



WASHINGTON
LAWYERS'
COMMITTEE
for Civil Rights Under Law

SUITE 427 • 733 FIFTEENTH STREET, NORTHWEST
WASHINGTON, D.C. 20005



28

Committee on Chicano Rights
1837 Highland Avenue
National City, California 92050



WASHINGTON
LAWYERS'
COMMITTEE
for Civil Rights Under Law

SUITE 427 • 733 FIFTEENTH STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 347-3801

April 7, 1980

Committee on Chicano Rights
1837 Highland Avenue
National City, California 92050

Dear Sir or Madam;

In recent years our immigration laws and policies have given rise to some serious concerns and have become a major public issue. Events such as the large influx of undocumented aliens, their treatment, the worldwide refugee crisis, and the manner in which INS enforces the laws - to name only a few - have all contributed to bring the subject of immigration to national attention.

Recognizing the importance of these issues, Congress created the Select Commission on Immigration and Refugee Policy in October 1978 (PL 95-412). Its purpose is to conduct an in-depth study of U.S. immigration and refugee law and policy, analyze policy alternatives and make comprehensive legislative recommendations by the spring of 1981. In addition to holding regional hearings, which some of you have already been involved in, the Commission has also invited submission of research and position papers on any topic related to immigration.

Because the recommendations of this Commission may shape our immigration laws for several decades, the opportunity to respond to the Commission's invitation should not be overlooked. Indeed, if the myths and misunderstandings which frequently influence immigration policy are to be dispelled, it is of the utmost importance that all persons and organizations with an interest in the rights of aliens make their views known in as effective a manner as possible.

To this end, discussed below are proposals for the development of position papers by a diverse coalition of organizations, academics, and volunteer lawyers from around the country. Also discussed is a tentative proposal for the planning and co-sponsorship by a diversity of organizations of a major Immigration Conference to be held in Washington in late 1980 or early 1981.

In Washington, the Alien Rights Law Project of the Lawyers' Committee for Civil Rights Under Law (ARLP) and the American Council for Nationalities Service (ACNS) are among several groups that frequently work together on immigration issues* and which have been monitoring the progress of the Select Commission. Because a major goal of the Select Commission is to develop a national consensus as to what changes are needed in our immigration laws, these groups plan to continue joint efforts to expand the present informal coalition and to present a unified position on as many issues as possible, not only before the Select Commission but before the Congress. In addition, ACNS and the ARLP have agreed to cooperate to recruit volunteer attorneys, academics, representatives of religious and ethnic agencies, and other interested persons to prepare position papers on a variety of immigration issues and to coordinate their efforts. This project is being funded by ACNS and by a grant from the Ford Foundation obtained by the ARLP.

The objective of the project will be to recruit experts on a pro-bono basis to prepare a series of position papers, each of which addresses a major issue related to immigration. We hope to have these papers prepared by June 1 at which time they will be circulated to all participating persons and organizations. After a period of review and comment, the final product will also be circulated with a request that the participating organizations endorse those positions with which they agree. Of course, all participants will be free to disagree on a particular issue or to refrain from taking any position. However, we hope to develop as broad-based a coalition of groups as possible in support of the various papers. These papers, with the endorsements, will then be submitted to the Select Commission. To be effective, however, they must reach the Commission by August 1.

Your experience with and understanding of immigration issues would be an invaluable asset to this undertaking, especially given the tight time schedule and important nature of this project. Therefore, we are seeking your participation in one or more of the ways described below.

1. A memorandum prepared by the Alien Rights Law Project which lists a number of issues we hope to address is enclosed. We would like your help in identifying additional issues and in refining the description of those issues that are included in the memorandum.

