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POSITION PAPER ON UNDOCUMENTED ALIENS IN THE UNITED STATES*

I

INTRODUCTION

The following analysis was prepared by HERMAN BACA, Chairman, Committee on Chicano Rights, Inc., ALBERTO GARCIA, Chairman, United California Mexican-American Association, JESSE RAMIREZ, Executive Director, Chicano Federation, Inc., and the National Center for the Study of Aliens' Rights (NCSAR).

The recommendations contained herein were the subject of extensive discussion at a meeting of Mexican-American leaders from throughout the United States held at Ontario, California, on May 7, 1977. The recommendations and positions were unanimously adopted and other organizations, not present at the meeting, have subsequently endorsed the proposals outlined below. In all, the following persons and organizations support and endorse the positions discussed in this paper:

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National Chairperson
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CASA

DOMINGO DE LA CRUZ
IMAGE
San Diego Sur

*Prepared by Peter A. Schey and Timothy S. Barker.

N.C.S.A.R. "Dedicated to the protection and promotion of aliens' rights through education, research, and litigation."

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The proposals contained below will address themselves to the following concerns of the Mexican/Latino communities:

(1) The systematic violation of civil rights, guaranteed by the Constitution, directed against persons of Latin ancestry, whether United States citizens, documented or undocumented aliens, by local, state, and the federal governments;

(2) The continual exclusion of representatives of the Mexican/Latino communities from participation in the formulation of national immigration policy;

(3) The consistent release of distorted, discriminatory, and xenophobic propaganda by Federal and state government officials on the issue of undocumented persons;

(4) The Federal government's toleration of nation-wide oppression of undocumented persons, including inaction in the face of human and economic degradation and suffering in violation of the universal Declaration of Human Rights;

(5) The unjustified and unsubstantiated claims, expressed through persistent propaganda and proposed legislation, that undocumented workers are materially responsible for economic depression and high unemployment;

(6) The discriminatory and brutal tactics of local, state and federal police agencies, utilized in their domestic efforts to detect and deport undocumented persons.

II

PROPOSALS FOR THE DOCUMENTATION OF ALL ALIENS

Elimination of the human degradation suffered by undocumented persons, and of the recently developed national dilemma concerning this segment of the population, requires the adoption of various proposals as outlined below.

1. Document all "Documentable" Aliens.

The legislative history of Sections 201-204 of the Immigration and Nationality Act, as amended, manifests a purported national policy concerned with the "unification" of families. Existing law establishes procedures whereby various categories of United States citizens and permanent resident aliens may petition for the immigration of their close relatives. The internal Operations Instructions of the Immigration Service (which are legally binding on the agency) require that an average "immediate relative" petition be processed within five (5) days.[1/] The Administrative Procedure Act, binding on the Immigration Service, requires that an agency process an application "within a reasonable time" [2/] and that a court shall compel action "unreasonably delayed." [3/]

Despite these requirements of law, an average "immediate relative" petition takes eighteen (18) months to process in Los Angeles,

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The Immigration Service, under the leadership of General Leonard Chapman, has intentionally subverted the entire Congressional concern in enacting the Immigration and Nationality Act. This was accomplished by withdrawing INS personnel from the "documentation" process, and reassigning them to "law enforcement" tasks.

The net result of General Chapman's policies has been to dramatically expand the undocumented population due to a failure to expeditiously document millions of "documentable" aliens residing in the United States.

PROPOSAL: THE INS BUDGET SHOULD BE REORGANIZED SO AS TO GIVE TOP PRIORITY TO THE PROCESSING AND ADJUDICATION OF PETITIONS FOR "DOCUMENTABLE" ALIENS. NO DOCUMENTABLE ALIEN SHOULD BE DEPORTED FROM THE UNITED STATES. ALL DOCUMENTABLE ALIENS SHOULD (1) BE PROVIDED INDEFINITE VOLUNTARY DEPARTURE PURSUANT TO 8 C.F.R. §242.5; OR (2) HAVE ALL DEPORTATION PROCEEDINGS CANCELLED AS "IMPROVIDENTLY BEGUN" PURSUANT TO 8 C.F.R. §242.7; OR (3) BE GRANTED INDEFINITE STAYS OF DEPORTATION PURSUANT TO 8 C.F.R. §243.4.

2. Amend the Immigration and Nationality Act Amendments of 1976.

The 1976 Amendments to the Immigration Act eliminated the labor certification exemption previously allowed for the parents of United States citizen and permanent resident alien children pursuant to Section 212(a)(14) of the Immigration and Nationality Act. This amendment effectively prevents the lawful immigration of the parents of permanent resident aliens and citizen children under twenty-one (21) years of age. More tragically, it results in the deportation

of vast numbers of persons who are the parents of citizens or immigrant children, and consequently leads to the de facto deportation of thousands of citizen and immigrant children.

