assumption may prove to have been mistaken.

Yet explanations of rationale and procedure are not answers in any fundamental sense. They do not address, indeed they boldly sidestep, the overarching question of why Hemnauth Mohabir was treated as uncivilly as he was. Of who had an interest in such an unforgiving disposition of his case and in such blindness to his grievances. Of why international norms of civilization and our own ideals were brushed aside in favor of government-sanctioned ruthlessness, indeed were barely even considered. Of how a system came into being that grafts atop a body of remarkably rigid federal immigration law an enforcement apparatus that has rarely been called to account.

The exploration of these questions led me to places few Americans want to go:

To the realization that the history of immigration and deportation in America is studded with the passage of laws and court decisions that aim to erect as high a barrier as possible between the rights of citizens and those of aliens, including legally resident aliens, even though the Constitution makes little to no such distinction beyond the right to vote and be elected to federal office. (The equal protection and due process language of the Fourteenth Amendment refers, pointedly, to *persons*.)

That unconstrained executive and legislative power to exclude and remove noncitizens has been a cornerstone of U.S. federal immigration policy for over a hundred years.

That the government's sway over immigrants' rights has been reinforced by the progressive imposition of an extra-Constitutional doctrine barring scrutiny of immigration law by our federal court system, including the Supreme Court.

That the same mindset and legal mechanics that enabled the banishment of Native Americans, the seizure of fugitive slaves, the Chinese Exclusion Act, the internment of citizens of Japanese extraction, the McCarran-Walter Act of the McCarthy era and other episodes of the American experience we would sooner forget reappear in our current immigration laws.

That the purpose of these laws, just like their antecedents, has not been merely to protect our borders and our sovereignty, but, through summary deportation of long-established resident aliens, to exert social, political — and, yes, racial — control over many who live among us and to subject them to our whims and bouts of paranoia.

That we deny persons in deportation proceedings access to the judicial system created under Article III of the Constitution, and hence to the comprehensive due process we are taught in grade school is the inalienable right not only of citizens, but of all persons present within our federal and state jurisdictions.

That the government can move detainees from jail to jail at will, without informing anyone, often in places far away from family members legally residing in the country, not to mention from their lawyers if they are fortunate enough to have a competent one.

That Congress and our immigration authorities have circumvented the constitutional proscription of double jeopardy with semantic hat tricks.

That with few exceptions, international law, treaties and conventions — even those our Senate has ratified — have no standing in immigration hearings, despite Americans' hyperventilated championship of human rights.

That the warm embrace of family values by our legislators does not extend to the recognition of a fundamental right to family integrity.

Hemnauth Mohabir's two years of imprisonment and subsequent exile are not even acknowledged as punishment, but rather as stations in an administrative process pursuant to a civil action on the part of the government, *not* a criminal charge. Never mind that one of the parties to the civil case, the INS succeeded by the Bureau of Immigration and Customs Enforcement (ICE), sets the rules of adjudication and controls the machinery of detention and deportation. To call Hemnauth's ordeal a punishment would have triggered pesky constitutional entitlements such as the right to an attorney, a trial before a jury of his peers, protection from double jeopardy and a modicum of proportionality of the penalty imposed to the



infraction he may have committed. All were denied him. Instead Hemnauth Mohabir received two years imprisonment; permanent exile from his home; forced separation from his ten-year-old child; public hearings whilst in belly chains, handcuffs and leg irons; loss of employment; forfeiture of benefits he had paid for with his taxes; and threats to his health and his life. These brutal penalties amounted to supplemental retaliation by the government for an underlying misdemeanor, which, five years earlier, a court of justice deemed worth all of a \$250 fine.

Hemnauth Mohabir is not a saint, and the pages that follow are not a hagiography. Like the rest of us, Hemnauth is of this earth. He has done a thing or two in his past that he regrets, likely with reason, and not done things he sorely wishes he had. For a time, he drifted and kept mischievous company in New York. He knows from experience that he does not tolerate alcohol and now avoids it.

Hemnauth is not even the worst case of suffering at the hands of ICE's immigrant detention and deportation apparatus. He couldn't be. The worst cases are dead.

Hemnauth Mohabir is simply a modest, soulful and guileless man. He is certainly not the "criminal alien" our immigration law's inflammatory and Orwellian lexicon labels him, not even close. He is more an exemplary than exceptional instance of an immigration enforcement apparatus impervious to history and the human condition, for there are countless other cases that share a like element of unrelenting official callousness, some of it explicitly sanctioned by Federal statutes, some of it not.

This is one good man's life story.

It is a story of law estranged from justice.

**“This book inspires a way forward to restore pride  
in America’s image at home and abroad.”**

—POLLY J. PRICE, Professor of Law, Emory University

Inspired by one immigrant’s story standing in glaring conflict with American ideals, Daniel Kunstler spent six years researching and documenting U.S. immigration enforcement practices. Arguing that our immigration and removal system is a matter of choice over necessity, Kunstler advocates changes in enforcement to correct a drift of law from justice and make us, finally, into the people we say we are.

“Daniel Kunstler’s compelling examination of Hemnauth Mohabir’s journey through the byzantine U.S. immigration system is not only an important exposé of systematic injustice, but also a compelling and eminently readable reminder of the real life consequences of modern immigration enforcement. Kunstler’s narrative is a clarion call on behalf of the men, women and children caught up in the clutches of a broken and dehumanizing system.”

—VINCE WARREN, Executive Director,  
Center for Constitutional Rights

“Kunstler succeeds in taking a complex legal subject and making it a human story.”

—MARIA BLANCO, former Executive Director,  
Earl Warren Institute on Law and Social Policy



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