* For example, ACNS and the ARLP participated in a coalition to oppose restrictions on access by lawful permanent residents to public benefit programs, together with the Mexican-American Legal Defense and Educational Fund (MALDEF), the Migrant Legal Action Program (MLAP), the National Association of Social Workers and other groups. More recently, the ARLP has organized and is conducting a broad coalition of groups and personalities in support of asylum for Haitian refugees in Southern Florida. This coalition includes, among many others, the National Council of the Churches

2. We also seek your help in identifying organizations which may wish to participate in the coalition and in identifying organizational representatives, academics, social scientists, and attorneys in your area who may have a particular expertise or interest regarding one or more issues.
3. Most importantly, we hope that you, [or someone in your organization] would be willing to work with other interested persons to develop one of these papers. For example, a representative of an ethnic organization might work with an academic and a volunteer attorney on the preparation of a paper on one issue or several related issues. By thus combining their expertise, the practical, legal and sociological aspects of an issue could all be discussed.

While the preparation of position papers is the most pressing task at this moment, we do not expect the coalition to disband with the submission of papers to the Select Commission. As the recommendations of that body become translated into legislative proposals we anticipate that the coalition will serve as a means by which member groups may together publicly indicate their support of a particular position, and as a forum for as many organizational representatives as possible to meet together and devise common advocacy strategies.

Specifically, we propose for your consideration the possibility of planning for or co-sponsoring an immigration conference to be held in Washington, D.C. in late 1980 or early 1981. The purpose of this conference would be (a) to bring as many organizations together as possible to discuss these issues; (b) to consider with others the position papers we have developed on these issues; (c) to reach a consensus on these positions; (d) to educate the public, the Congress, the administration, and the media on these issues, and (e) to develop an umbrella organization that can respond from a position of combined strength to the many immigration developments that are occurring.

In addition to quickly securing a commitment to participate in the development of position papers and building of a broad-based, national coalition, we would appreciate your reaction to the proposed conference. We encourage you to distribute these materials to others whom you feel would be interested in participating in this project.

The cooperative effort between the Alien Rights Law Project and ACNS to develop position papers is being coordinated by Rick Swartz for the Alien Rights Law Project and Carolyn Waller for ACNS.

* (cont.) of Christ, several Catholic bishops and other religious leaders, the Congressional Black Caucus, the Black-Hispanic Democratic Organization, Amnesty International and several prominent community leaders in different areas of the United States.

Page Four
April 7, 1980

One of them will be contacting you in the near future. In the meantime, if you have any comments, suggestions, would like to volunteer, or would simply like more information, please contact either Juan Mendez or Flori Piccolo of the Alien Rights Law Project staff at 733 15th. St., N.W., Suite 427, Washington, D.C. 20005, (202) 638-4207, or Carolyn Waller at 815 15th. St., N.W. Suite 509, Washington, D.C. 20005, (202) 347-3507. We would very much like to hear from you.

Sincerely,

Carolyn Waller, Esq.
American Council for
Nationalities Service

Dale F. Swartz, Esq.
Alien Rights Law Project

TO:

FROM: Alien Rights Law Project

RE: Advocacy before the Select Commission on Immigration
and Refugee Policy

DATE: April 1, 1980

I. INTRODUCTION

The Select Commission on Immigration and Refugee Policy was created by Congress (P.L. 95-412) in October, 1978. Its purpose is to conduct an in-depth study of the phenomenon of immigration, analyze policy alternatives and make comprehensive legislative recommendations by the Spring of 1981.

The Commission is comprised of sixteen members: the Attorney General; the Secretaries of State, Labor, and Health, Education and Welfare; Senators Kennedy, DeConcini, Mathias and Simpson; Congresswoman Holtzman, Congressmen Rodino, McClory and Fish; and four public members: Rev. Theodore M. Hesburgh, President, University of Notre Dame; Rose Matsui Ochi, Executive Assistant to the Mayor of Los Angeles; Joaquin F. Otero, Vice President, Brotherhood of Railway and Airline Clerks; and Judge Cruz Reynoso. The Commission is chaired by Rev. Hesburgh. Its Executive Director is Dr. Lawrence Fuchs, formerly a professor of American Studies at Brandeis University.