PROPOSAL: SECTION 201(b) OF THE IMMIGRATION ACT SHOULD BE AMENDED TO ELIMINATE THE PROVISION THAT EXCEPTS THE PARENTS OF A UNITED STATES CITIZEN CHILD, UNDER TWENTY-ONE (21) YEARS OF AGE, FROM BEING DEFINED AS AN "IMMEDIATE RELATIVE." SECTION 203(a)(2) OF THE IMMIGRATION ACT SHOULD BE AMENDED TO INCLUDE THE PARENTS OF IMMIGRANT CHILDREN. UNTIL THE ACT IS SO AMENDED, NO PARENT OF A UNITED STATES CITIZEN OR IMMIGRANT CHILD SHOULD BE DEPORTED FROM THE UNITED STATES. SUCH ALIENS SHOULD BE ALLOWED TO INDEFINITELY REMAIN IN THE UNITED STATES PURSUANT TO 8 C.F.R. §§242.5, 242.7, OR 243.4.

3. Concerning Aliens Not Documentable Under Current Law Because of the Lack of Family-Ties or Exceptional Skills.

Of the scores of studies conducted on the impact of undocumented workers on the United States economy, none have empirically ascertained the displacement of American workers caused by the employment of undocumented workers. William S. Bernard, in his book American Immigration Policy, New York: Harper & Brothers, 1950, pp. 55-97, analyzes immigration flows into the United States and concludes that:

> One of the most persistent and recurrent economic fallacies in popular thought is the notion that immigrants take away the jobs of native Americans. This rests on the misconception that only a fixed number of jobs exist in any economy and that any newcomer threatens the job of any old resident. Id., page 57.

Bernard shows that with increase in population both wealth and industry have historically expanded and job opportunities have multiplied.

David S. North reported in a 1976 study that of 793 apprehended aliens 77% contributed to Social Security, 73% paid federal income taxes, 0.5% received public assistance (welfare), and 1.3% used food stamps. Virtually every study conducted in this area (see, Bibliograph, Preliminary Report, Domestic Council Committee on Illegal Aliens) concludes that undocumented aliens pay for more into the system, than they extract out of the system.

More importantly, deportations are today carried out in complete violation of due process of law. See, Report on the Deportation and Removal of Aliens, Los Angeles County Bar Assoc. pp. 18-24. Mass hearings determine an alien's lawful right to remain in the United States. Virtually all persons in deportation proceedings go unrepresented, even though the proceedings are adversary in nature and the government is represented by a trial attorney. 4/ In 1975, INS physically removed from the United States 679,252 persons. 5/ Of this number, only 23,438 actually were found to be deportable by an Immigration Judge following a hearing on the merits of the case. 6/ A study of expulsion statistics for the past ten (10) years shows that with each successive year, INS is removing a higher percentage of persons without benefit of a deportation hearing.

Judge Learned Hand once described deportation as "exile, a dreadful punishment abandoned by the common consent of all civilized peoples." 7/ Deportation to Mexico is frequently the equivalent of a sentence to starvation and impoverishment. Such official action

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4/ Section 242, Immigration and Nationality Act; 8 C.F.R. §§242.9, 242.10, 242.15.

5/ 1975 Annual Report: Immigration and Naturalization Service, p. 90.

6/ Ibid.

7/ Klonis v. Davis, 13 F.2d 630 (2dCir. 1926).

appears to violate Article 25 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948. 8/

The policy of the United States government is, in fact, one of no deportations. It is generally conceded that persons removed forcibly from the country make their way back into the United States and to their homes without much difficulty. The time has come to recognize this reality and put a halt to all deportations.

PROPOSAL: PERSONS WHO DO NOT POSSESS THE NECESSARY FAMILY-TIES OR EXCEPTIONAL SKILLS TO BECOME DOCUMENTED SHOULD NONETHELESS NOT BE DEPORTED FROM THE UNITED STATES. SUCH PERSONS SHOULD BE ALLOWED TO REMAIN INDEFINITELY IN THE UNITED STATES BY AMENDING OPERATIONS INSTRUCTIONS 242.10, OR PURSUANT TO 8 C.F.R. §§242.5, 242.7, OR 243.4. EITHER THE ATTORNEY GENERAL OR THE COMMISSIONER SHOULD EXERCISE THEIR BROAD POWERS PURSUANT TO SECTION 103 OF THE IMMIGRATION ACT TO ALLOW ALL ALIENS PHYSICALLY PRESENT IN THE UNITED STATES TO REMAIN INDEFINITELY. FURTHER, LEGISLATION SHOULD BE INTRODUCED TO ESTABLISH LEGAL PERMANENT RESIDENCE FOR ALL ALIENS NOW RESIDING IN THE UNITED STATES.

III

PROPOSALS FOR FAIR IMMIGRATION LAWS

1. Eliminate Quota Restrictions.

Congress in 1921 introduced the first Quota Law which limited aliens of any nationality permitted to enter the United States each year to three percent (3%) of the foreign-born people of that nationality living in the United States in 1910. Following a number of

8/ Article 25: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family ..."

amendments, all laws concerning immigration were codified as the Immigration and Nationality Act in 1952. Western Hemisphere aliens could immigrate to the United States without regard to a quota. As of July 1, 1968, a numerical limitation of 120,000 immigrants per annum from the Western Hemisphere became effective. No foreign state limitation existed at that time for the Western Hemisphere.

