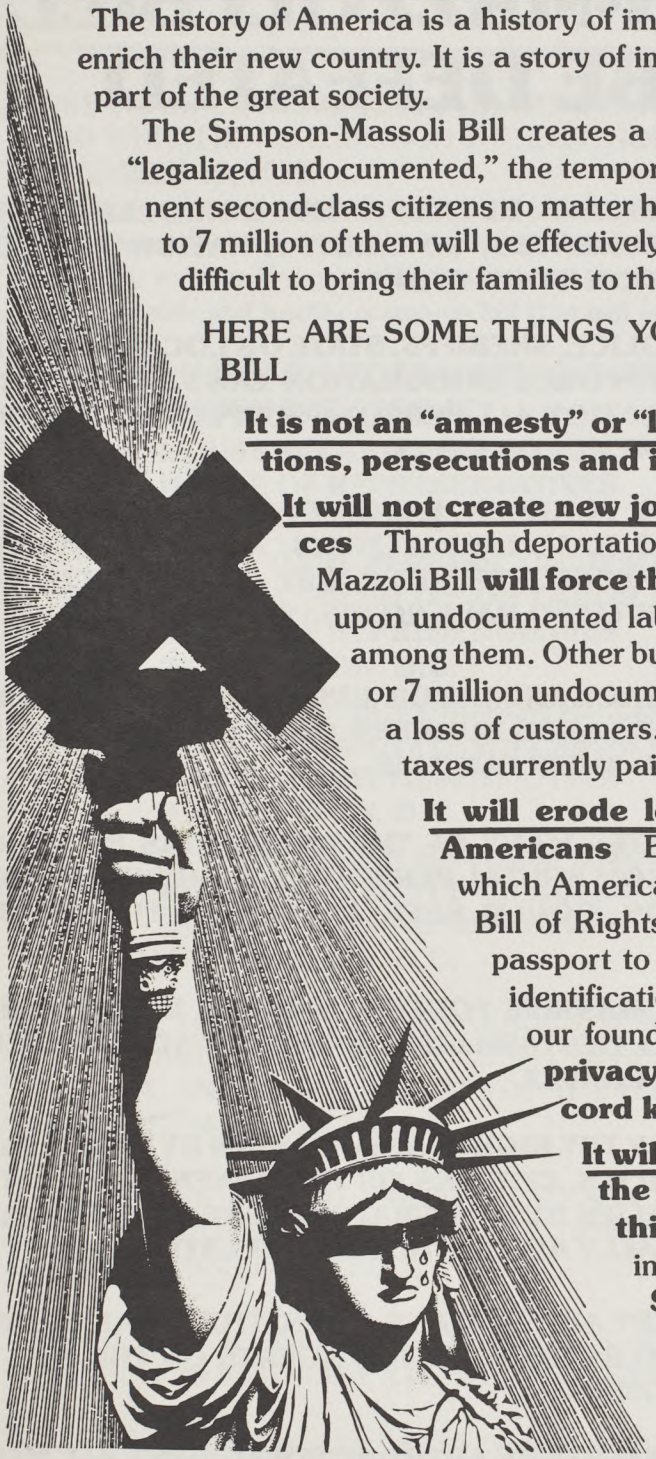
YOU SHALL NOT OPPRESS AN ALIEN; YOU WELL KNOW WHAT IT FEELS TO BE AN ALIEN SINCE YOU WERE ONCE ALIENS IN THE LAND OF EGYPT.
EXODUS 23:9

STOP THE SIMPSON-MAZZOLI BILL



The history of America is a history of immigrant people working to develop their own resources and enrich their new country. It is a story of individuals and united families working together to become a part of the great society.

The Simpson-Massoli Bill creates a new status for immigrants to this country. These so-called "legalized undocumented," the temporary H-2 workers or imported braceros, will become permanent second-class citizens no matter how long they reside here or how much they pay in taxes. All 6 to 7 million of them will be effectively prevented from unionizing. They will also find it increasingly difficult to bring their families to the country where they may spend most of their working lives.

HERE ARE SOME THINGS YOU SHOULD KNOW ABOUT THE SIMPSON-MAZZOLI BILL

It is not an "amnesty" or "legalization" bill Instead, it will **lead to more deportations, persecutions and intimidation** of the undocumented.