The establishment of the Select Commission on Immigration and Refugee Policy represents a once-in-a-generation opportunity to attempt comprehensive statutory reform of United States immigration law and policy.

A number of social scientists with an interest in immigration have already indicated an interest in working with both the Alien Rights Law Project and volunteer attorneys to develop statistical and other studies relevant to the issues we intend to address, together with policy recommendations. Interested non-governmental organizations and volunteer attorneys working with these scholars, would then draft memoranda recommending reform in critical areas of current immigration law, and policy. The Advisory Board of the Alien Rights Law Project, comprised of leading members of the private immigration bar, will provide guidance and back-up support.

Throughout this process efforts will be made to build coalitions in support of particular recommendations, and to advocate reforms through the media and before relevant agencies and Congressional Committees.

The following is a list of topics to be addressed in regard to immigration law and policy, for submission of position papers to the Select Commission on Immigration & Refugee Policy. Each area should be covered by a team of lawyers, social scientists and representatives of organizations, as advisable. In each of the following topics, special attention will be placed on issues of federalism and invasion by State and local governments of matters reserved to Congress, and on the liberalization by legislation, of restrictive judicial decisions in the area.

II. BASIC IMMIGRATION POLICIES

A. Number of Annual Admissions

1. Explore whether admission of immigrants should be limited to an annual maximum, and if so, what number is consistent with population controls and conservation of resources, as well as for other economic needs.
2. How should numbers be allocated among countries of the world? Should there be special consideration for certain countries on the basis of their geographical situation, pressure for emigration, "special relationship" or other criteria?
3. Alternatives to present system: explore feasibility of allocating quotas on the basis of percentages of each country's population;

should annual quotas be fixed or flexible or a combination of both?

B. Measures to Curb Flow

1. Employer Sanctions

Analyze the impact of the passage in several States of laws to impose sanctions on employers that hire undocumented workers. Review the effect on labor market and the policy considerations militating for or against a federal pre-emption of these laws, by means of Congressional enactment that would cover the field. Review possible consequences as to discrimination against U.S. citizen workers of certain national origins.

2. Other Measures

Examine the desirability of other measures to curb the flow of immigrants that have been proposed, such as the issuance of identification cards for employment purposes, etc.

C. Amnesty

Develop policy reasons for grant of legal status for undocumented aliens present in the United States. Study past experiences with registry and other forms of amnesty. Propose policy decisions regarding scope

of the benefit, conditions, cut-off dates and mode of implementation. Analyze relationship between this issue and measures to curb the flow of new undocumented immigrants.

D. Criteria For Admissibility

1. Family Reunification:

- a) Analyze the problems arising from the current backlog of 2nd preference visas (for spouses and minor children of permanent residents), and the need--or inconvenience--of creating a preference category for other relatives of lawful permanent residents. Develop proper alternatives to deal with the tension between the principle of family reunification and incentive to naturalize.
- b) Investigate the situation of children in our immigration law, including the question of de facto deportation of United States citizen children (when their parents are deported)
- c) Examine the matter of "viability of marriages" and undue invasions of privacy by the Immigration and Naturalization Service. More generally, study the effects of family law (both United States and foreign) on issues like adoption, legitimacy, void ab initio marriages, divorce and the status of stepchildren.

2. Protection of Labor Market:

a) Research the procedures for labor certification and adjustment of status, including entitlement for benefits, requirements and impact on workers and labor market.

b) Analyze the structure and implementation of present and past temporary workers programs (H-2, "bracero") as well as proposals being submitted ("guest workers"), with emphasis on the effects on wages, union organizing and other rights of workers.

c) Analyze the regulatory "work authorization" issued by INS to several categories of non-immigrants (students, exchange visitors, refugees and asylees, domestics of diplomats, etc.) including administration and implementation problems.