The 1976 Amendments to the Immigration and Nationality Act created, for the first time, a per-country limitation on the number of persons who could immigrate to the United States for any one country under the quota system. In 1975, 42,218 persons immigrated to the United States from Mexico under the quota system. 9/ The vast majority of these persons had relatives in the United States and could only immigrate because the need to obtain labor certification was waived pursuant to prior Section 212(a)(14). The 1976 Amendments reduce by approximately 50% the number of persons who can lawfully immigrate to the United States from Mexico under the quota system. It is naive to believe that these restrictive measures will not substantially exacerbate the undocumented worker problem in the United States. Current predictions are that certain Mexican aliens, with relatives in the United States and petitions pending, have at least a seven (7) year wait before their immigrant visa will be processed. 10/

PROPOSAL: THAT THE LAW AS IS EXISTED PRIOR TO JULY 1, 1968, BE RE-INTRODUCED WITH REGARDS TO QUOTA RESTRICTIONS FOR THE THE WESTERN HEMISPHERE. NAMELY, THAT HEMISPHERICAL AND PER COUNTRY QUOTAS FOR WESTERN HEMISPHERE ALIENS BE ELIMINATED. IN THE ALTERNATIVE

9/ 1975 Annual Report: INS, p. 37

10/ See, U.S. Department of State, Bureau of Security and Consular Affairs, "Availability of Immigrant Visa Numbers for May 1977."

THE 1976 AMENDMENTS SHOULD AGAIN BE AMENDED TO PROVIDE FOR A POOL OF UNUSED WESTERN HEMISPHERE QUOTA NUMBERS. THE QUOTA NUMBERS IN THE POOL WOULD BE MADE AVAILABLE TO CITIZENS OF A WESTERN HEMISPHERE COUNTRY THAT HAD EXHAUSTED IT'S 20,000 LIMITATION. SUCH AVAILABILITY WOULD OCCUR ON A FIRST-COME-FIRST-SERVE BASIS.

IV

SANCTIONS AGAINST EMPLOYERS- THE NATIONAL IDENTIFIER CARD.

Current law requires a person to prove that they are lawfully in the United States prior to obtaining a social security number.[11/] Regulations currently provide that the Social Security Administration "will immediately notify the Immigration and Naturalization Service when an applicant presents invalid or expired Immigration and Naturalization Service documents."[12/] In light of the above-mentioned requirements additional legislation to avoid the employment of undocumented persons needs to be carefully examined.

It is clear to every person who has studied the undocumented alien issue that legislation placing sanctions on employers for hiring undocumented workers would have the following results: (1)Widespread discrimination against Mexican/Latin-Americans lawfully in the United States; (2) Widespread discrimination against non-English speaking workers lawfully in the United States; (3) Minimal sanctions against employers due to the difficulty in prosecution and the easy defense that the employer was not qualified to determine the immigration status of the concerned employees; (4) No impact in terms of im-

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11/ See, 20 C.F.R. §§ 422.101 et seq.
12/ See. 20 C.F.R. § 422.107(d)(4).

proving working conditions for both documented and undocumented workers; (5) No impact on preventing the practice of paying large portions of the Mexican/Latin-American community below minimum wage; (6) Large-scale domestic law enforcement that will impact not only undocumented workers, but also workers lawfully in the United States.

Rather than attempt to concentrate on the immigration status of workers, the government should instead concentrate on the working conditions and wages in all areas of the economy that historically involve exploitation of workers. Labor law violations would be far easier to determine and prosecute than violations of Rodino-type legislation. Squeezing undocumented workers out of the exploitative parts of the economy will not decrease the exploitation---it will simply replace those being exploited.

Federal monies should be appropriated to the Department of Labor to allow effective enforcement of labor laws dealing with wage rates and working conditions. Once this is accomplished it is generally agreed that the stimulus for hiring undocumented workers over citizen workers will no longer exist. Guarantees of anonymity in the filing of complaints is a pre-requsite to the elimination of labor law violations. For example, a worker filing a complaint qursuant to the Federal Occupational Safety and Health Act may request that his/her identity be held confidential under 29 U.S.C. §657(f)(1).

The Administrator of the Department of Labor, Wage and Hour Division, should be provided with special monies for proposed of establishing regional programs which could accept complaints concerning wage and hour violations, deal with them rapidly, and guarantee anonymity to the complainant. Only when such a commitment is made will the exploitative conditions that encourage the hiring of undoc-

umented workers be removed. The Internal Revenue Service should be encouraged to enforce 26 U.S.C. §3402, requiring every employer making payment of wages to deduct and withhold a tax determined in accordance with the established withholding tabels.

It should be clear that certain employers hire undocumented workers because the federal agencies allow these employers to escape sanction while exploiting vulnerable foreign workers. To add a new element of conduct that will be unlawful(i.e., the hiring of undocumented workers), to an entire set that already exists but is not enforced, is ludicrous. The offense of knowingly hiring a person in the country in violation of law, will be far more difficult to prove than would a violation of the Occupational Safety and Health Act, or a violation of the minimum wage laws. There is no need for additional legislation when the current law, which is easier to apply than the proposed legislation, is not even being enforced.

