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LET MY PEOPLE COME

Marc Van Der Hout opens doors for immigrants

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By Rose Nisker on July 17, 2006

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The offices of Van Der Hout, Brigagliano & Nightingale are located in downtown San Francisco, but once inside you might think you were in the Mission. Displayed prominently behind the front desk is a massive print of Diego Rivera's indigenous flower seller in "Girl with Lilies." Below the image, the office receptionist answers a steady stream of calls in both English and Spanish while a young, diverse staff buzzes around her. The lobby is a perfect introduction to the world of Marc Van Der Hout.

The renowned immigration attorney has spent the last 28 years committed to using the law as an instrument of social change. Van Der Hout's deportation and asylum cases — often lengthy, complex ordeals — not only help make law, they make news. Even though he's become intimate with the changeable nature of his field, he says the past decade has proven to be a particularly turbulent ride.

It's easy to feel welcome around Van Der Hout. Maybe it's his graying beard and kind eyes. Or maybe it's because he's used to welcoming people. In 1991, Van Der Hout welcomed more than half a million Salvadoran and Guatemalan refugees into the United States when he fought to give them an equitable chance at political asylum. The landmark case, American Baptist

Churches v. Thornburgh, also known as the "ABC case," spanned more than six years (some cases are still being processed) and involved the Immigration and Naturalization Service's (INS) almost-blanket denial of asylum to immigrants from El Salvador and Guatemala, countries whose governments were supported by the United States. The case brought national attention to the systemized discrimination used in INS asylum decisions at the time. To this day, Van Der Hout still runs into people who thank him for making it possible for their families to come to this country.

Not bad for a guy who just wanted to "use his Spanish-speaking skills and help people." Van Der Hout attended Golden Gate University School of Law, and while there, he worked with the United Farm Workers, representing workers in labor disputes. When a friend offered him a position as staff attorney at a nonprofit organization providing immigration services — the International Institute in Redwood City — Van Der Hout took a chance. "I didn't know anything about immigration law," he recalls, "but it sounded interesting. Starting from almost no experience, I had to learn the basic ropes by the seat of my pants."

Van Der Hout hit the ground running. Within a year of taking the position, he was collaborating with the National Lawyers Guild and the ACLU, among others, on a major class action lawsuit that challenged INS roundups of factory workers. Soon after, he helped to represent dozens of Iranian students in a suit against the U.S. government involving alleged harsh treatment and reprisals that the students faced following the Iran hostage crisis. For Van Der Hout, that case is one of many that demonstrates how "the U.S. government often uses immigration practices as a domestic arm of foreign policy."

An activist at heart, Van Der Hout is fueled by cases that he feels can have a major impact. Sometimes that fuel is required to burn an inordinately long time. In a case approaching its 20-year mark, Van Der Hout is battling to prevent the deportation of a group of immigrants known as the Los Angeles Eight. Although the eight immigrants came to this country legally, their involvement with a Palestinian political organization instigated a U.S. government attempt to deport them in 1987. The basic question, Van Der Hout explains, is whether these immigrants can be deported for activities that would be constitutionally protected if they were U.S. citizens. The case has been up and down through the courts countless times, including the Supreme Court. "We've won three times and each time Congress has passed

a new law to overturn the decision that we had won before," Van Der Hout says. He feels that the case has gone far beyond the individuals involved. "The Justice Department wants to establish a legal precedent with this case so they can stop people from exercising First Amendment rights in the context of a deportation proceeding."

The Future of Immigration Law

While the case of the L.A. Eight (see accompanying story) has been a steeply uphill battle, Van Der Hout believes the future will present even tougher challenges. Post-9/11 laws like the PATRIOT Act, the Real ID Act and other restrictive legislation have made all manner of immigration procedure more difficult, he says. But Van Der Hout's biggest concern is the dwindling power of the courts in regard to immigration cases. "We see more laws being carefully scripted to both overturn decisions based in the courts and prevent future access to the courts for immigrant issues," he explains with urgency. In effect, Van Der Hout says, the government is taking away the power of the courts to oversee immigration agency activity. Van Der Hout fears that for immigrants, "the U.S. is becoming like a monarchy with all the power invested in one branch."

For Van Der Hout, that makes wins like the recent Zavala v. Ridge particularly meaningful. The win deemed unconstitutional a regulation that allows the Department of Homeland Security to block the release of detainees who were granted bond by staying an immigration judge's decision until the Board of Immigration Appeals makes a finding. Visibly frustrated, Van Der Hout says, "The government has the impunity to say, 'Judge, we don't like your decision so we're going to appeal it, and by the way, your decision has no effect while we're appealing it.' Hello? How about two sides here and a judge deciding?"

Even with all the new restrictions on immigration policy, Van Der Hout believes that immigration will persist, albeit illegally. "There's a need in the U.S. that immigrants fill. Anti-immigration legislature will only serve to create a perpetual underclass of people who can't surface. That's not good for anybody."

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