Thang D. Nguyen

From: reesgj@aol.com
Sent: Saturday, January 29, 2022 8:24 PM
To: 'Khoa Le'
Cc: _____
Subject: RE: Forwarding Letter to Ambassador Rees 12/4

Dear Mr. Khoa,

Thank you for your message. I'm so sorry it has taken me this long to respond, but these are complex issues from 25 years ago, and I needed to do some research to refresh my recollection.

I first heard of the Comprehensive Plan of Action in the early 1990s when I was General Counsel of the United States Immigration and Naturalization Service (INS). Nobody in the State Department or in the operational components of INS ever asked me for a legal opinion or any other form of advice, I guess because the program was already up and running by the time I arrived in 1991. But the CPA was held up as an example of exactly the right thing to do in mass migration situations: the "genuine" refugees are identified and quickly resettled, and everyone else is given time to decide to repatriate voluntarily, with guarantees of safe return and non-persecution. It sounded great. However, when I left INS in 1993 and went back to teaching/writing/researching, I soon began to hear the other side of the story: that the interviews were often conducted by police or military personnel with no serious training and no real interest in refugee protection; that in some countries there was an informal limit of 10% screen-ins, enforced by not renewing the contracts of officers whose screen-in rates were too high, because anything higher than 10% was deemed a "magnet" for further irregular departures; and that some of the people screened out as "economic migrants" by the CPA included anti-government intellectuals, Buddhist monks, Catholic priests and nuns, and others who in a fair screening process would have been recognized as refugees. I felt guilty about not having gotten involved while I was at INS to try to fix the program.

In January 1995 I accepted an offer from Rep. Chris Smith to serve as Staff Director and Chief Counsel of the Subcommittee on International Operations and Human Rights, of which he was the new Chairman. I had developed a pro-refugee reputation during my time at INS, and Congressman Smith had a similar reputation, so we were soon approached by a number of refugee advocates who wanted to share their perspectives on some of the refugee issues that would confront Congress. Among these early discussions was a meeting I had, probably in around February of 1995, with three advocates who informed me in detail of some of the problems with the CPA. In particular, they and/or their colleagues had compiled a list of about 500 "egregiously screened-out cases". They asked that Congressman Smith write a letter to the State Department urging that the people on the list be given new interviews, ideally with US officers. The three advocates were Shep Lowman, Lionel Rosenblatt, and Nguyen Dinh Thang. (I was not then well-acquainted with any of them, although I may have spoken to

Lionel on the phone when I was at INS and Refugees International had concerns about our treatment of Haitian boat people.)

After listening to what they had to say and discussing in detail some of the "egregiously screened-out cases" as well as the process that led to these results, I asked the advocates why, if the process was as bad as it seemed to be, we should only ask for re-screening of 500 cases. Surely there were others, unknown to the advocacy community, who had been screened out just as egregiously; and, indeed, the problems with the process appeared to be so bad that we could have no confidence that any rejected asylum seeker had no fear of persecution if returned to Viet Nam. So why not insist that no U.S. funds be used to repatriate anyone through the CPA until that person had been interviewed by a U.S. asylum officer and found not to be a refugee? The response – I believe it was mainly from Lionel, although Shep may have agreed with him – was that while this might be the best answer in theory, it was too late in the process to insist on such a dramatic change, and that it would only give the CPA detainees "false hope". So the best we could hope for was a re-screening of the 500 people, or perhaps just a few of them, but this was better than nothing. Dr. Thang did not say much during this part of the discussion. However, an hour or two after the meeting he called me and said that despite what his colleagues had said, he thought the CPA screening was indeed so bad that a full-scale re-screening was the right way to proceed. I then discussed the matter with Congressman Smith, and he decided to put a provision in the Foreign Relations Authorization Act, which was to originate in our subcommittee, to prohibit funding for further CPA repatriations of persons who had not been interviewed and screened out by US asylum officers, and to provide for resettlement in the US of those who were screened in during any such re-interviews.