3. Other Criteria:

Explore the viability of new criteria for certain categories of immigrants, such as investors-- including the need to develop guidelines regarding size and nature of the investment, as well as its foreign relations impact. Special categories for persons with substantial ties and prolonged stay in the country, such as children of foreign diplomats or officials of international organizations. Feasibility of other criteria for admission, such as destined location of immigrants within U.S., and age of applicants relative to composition of U.S. population.

4. Refugees:

a) Analysis of recently enacted Refugee Act and suggestions for regulatory implementation. Devise guidelines for the allocation of numbers.

b) Development of uniform procedures for asylum in the United States. Analysis of the criteria for "firm resettlement" in a 3rd country and freedom to travel.

c) Study of the resettlement practice of agencies and volunteer groups, and suggestions for improvement.

III. GROUND FOR EXCLUSION

A. To examine Sec. 212(a) of the McCarran-Walter Act and determine what changes need to be introduced as a matter of policy, to reflect different perceptions about foreign affairs and immigration. Examine the case law developed in relation to certain grounds, in particular as to constitutional issues and with specific reference to the following issues:

1. In the light of Sec. 212(a)(28) and the McGovern Amendment, determine what relevance, if any, should be given to the political views of the applicant.
2. Analyze the effects of Sec. 212(a) relating to exclusion of homosexuals and the need to amend or eliminate it as a ground.

B. Procedure For Exclusion

1. Consular Discretion: Investigate the unlimited discretion granted to consular officers to apply the grounds of exclusion by determining intent, and other relevant factors. Propose rules to develop fair guidelines and to afford adequate review.
2. Review the authority granted to INS inspectors at Ports of Entry, as well as to Customs Officers, including guidelines and/or regulations regarding reasonable searches and seizures and the individual's right to privacy.

IV. GROUNDS FOR DEPORTATION

Analyze the present set of rules regarding offenses and other circumstances that subject an alien to deportation.

1. Review statute and case law concerning unauthorized employment as a ground for deportation.
2. In the area of criminal convictions, analyze current law as to narcotics convictions, as well as the effects of plea-bargaining on conviction and deportation. Analyze the need for uniformity in relief derived from expungement of records and other State or federal criminal procedure benefits, and the need for statutes of limitations to bar deportations arising from certain convictions.
3. Should the Immigration and Nationality Act provide for lesser penalties --short of deportation-- for certain offenses?

V. RELIEF FROM EXCLUSION AND DEPORTATION

- A. Comprehensive review of waivers provided for in the Act and regulations; feasibility of drafting one comprehensive waiver

provision. Review the criteria for circumstances and responsibility for both discretionary and mandatory relief, including the "deferred action program", extended voluntary departure, registry, "color of law" and relief based on military service. Analyze the need for statutes of limitations and the authority to make "nunc pro tunc" determinations.

VI. PROCESSING OF CASES

A. Admittance:

Analyze procedures involved in the adjustment of status, stressing the different treatment afforded to immigrants who enter with a visa and to those who adjust their status within the U.S., under § 245 of the INA (see Consular Discretion at p.8). For example, Sec. 241(f) forgives deportability for fraud under certain circumstances where the alien obtained permanent resident status by getting an immigrant visa but confers no comparable relief where the alien obtained his permanent resident status by adjustment under § 245. On the other hand, 241(f) is not available where the original immigrant visa was obtained through fraudulent marriage (240(c)). Relief under § 241(f) is also avoided on the basis that the alien entered without labor certification (Matter of Gonzalez, Interim Decisions 2662, BIA, 7-26-78; Cobian-Hernandez v. INS, 587 F.2d 872 (7th Cir. 1978)).

B. Exclusion and Deportation Proceedings:

1. Analyze statutory and administrative case law

(BIA) regarding exclusionary rule as to illegal searches and seizures (Matter of Sandoval). Review constitutional (4th.Amendement) issues surrounding INS raids or "area control operations", probable cause, right to privacy, etc.