Leaders in the Department of Labor have recommended the adoption of a "national identifier' card to be carried by all workers in the United States. This is, in effect, a call for an "internal passport" for all workers and presents civil liberties issues that should be rejected for a number of reasons; (1) Even under current regulations of the Social Security Administration, only persons lawfully in the United States can obtain Social Security cards. Proof of lawful residence in the United States is required for all applicants for Socail Security cards; (2) Much of the problem encountered does not involve counterfeit Social Security cards, but instead involves the fact that many employers simply do not require their employees to provide Social Security numbers. This problem will in no way be solved by the suggestions of the Department of Labor;

(3) If all workers are required to posssss "national identifier" cards, we can expect local police agencies to begin stopping and detaining persons simply to require production of their "national identifier" card. Those without cards will inevitably face long periods of detention and possible incarceration by INS; (4) It can be expected that in the process of issuing "national identifier" cards Mexican/Latin-American workers will be severely discriminated against, particularly those who can not prove their lawful residence in the United States. Many persons may be denied access to the job market merely based on their inability to obtain a birth certificate, or similar document, thus depriving them of access to a "national identifier" card.

PROPOSAL: THAT LEGISLATION PENALIZING EMPLOYERS FOR HIRING UNDOCUMENTED WORKERS NOT BE ENACTED DUE TO ITS DISCRIMINATORY EFFECTS AND DUE TO THE INABILITY TO ENFORCE SUCH A LAW. THAT LABOR LAWS CONCERNING WORKING CONDITIONS, OCCUPATIONAL HEALTH AND SAFETY, ORGANIZING RIGHTS, WAGE RATES, ETC.,BE STRICTLY ENFORCED WHETHER WORKERS ARE UNITED STATES CITIZENS, DOCUMENTED OR UNDOCUMENTED ALIENS. THAT COMPLAINANTS BE PROVIDED ANONYMITY. THAT MONIES BE APPROPRIATED TO THE DEPARTMENT OF LABOR TO EFFECTIVELY ENFORCE EXISTING LABOR LAWS. THAT NO SPECIAL LEGISLATION BE ENACTED REQUIRING WORKERS TO POSSESS ANYTHING OTHER THAN SOCIAL SECURITY CARDS AS CURRENTLY REQUIRED BY LAW.

V

RE-INTRODUCTION OF THE BRACERO PROGRAM

Senator Eastland has for many years been proposing a liberalization of the H-2 visa, non-immigrant "temporary worker' law. Many

large corporations and agricultural interests support these efforts to import exploitable labor.13/ These business interests desire this easy access to the Mexican labor pool to keep wages at a minimum, working conditions poor, and to utilize in opposition to organizing efforts of workers lawfully in the United States.

The contradiction of the federal government's position on undocumented persons comes into full view here. On the one hand they argue that undocumented persons are substantially creating unemployment in this country. On the other hand, they argue for a liberalization of the "temporary worker" statutes.

Government officials are now labeling their proposed changes in the law "guest worker" statutes. However, in reality it is the Bracero porgram with a new name. The business interests are merely seeking cheap resources of labor that can be easily exploited, easily deported, and easily prevented from organizing.

A renewed Bracero program would not benefit the peoples of Mexico. Persons brought into the United States on a Bracero-type program will spend most of their income here in the United States, they will be split-up from their families, and, in effect, will become the merchandise in a legalized slave-trade.

PROPOSAL: THAT UNTIL THE SCOPE AND EXTENT OF THE PROBLEMS OF WORKERS ALREADY IN THE UNITED STATES, WHETHER CITIZENS, DOCUMENTED OR UNDOCUMENTED ALIENS, ARE ANALYZED AND RESOLVED, THE "TEMPORARY WORKER" PROGRAMS SUPPORTED BY INS IN COLLABORATION WITH BUSINESS INTERESTS, SHOULD BE CURTAILED AND NOT LIBERALIZED.

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13/ Legislative History, P.L. 93-518, U.S.Code Cong.&Adm. News, 93rd Congress, 2nd Sess. p.6444-45

VI

CIVIL RIGHTS VIOLATIONS BY INS AGENTS AND BORDER PATROL

The establishment of the law enforcement priority within the Immigration and Naturalization Service in recent years, as described above, combined with the reopening of the inland checkpoints has created a reign of terror in the Mexican/Latin-American communities in the border areas. Wholesale violations of civil and constitutional rights are systematically occuring. Border Patrol and INS agents are stopping children on their way to school demanding to see their papers and interrogating them as to their right to remain in the United States. Persons are being dragged from their homes, their automobiles, and off the streets without a reasonable suspicion or probable cause that they are aliens unlawfully in the United States by INS agents and Border Patrol agents acting under color of law. Persons are being illegally stopped and detained at airports, bus and train stations and are harassed and intimidated by INS and Border Patrol Agents. Persons are being detained at the inland checkpoints illegally and without probable cause. These violations by the Immigration Service must cease immediately.