What ensued, to my surprise and disappointment, was a pitched battle in which several prominent refugee organizations sided with the State Department – and with anti-immigration organizations such as the Federation for American Immigration Reform – to oppose the Smith anti-repatriation provision. They supported an amendment by Congressman Bereuter, who was chairman of the Asia/Pacific subcommittee and was both a "constructive engagement" advocate and an ally of the anti-immigration groups, to strip the Smith language from the Foreign Relations Authorization Act. Of course we tried to convince these pro-refugee organizations to change their position. In conversations with representatives of these organizations, some of whom I considered friends, I was basically told that it was too late in the process; the CPA was a "done deal" and all our provision could do was to give "false hope" and thereby further complicate the situation. And one of their major arguments was that "the Vietnamese-American community is divided" on the Smith provision and on the underlying issue of whether the CPA was so bad that it required radical reconstruction. I was surprised at this, because by then I was getting hundreds of calls and letters from Vietnamese-Americans in support of our position and none in opposition; but the evidence for "division in the community" – indeed, the sole evidence that was ever cited to me – was that the highly respected Dr. Khoa and his organization SEARAC were opponents of the Smith provision and believed our arguments against the CPA were overstated. I don't think you and I had ever met at that point, but I heard your name many times, always in support of the proposition that the State Department/Bereuter

approach was correct and that the Smith provision (by then vigorously supported by Dr. Thang and Boat People SOS) was wrong.

I think you know the rest. Rather than just oppose the Bereuter amendment, Congressman Smith offered his own amendment that preserved the anti-repatriation language. The Smith amendment passed the House overwhelmingly. In the House-Senate conference on the Foreign Relations Authorization Act, Congressman Bereuter and Senator Kerry opposed including the Smith language, but the other conferees – I remember Biden, Helms, and Ashcroft in the Senate as well as Gilman, Hyde, Goodling, Lantos, and Berman in the House, but there probably one or two others – supported the language and it was made part of the conference report, which then passed the House and the Senate.

The bill was vetoed by President Clinton, mainly for reasons unrelated to the refugee provisions. But by then – indeed, soon after House passage of the bill with the Smith provision – we began to hear from the State Department and the White House that they were trying to come up with a plan to address our concerns with the CPA, which were obviously shared by so many Members of Congress. Indeed, several Administration officials appeared at an informal off-the-record briefing, attended by Chairman Smith and by several other senior members of the Committee, not just to inform us of the Administration's position but also to participate in a candid discussion of some of the problems with the CPA and how to address them.

At our public subcommittee hearing in July 1995 which, I believe, is the one to which Dan Wolf refers in the message you forwarded to me, among the witnesses were Shep, Dan, and Dr. Thang. Dan and Shep presented a plan for re-screening of the screened-out CPA asylum seekers, which they had also presented to the State Department. Dr. Thang endorsed some aspects of this plan, with the important caveat that he believed the re-screening should take place in the camps, not after return to Viet Nam. He gave two main reasons for this: first, the Vietnamese government could easily renege on any commitment it might make to the US government to give us access to returnees; and, second, that any improperly-screened-out refugees who were returned to Viet Nam would be at risk of serious persecution in the time between their repatriation and however long it took for us to give them an interview. Both my memory of the hearing and my current view on re-reading the transcript is that there was no serious disagreement among Shep, Dan, and Thang: they all agreed that the CPA was seriously flawed and that a mass re-screening was appropriate, although they did disagree on one important point, which was where the screening should be conducted. Dan and Shep acknowledged that the returnees might be in danger if they returned to their home areas in Vietnam, but both expressed the hope that the returnees could be re-screened in a safe area near the airport within 7 to 10 days of their arrival and promptly resettled, thus mitigating the danger of persecution. Significantly, all the witnesses clearly agreed that the reason a re-screening might even be on the table was that the passage of the Smith provision had altered the state of play and made it both difficult and embarrassing for the Administration to proceed with full-throated support of an unmodified CPA.