2. Due Process in Exclusion and Deportation: Examine adequate protections necessary to guarantee right to counsel at the appropriate stages, right to privacy, burden of proof standards. Explore feasibility of parole or other forms of probationary admittance for excludable or deportable aliens, and elimination of differences in consequences of deportability and excludability.
3. Bails and bonds: Propose legislation and regulations for proper determination of immigration bails and bonds.
4. Enforcement of immigration laws: Propose legislative or regulatory suggestions to avoid enforcement by state and local police.

VII. OTHER RIGHTS OF ALIENS

A. Right to Work:

1. Procedure for and substantive entitlement to "work authorization": convenience of drafting statutory or regulatory language, criteria for exercise of discretionary authority.
2. Review problems of employment discrimination based on alienage and/or national origin: feasibility of proposing amendments to Civil Rights Acts.

3. Review case law relating to applicability of state and federal laws to aliens, whether documented or undocumented, in the areas of wage and hour laws, unemployment compensation and workmen's compensation. Formulate proposals to eliminate disparity through preemption and/or other means.
4. Public employment: Review recent case law and federal, state and local orders restricting public employment to U.S. citizens. Analyze equal protection problems as well as inconveniences in the provision of public services caused by such orders. Formulate alternative measures.

B. Right to Government Benefits:

1. Federal: Investigate the restrictions currently being placed on SSI, food stamps, Medicare, legal services and other programs, both on legal/Constitutional grounds and from policy perspectives.
2. State: Review different state and local policies for the availability to aliens of Medicaid, AFDC, general assistance and land ownership. Develop criteria to replace "under color of law" classification. Special attention to the question of aliens' access to free public education.

- C. Naturalization: Review the feasibility of removing certain statutory bars to acquiring U.S. citizenship

(such as homosexuality). Analyze the desirability of eliminating or modifying language and knowledge requirements. Make policy recommendations for changes contemplating the tension between requirements and encouragement to naturalize.

VIII. ADMINISTRATIVE STRUCTURE

A. Research alternatives to present organization of INS, and possible elimination of dual role of enforcement and service agency. Propose measures to improve efficiency and simplify operations.

B. Administrative Adjudicatory Bodies:

Review the present status of Immigration Judges and Board of Immigration Appeals. Need for statutory status for BIA, including guidelines for publication of opinions, procedure, weight of precedents, and judicial review.

IX. OTHER TOPICS

A. Privacy Rights:

Examine INS practices and statute or regulations that impinge upon rights to privacy (see I-B-1-b; II-A-2 & 3; II-B-1 & 2; V-2-a & b; V-3) as well as non-immigration legislation that commands certain government officers (e.g., food stamp certifiers) to inquire into immigration status of applicants and report information to INS. Analyze the impact of these invasions of privacy

on the attitude of aliens who do not report crimes or are discouraged from using basic human services.

B. Foreign Policy Considerations:

Evaluate immigration policy in regard to stated and implicit purposes of U.S. foreign policy, in particular as to human rights considerations, regional economic patterns and interests, and special relationship of the U.S. to Canada and Mexico. Determine compliance or non-compliance of U.S. immigration policy with standards set forth in treaties and international instruments to which the U.S. is a signatory, such as the Treaty on Security and Cooperation in Europe ("Helsinki Final Act") and the U.N. Protocol and Convention Relating to the Treatment of Refugees. Further work should include identification of all treaties and accords that bear directly or indirectly on the rights of aliens, and a study of U.S. practices related to them.

C. Use of Immigration Laws Against Unions:

Review of the impact of statutes and regulations, as well as INS practices, to discourage union organizational efforts, by authorizing the employment of low-paying labor through temporary programs, or by conducting searches and seizures in plants or workplaces where organizing efforts are underway.

D. The Census: Address the problems created by the current litigation against the Bureau of the Census (to force it to exclude undocumented immigrants from the reapportionment population base, as well as other judicial or congressional activities that might develop.