PROPOSAL: GUIDELINES BE PROMULGATED GOVERNING THE STOPPING AND INTERROGATING OF PERSONS ONLY IN SITUATIONS WHERE THERE IS A REASONABLE SUSPICION, BASED UPON ARTICULABLE FACTS, THAT THE PERSON IS (1) AN ALIEN, AND,(2) IN THE UNITED STATES UNLAWFULLY; THAT AUTOMOBILES BE STOPPED ONLY ON A CLEAR SHOWING OF PROBABLE CAUSE THAT (1) THE OCCUPANTS ARE ALIENS, AND, (2) IN THE UNITED STATES UNLAWFULLY;

THAT THE INLAND CHECKPOINTS, WHICH OPERATE AS A RACIST ATTACK UPON THE MEXICAN/LATIN-AMERICAN PERSONS OF THE SOUTHWEST, BE CLOSED. FURTHER, AN OMBUDSMAN BE CREATED IN INS TO RECEIVE AND ACT ON COMPLAINTS OF VIOLATIONS OF CIVIL AND CONSTITUTIONAL RIGHTS BY INS AND BORDER PATROL AGENTS.

VII

CALL FOR NATIONAL HEARINGS

Major legislation that will impact on millions of Mexican/Latin-Americans is currently being developed by the Carter Administration. Virtually no input has been received from the communities that will be most impacted by the legislative changes currently under consideration. No experts in this area of the law outside of government agencies have been consulted. This is an "in-house" effort by a group of high officials that unless checked immediatedly may result in massive violations of civil rights in Mexican-Latino communities throughout the United States and in black communities on the East Coast. Federal officials should understand that policies that do not have the support of the communities upon which they will impact will never be enforceable. This should be clear from the policies followed by General Leonard Chapman - he attempted massive domestic law-enforcement, at tremendous cost to the taxpayers, and with virtually no results.

The time has come to review the entire Immigration and Nationality Act of 1952, not just certain provisions concerning quotas, adjustment of status, etc. The entire law is bankrupt and needs to be overhauled. However, this task should not fall into the hands

of governmental officials removed from the cities and fields where the problem manifests itself. Prior to the enactment of major changes in the law, national hearings should be conducted, primarily in the impacted communities of the Southwest, where community representatives and leaders may have an opportunity to provide input into proposed statutory changes. Furthermore, such national hearings should be held by a board or commission whose membership represents those who will be affected by the recommendations of such a group.

PROPOSAL: THAT NATIONAL HEARINGS BE CALLED TO EXAMINE THE POSSIBLE OVERHAUL OF THE ENTIRE IMMIGRATION AND NATIONALITY ACT OF 1952, AND THAT THE COMMUNITIES MOST LIKELY TO BE IMPACTED BY THE RECOMMENDATIONS RESULTING FROM SUCH NATIONAL HEARINGS SHOULD HAVE A LARGE AMOUNT OF INPUT INTO THE HEARINGS.

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CAPS ON THE PERSONS NAMES.

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The 1976 Amendments to the Immigration Act eliminated the labor certification exemption previously allowed for the parents of United States citizen and permanent resident alien children pursuant to Section 212(a)(14) of the Immigration & Nationality Act. This amendment ~~has~~ effectively prevents the lawful immigration of the parents of ~~citizens &~~ permanent resident aliens and citizen children under twenty-one (21) years of age. More tragically, it results in the deportation of vast

numbers of persons who are the parents of citizens or immigrant children, and consequently leads to the de facto deportation of thousands of citizen and immigrant children.

PROPOSAL: SECTION 201(b) OF THE IMMIGRATION ACT SHOULD BE AMENDED TO ELIMINATE THE PROVISO THAT EXCEPTS THE PARENTS OF A UNITED STATES CITIZEN CHILD, UNDER TWENTY-ONE YEARS OF AGE, FROM BEING DEFINED AS AN "IMMEDIATE RELATIVE." SECTION 203(a)(2) OF THE IMMIGRATION ACT SHOULD BE AMENDED TO INCLUDE THE PARENTS OF IMMIGRANT CHILDREN. UNTIL THE ACT IS SO AMENDED, NO PARENT OF A UNITED STATES CITIZEN OR IMMIGRANT CHILD SHOULD BE DEPORTED FROM THE UNITED STATES. SUCH ALIENS SHOULD BE ALLOWED TO INDEFINETLY REMAIN IN THE UNITED STATES PURSUANT TO 8 C.F.R. §§ 242.5, ~~242.2~~ 242.7, OR 243.4.

3. Concerning Aliens Not Documentable Under Current law Because of the lack of Family-Ties or Exceptional Skills.

Of the scores of studies conducted on the impact of undocumented workers on the United States economy, none have empirically ascertained the displacement of American

workers caused by the employment of undocumented workers. William S. Bernard, in his book American Immigration Policy, New York: Harper & Brothers, 1950, pp. 55-97, analyzes immigration flows into the United States & concludes that:

indent single space

> One of the most persistent & recurrent economic fallacies in popular thought is the notion that immigrants take away the jobs of native Americans. This rests on the misconception that only a fixed number of jobs exist in any economy & that any newcomer threatens the job of any old resident. Id., pag 57.

Bernard shows that with increase in population both wealth & industry have historically expanded and job opportunities have multiplied.

¶ David S. North reported in a 1976 study that of 793 apprehended aliens 77% contributed to Social Security, 73% paid federal income taxes, 0.5% received public assistance (welfare), and 1.3% used food stamps. Virtually every study conducted in this area (see, Bibliograph, Preliminary Report, Domestic Council Committee on Illegal Aliens) concludes that undocumented aliens pay far more into the system, than they extract

out of the system.