Some months later, the Administration requested a meeting with the staffs of the House and Senate Committees to present its proposal for what it called the ROVR ("Resettlement Opportunities for Vietnamese Returnees") program. The meeting was unusual, in that on the Congressional side it was at the staff level but on the Administration side it was at a very senior level: the presentation was made by the Assistant Secretary for PRM, Phyllis Oakley. Until that meeting, there had been no public announcement of the program. Neither the details of the program nor the name (ROVR) had been made public. At the meeting, Assistant Secretary Oakley joked that "we wanted to call it Grover, but we could not think of a word that began with G, so we called it ROVR." I took this as one of many tacit acknowledgments by the Administration that the program was a response to the Smith anti-repatriation initiative. In fact Asst Secretary Oakley and her colleagues made clear that they would go forward with the program only if the Congressional proponents of the Smith provision accepted it as a substitute for the anti-repatriation legislative language and agreed not to continue to push this language in other legislation.

I promised to take the proposal back to Chairman Smith, which I immediately did. Of course the biggest problem we had with the proposal was that the re-screenings would take place in Viet Nam, which we regarded as the most dangerous place to have them. But the Administration had made clear that it would absolutely not agree to conduct the program anywhere but Vietnam. They made clear that they would have to negotiate the details with the Vietnamese government – I believe they said they had had some preliminary indications that the proposal would be acceptable – and they did not make any promises about a safe area near the airport, although they said they hoped the interviews could be done promptly. Ultimately we agreed to the proposal, and Chairman Smith and other Congressional proponents of his anti-repatriation language agreed not to insist on this language in future legislation provided that the Administration implemented the ROVR program instead.

As it happened, our fears that return to Viet Nam would be dangerous for many of the asylum seekers and that the Vietnamese government would obstruct implementation of the program turned out to be well-founded. Many thousands of people would return to Viet Nam over the next few months, but the Vietnamese government ignored its commitment to allow US interviewers access to them for ROVR interviews. After about eighteen months the Administration, to its credit, withheld an economic benefit that the Vietnamese government had been expecting to receive, making clear that this benefit would be conferred only when the Vietnamese authorities honored their commitment to let the US implement the ROVR program. They pretty promptly after that, and within a few months our INS asylum officers were in Viet Nam conducting interviews. Out of about 19,000 people who were deemed eligible for the interviews – the PRM bureaucracy had limited eligibility by imposing arbitrary deadlines, thus excluding at least 100,000 returnees who we believed should be eligible – and of these 19,000 the vast majority, over 18,000, were found to be refugees and were resettled in the United States.

I have always been proud of my role in bringing about the ROVR program, even though I never thought it was a good idea to require people to return to Viet Nam as a condition of eligibility

and I believed it should have been open to all the CPA returnees. To this day I am filled with joy whenever I meet someone who was resettled in the US through ROVR. And, for the reasons set forth above, I have always believed that ROVR would never have happened if it had not been for our efforts to enact the Smith anti-repatriation provision.

I was therefore surprised to learn, at the Library of Congress event on Vietnamese boat people in 2009 at which you and I were both speakers, that you believed the ROVR program was a result of your own advocacy. I did some research at the time, and I have done further research since receiving your letter below, in an effort to understand your position. I now understand – although I don't think I knew it at the time – that you had at various times stated that some kind of "Track Two" or "Grey Area" program for certain repatriated asylum seekers might be a good idea. As I have discussed above, I know that Shep and Lionel and others had taken similar positions. But I am pretty sure that prior to the passage of the Smith provision in mid-1995 all of these proposals were for re-screening of a very small number of people, perhaps a few hundred. Some of your own contemporary statements which I have found online suggest that there was no widespread persecution or even discrimination in Viet Nam, because the government had left the Cold War behind and endorsed free-market capitalism, and that returnees with past connections to the US government might be re-interviewed by slightly modifying the in-country ODP program. I hope I am not misunderstanding your position; my understanding is based on what a few people (including some who regard themselves as friends and admirers of yours) told me when I asked them about this in 2009, and on statements of yours that I was able to find on the internet.