TP More importantly, deportations are today carried out in complete violation of due process of law. See, Report on the Deportation & Removal of Aliens, Los Angeles County Bar Assc.' pp. 18-24. Mass hearings determine an alien's lawful right to remain in the United States. Virtually all persons in deportation proceedings go unrepresented, even though the proceedings are adversary in nature & the government is represented by a trial attorney.[4] In 1975 INS physically removed from the United States 679,252 persons.[5] Of this number only 23,438 actually were found to be deportable by an Immigration Judge following a hearing on the merits of the case.[6] A study of expulsion statistics for the past ten (10) years shows that with each successive year INS is removing a higher ~~& higher~~ percentage of persons without benefit of a deportation hearing.

TP Judge learned Hand once described deportation as "exile, a dreadful punishment abandoned by the common

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4/ Section 242, Immigration & Nationality Act; 8 C.F.R. §§ 242.9, 242.10, 242.15.

5/ 1975 Annual Report: Immigration & Naturalization Service, p. 90.

6/ Ibid.

consent of all civilized peoples." 7/
Deportation to Mexico is frequently the
sp? → equivalent of a sentence to starvation
& impoverishment. Such official action
appears to violate Article 25 of the
Universal Declaration of Human Rights
adopted by the General Assembly of the
United Nations on December 10, 1948. 8/

¶ The policy of the United States
government is, in fact, one of no
deportations. It is generally conceded
that persons removed forcably from the
country make their way back into
the United States & to their homes
without much difficulty. The time has
come to recognize this reality & put
a halt to all deportations.

PROPOSAL: PERSONS WHO DO NOT POSSESS THE NECESSARY FAMILY-TIES OR EXCEPTIONAL SKILLS TO BECOME DOCUMENTED SHOULD NONETHELESS NOT BE DEPORTED FROM THE UNITED STATES. SUCH PERSONS SHOULD BE ALLOWED TO REMAIN INDEFINITELY IN THE UNITED STATES BY AMENDING

7/ Klonis v. Davis, 13 F.2d 630 (2d Cir. 1926).
8/ Article 25: "Everyone has the right to a standard of living adequate for the health & well-being of himself & of his family..."

OPERATIONS INSTRUCTIONS 242.10, OR PURSUANT TO 8 C.F.R. §§ 242.5, 242.7, OR 243.4. EITHER THE ATTORNEY GENERAL OR THE COMMISSIONER SHOULD EXERCISE THEIR BROAD POWERS PURSUANT TO SECTION 103 OF THE IMMIGRATION ACT TO ALLOW ALL ALIENS PHYSICALLY PRESENT IN THE UNITED STATES TO REMAIN INDEFINITELY. FURTHER, LEGISLATION SHOULD BE INTRODUCED TO ESTABLISH LEGAL PERMANENT RESIDENCE FOR ALL ALIENS NOW RESIDING IN THE UNITED STATES.

PROPOSALS FOR FAIR IMMIGRATION LAWS

1. Eliminate Quota Restrictions

Congress in 1921 introduced the first Quota law which limited aliens of any nationality permitted to enter the United States each year to 3 percent of the foreign-born people of that nationality living in the United States in 1910. Following a number of amendments, all laws concerning immigration were codified as the Immigration & Nationality Act in 1952. Western Hemisphere aliens could immigrate to the United States without regard to a quota. As of July 1, 1968, a numerical limitation of 120,000 ~~became~~ immigrants per annum from the Western Hemisphere became effective. No foreign state limitation existed at that time for the Western Hemisphere.

The 1976 Amendments to the Immigration & Nationality Act created, for

the first time, a per-country limitation on the number of persons who could immigrate to the United States from any one country, under the quota system. In 1975 42,218 persons immigrated to the United States from Mexico under the quota system. [9] The vast majority of these persons had relatives in the United States & could only immigrate because the need to obtain labor certification was waived pursuant to prior Section 212(a)(14). The 1976 Amendments have reduced by approximately 50% the number of persons who can lawfully immigrate to the United States from Mexico, under the quota system. It is naive to believe that these restrictive measures will not substantially exacerbate the undocumented worker problem in the United States. Current predictions are that certain Mexican aliens, with relatives in the United States & petitions pending, have at least a seven (7) year wait before their immigrant visa will be processed. [10]

9/ 1975 Annual Report: INS, p. 37.

10/ See, U.S. Department of State, Bureau of Security & Consular Affairs, "Availability of Immigrant Visa Numbers for May 1977."

PROPOSAL: THAT THE LAW AS IT EXISTED PRIOR TO JULY 1, 1968, BE RE-INTRODUCED WITH REGARDS QUOTA RESTRICTIONS FOR THE WESTERN HEMISPHERE. NAMELY, THAT ~~XXX~~ HEMISPHERICAL ~~OR~~ AND PER COUNTRY QUOTAS ~~EXIST FOR THE WESTERN HEMISPHERE~~ FOR THE WESTERN HEMISPHERE BE ELIMINATED. ~~HEMISPHERE~~. IN THE ALTERNATIVE, THE 1976 AMENDMENTS SHOULD AGAIN BE AMENDED TO PROVIDE FOR A POOL OF UNUSED WESTERN HEMISPHERE QUOTA NUMBERS. THE QUOTA NUMBERS IN THE POOL WOULD BE MADE AVAILABLE TO CITIZENS OF A WESTERN HEMISPHERE COUNTRY THAT HAD EXHAUSTED ~~THEIR~~ IT'S 20,000 LIMITATION. SUCH AVAILABILITY WOULD OCCUR ON A FIRST-COME-FIRST-SERVE BASIS.

IV

SANCTIONS AGAINST EMPLOYERS — THE NATIONAL IDENTIFIER CARD.

PP Current law requires ~~that~~ a person to prove that they are lawfully in the United States prior to obtaining a social security number. [11] Regulations currently provide that the Social Security Administration "will immediately notify the Immigration

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[11] See, 20 C.F.R. §§ 422.101 et seq.

& Naturalization Service when an applicant presents invalid or expired Immigration & Naturalization Service documents." [12] In light of the above-mentioned requirement additional legislation to avoid the employment of undocumented persons need to be carefully examined.

It is clear to every person who has studied the undocumented alien issue that ~~Rodino-type~~ (placing sanctions on employers for hiring undocumented workers) legislation would have the following results: (1) Widespread discrimination against Mexican/Latin-Americans lawfully in the United States; (2) Widespread discrimination against non-English speaking workers lawfully in the United States; (3) Minimal sanctions against employers due to the difficulty in prosecution and the easy defense that the employer was not qualified to determine the immigration status of the concerned employees; (4) No impact in terms of improving working conditions for both documented and undocumented workers; (5) No impact on preventing the practice of paying large portions of the Mexican/Latin-American community below minimum wage; (6) Large-scale domestic law enforcement that will impact not only on undocumented workers, but also on workers lawfully in the United States.

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[12] 20 C.F.R. § 422.107(d)(4).

¶ Rather than attempt to concentrate on the immigration status of workers, the government should instead concentrate on the working conditions and wages in all areas of the economy that historically involve exploitation of workers. Labor law violations would be far easier to determine and prosecute than violations of Rodino-type legislation. Squeezing undocumented workers out of the exploitative parts of the economy will not decrease the exploitation---it will simply replace those being exploited.

¶ Federal monies should be appropriated to the Department of Labor to allow effective enforcement of labor laws dealing with wage rates and working conditions. Once this is accomplished it is generally agreed that the stimulus for hiring undocumented workers over citizen workers will no longer exist. Gaurantees of anonymity in the filing of complaints is a pre-requisite to the elimination of labor law violations. For example, a ~~complainant~~ worker filing a complaint pursuant to the federal Occupational Safety & Health Act may request that his/her identity be held confidential under 29 U.S.C. § 657(f)(1)

¶ The Administrator of the Department of Labor, Wage & Hour Division, should be provided with special monies for purposes of establishing regional programs which could accept complaints concerning wage & hour violations, deal with them rapidly, & gaurantee anonymity to the complainant. Only when such a committment is made, will the exploitative conditions that encourage the hiring of undocumented

workers be removed. The Internal Revenue Service should be encouraged to enforce 26 U.S.C. § 3402, requiring every employer making payment of wages to deduct & withhold a tax determined in accordance with certain established tables.

¶ It should be clear that certain employers hire undocumented workers because the federal agencies allow these employers to escape sanction while exploiting ~~these~~ vulnerable ~~workers.~~ foreign undocumented ~~laborers~~. workers. To add a new element of conduct that will be unlawful (i.e., the hiring of an undocumented worker), to an entire set that already exists but is not enforced, is ludicrous. The ~~new~~ offense of knowingly hiring a person in the country in violation of law, will be far more difficult to prove than would a violation of the Occupational Safety & Health Act, or a violation of the minimum wage laws. There is no need for ~~the~~ additional legislation when the current law, which is easier to apply than the proposed legislation, is not even being enforced.

¶ Leaders in the Department of Labor have recommended the adoption of a "national identifier" card to be carried by all workers in the United States. This is, in effect, a call for an "internal passport" for all workers and presents civil liberties issues that should and will concern all workers. The concept should be rejected for a number of reasons: (1) Even under current regulations of the Social Security Administration, only persons

lawfully in the United States can obtain Social Security cards. Proof of lawful residence in the U.S. is required for all applicant for Social Security cards; (2) Much of the problem encountered does not involve counterfiet Social Security cards, but instead involves the fact that many employers, ~~exploiting their employees~~, simply do not require their employees to provide Social Security numbers ~~Social Security cards from their employees~~. This problem will in no way be solved by the suggestions of the Department of Labor; (3) If all workers are required to possess

"national identifier" cards, we can expect local police agencies to begin stopping and detaining persons simply to require production of their "national identifier" card. Those without cards will inevitably face long periods of detention and possible incarceration by INS; (4), It can be expected that in the process of issuing "national identifier" cards Mexican/Latin-American workers will be severly discriminated against, particularly those who cannot prove their lawful residence in the U.S. Many persons may be denied access to the job market merely based on their inability to obtain a birth-certificate, or similar document, thus depriving them of access to a "national identifier" card.