Even, however, if you had endorsed a robust re-screening program for many thousands of returnees, I find it difficult to believe that any such program would have been implemented if Congress had not passed the Smith anti-repatriation provision. Indeed, I had approached the Administration in early 1995 about Shep and Lionel's request to re-screen the 500 "egregiously screened-out cases" and had gotten nowhere. It was clear that the only thing the PRM bureaucracy did not like about the CPA was that people were not being repatriated quickly enough. I believe that the Smith provision – and the light that was shone on the defects in the CPA during consideration of the provision – are what made ROVR possible. That provision was strongly supported by Dr. Thang and Boat People SOS. In fact, the evidence they presented about the flaws in the CPA was crucial to the success of our legislation. And you were frequently cited as a prominent supporter of the opposing position. So I hope you will forgive me for believing that Dr. Thang's belief that his and BPSOS's advocacy of the Smith provision led to the ROVR program is more accurate than your view that the program was a response to your own advocacy.

I hope I have not written anything here that will hurt or offend you. Lan Dai has told me that you were always kind and respectful to my dear adopted uncle Le Van Tien, and I am most grateful to you for that. And I am sure that at all times you believed you were pursuing the correct course. But reasonable people can and do have different opinions on public policy, and I think that is what was happening here.

With warm regards,
Joseph

Grover Joseph Rees
United States Ambassador (retired)
Post Office Box 6
Breaux Bridge, Louisiana 70517

From: Khoa Le <tuvan09@gmail.com>
Date: December 3, 2021 at 5:10:01 AM GMT+1
To: _____
Subject: letter to Ambassador Rees

Dear Ambassador Rees,

Since I do not have your email address, I am sending you c/o Lan Dai a copy of my letter dated 11/29/2021 and sent to Congressman Chris Smith yesterday by USPS priority mail. This is about my lawsuit against Dr. Nguyen Dinh Thang (NDT) who, in addition to his defamatory article on May 25, 2020, recently released a video montage showing you and Congressman Smith alternately praising him as the founder of the ROVR program nearly thirty years ago.

Part of my above-mentioned letter to Congressman Smith relates to an alleged video interview you gave in 2019 in which there was no voice and no image of the interviewer. NDT used the cut-and-paste technique on this video interview and another video statement by Congressman Smith to create a single video presentation with both of you on the same screen. The statement by Congressman Smith was undated but was presented to the public on Christmas Day, 12/25/2019.

On page 2 of the attached letter, I have raised two questions for Congressman Smith, only one of which (the first one) is for you. Please do respond to this question. If your answer is NO, you don't need to explain unless you want to, but if you say YES, I would greatly appreciate your telling me what is wrong in my ROVR story (Attachment A) and/or in my letter to Congressman Smith on 09/12/2020 (then cc'd to you via Lan Dai's email address) nullifying all NDT's false claims and slanderous statements against me in his long article on May 25, 2020. I particularly call your attention to Dan Wolf's affirmation that NDT's opposition to the ROVR program is "a matter of public record," and that "he testified against ROVR at

the very same hearing before the House Subcommittee on Asia and the Pacific that Shep and I testified in support of it." Lionel Rosenblatt, whom you know well, also sent me these words, "It is very disappointing to see Thang continuing to defame you. Don't let this discourage you. Your colleagues and friends have continued admiration for you."

I wish that you won't allow Nguyen Dinh Thang to involve you in this lawsuit so that your prestige will not be stained by NDT's unprofessional and unethical conduct. To defame honest people and distort historical truth for personal ambition and self-serving interests will be judged severely by the public if not by the law. I look forward to an opportunity to have a frank conversation with you to set straight all past misunderstandings about me and SEARAC.

Thank you for your attention.

Best regards,
Le Xuan Khoa