PROPOSAL: THAT LEGISLATION PENALIZING EMPLOYERS FOR HIRING UNDOCUMENTED WORKERS NOT BE ENACTED DUE TO ITS DISCRIMINATORY EFFECTS & DUE TO THE INABILITY TO ENFORCE SUCH A LAW.

~~EFFECTS AND~~ INABILITY TO ENFORCE. THAT LABOR LAWS CONCERNING WORKING CONDITIONS, OCCUPATIONAL HEALTH AND SAFETY, ORGANIZING RIGHTS, WAGE RATES, ETC., BE STRICTLY ENFORCED WHETHER WORKERS ARE UNITED STATES CITIZENS, DOCUMENTED OR UNDOCUMENTED ALIENS. THAT COMPLAINANTS BE PROVIDED ANONYMITY. THAT MONIES BE APPROPRIATED TO THE DEPARTMENT OF LABOR TO EFFECTIVELY ENFORCE EXISTING LABOR LAWS. THAT NO

SPECIAL LEGISLATION BE ENACTED REQUIRING WORKERS TO POSSESS ANYTHING OTHER THAN SOCIAL SECURITY CARDS AS CURRENTLY REQUIRED BY LAW.

V

RE-INTRODUCTION OF THE BRACERO PROGRAM.

Senator Eastland has for many years been ~~pushing for~~ proposing a liberalization of the H-2 visa, non-immigrant "temporary worker" laws. ~~He represents~~ many large corporations and agricultural interests ~~in~~ support these efforts.[13] These business interests desire easy access to cheap, exploitable labor. Temporary workers ~~also~~ further provide a ~~good~~ resource for businesses ~~fighting~~ opposing the organizing efforts of ~~exploited~~ workers lawfully in the United States.

The contradiction of the federal government's position on undocumented persons comes into full view here. On the one hand they argue that undocumented persons are substantially creating unemployment in this country. On the other hand, they argue for a liberalization of the "temporary worker" statutes.

~~We should not be fooled by the fact that the~~ Government officials are now ~~calling~~ labelling their proposed changes in the law "guest worker" statutes. ~~It~~ However, in reality it is the Bracero program with a new name. ~~The program is not being suggested by Eastland and the interests he represents for humanitarian reasons.~~ The business interests ~~They~~ are merely seeking cheap resources of labor that can be easily exploited, easily deported, and easily ~~stopped~~ prevented from organizing.

13/ Legislative History P.L. 93-518, U.S. Code Cong. & Adm. News, 93rd Congress, 2nd. Sess. p. 6444-45.

A renewed Bracero program would not benefit the peoples of Mexico. Persons brought into the U.S. on a Bracero-type program will spend most of their income here in the United States, they will be split-up from their families, and, in effect, will become the merchandise in a legalized slave-trade.

PROPOSAL: ~~RECOMMENDATION:~~ THAT UNTIL THE SCOPE AND EXTENT OF THE PROBLEMS OF WORKERS ALREADY IN THE UNITED STATES, WHETHER CITIZENS, DOCUMENTED OR UNDOCUMENTED ALIENS, ARE ANALYZED AND RESOLVED, THE "TEMPORARY WORKER" PROGRAMS SUPPORTED BY INS IN COLLABERATION WITH BUSINESS INTERESTS, SHOULD BE CURTAILED AND NOT LIBERALIZED.

VI

CALL FOR NATIONAL HEARINGS

Major legislation that will impact on millions of Mexican/Latino-Americans is currently being developed by the Carter Administration. Virtually no input has been received from the communities that will be most impacted by the legislative changes currently under consideration. No experts in this area of the law outside of government agencies have been consulted. This is an "in-house" effort by a group of high officials that unless checked immediately ~~will probably~~ may result in massive violations of civil

rights in Mexican-Latino communities throughout the United States, and in black communities on the East Coast. ~~The~~ Federal ~~government~~ officials should ~~realize~~ understand that policies that do not have the support of the communities upon which they will impact will never be enforceable. This should be clear from the policies followed by General Leonard Chapman ~~in~~ he attempted massive domestic law-enforcement, at tremendous cost to the tax-payers, and with virtually no results.

PP → The time has come to review the entire Immigration and Nationality Act of 1952, not just certain provisions concerning quotas, adjustment of status, etc. The entire law is bankrupt and needs to be overhauled. However, this task should not fall into the hands of government officials removed from the cities and fields where the problem manifests itself. Prior to the enactment of major changes in the law, national hearings should be conducted, primarily in the impacted communities of the Southwest, where community representatives and leaders ~~can~~ may have an opportunity to provide in-put into ~~where the law should be going~~ proposed statutory changes. Furthermore, such national hearings should be held by a board or commission whose membership represents those who will be affected by the recommendations of such a group.

PROPOSAL: ~~RECOMMENDATION~~: THAT NATIONAL HEARINGS BE CALLED TO EXAMINE THE POSSIBLE OVERHAUL OF THE ENTIRE IMMIGRATION AND NATIONALITY ACT OF 1952, AND THAT THE COMMUNITIES MOST LIKELY TO BE IMPACTED BY THE RECOMMENDATIONS ~~COMING OUT OF~~ RESULTING FROM SUCH NATIONAL HEARINGS SHOULD HAVE A LARGE AMOUNT OF INPUT INTO THE HEARINGS.