It will not create new jobs, cut inflation or reduce cut-backs in social services Through deportation of huge numbers of undocumented workers, the Simpson-Mazzoli Bill **will force the closure of many American businesses** which depend upon undocumented labor — small farms, clothing manufacturers and restaurants among them. Other businesses which provide goods and services to the estimated 6 or 7 million undocumented in the United States will experience a drop in sales and a loss of customers. And the **U.S. Treasury will lose millions of dollars** in taxes currently paid by undocumented laborers.

It will erode long-standing civil and constitutional rights for all Americans By viewing immigrants as a threat rather than the stuff out of which America was made, the Simpson-Mazzoli Bill will take an ax to the Bill of Rights. One provision calls for a National Identification card or passport to be shown by all citizens when applying for a job. Such an identification system, often used in police states but strongly resisted by our founding fathers, would **rob all Americans of their right to privacy by making them a part of a huge computerized record keeping system.**

It will set back many of the socio-economic gains made by the 20 million Spanish-speaking Americans already in this country As the raids of factories, homes and businesses increase, **all Spanish-speaking citizens of the United States may become the target of the search and interrogation efforts** of the Immigration and Naturalization Service (INS). At a time when more and more Spanish-speaking citizens are making a real contribution to the political and economic well-being of this country, such treatment by agents of their government will erode their trust and raise havoc with their lives. They will be treated like 2nd class citizens.

It will damage and oppress the immigrants themselves Instead of showing compassion or extending the constitutional rights of the United States to those who are being exploited and persecuted because they are here without visas, the Simpson-Mazzoli Bill will create more hostility and injustice. It will **make it almost impossible for immigrants to unify their families** and obtain the full birthrights of their U.S.-born children. For refugees such as those fleeing El Salvador and Haiti, there will be increased periods of detention with no opportunity of receiving political asylum.

IMPORTANT AMERICANS HAVE SPOKEN OUT AGAINST THE SIMPSON-MAZZOLI BILL

Partial List of Organizations & Individuals Opposed to the Simpson-Mazzoli Bill:

MAYOR TOM BRADLEY

GOVERNOR JERRY BROWN

CESAR CHAVEZ

THE U.S. CATHOLIC CONFERENCE OF BISHOPS *Strongly Opposes Most Sections Of The Bill.*

International Molders Union Convention, AFL-CIO
International Molders Union Local 164, AFL-CIO
Frank Rosen, Int. V.P. United Radio & Machine Workers of America
International Longshore & Warehouse Union
United Auto Workers Local 645, AFL-CIO
United Auto Workers Dist. 65, So. Cal.
Mario Obledo, California Candidate Governor
Fr. George Crespin, Chancellor, Roman Catholic Diocese of Oakland, Calif.
La Raza Coalition de Berkeley, Calif.
Filipino Immigrant Services Center
East Oakland Community Law Office
Raza Democratic Club of Alameda County
C.I.S.P.E.S. San Francisco

American Friends Service Committee
Coalition For Haitian Asylum
Centro Legal de la Raza
Catholic Charities, Oakland, Calif.
National Lawyers Guild, San Francisco, Cal.
Mark Van Der Hout, Atty-At-Law
M.A.P.A., Alameda County
Spanish-Speaking Unity Council, Oakland
Fr. Larry Dunphy, Franciscan Social Concern
Comite Popular Educativo de la Raza, Oakland

Frente Unido Salvadoreno
Asian Law Caucus
Fr. Ray Tintle, Mary Help of Christians Ch.
Fr. Antonio Valdivia, St. Anthony's Church
Fr. John MacDonnell, St. Elizabeth Church
San Antonio Neighborhood Health Center
Western Region Puerto Rican Council
U.S. Congressman Pete Stark
U.S. Congressman Don Edwards
U.S. Congressman Ron Dellums
Fruitvale Senior Citizens Community Center
Emiliano Zapata Street Academy
La Escuelita, Oakland, California

Interfaith Coalition for Justice to Immigrants
Natl. Fed. of Priests Councils, Fr. McCauley
National Assembly of Women Religious, NAWR
Ceferino Ochoa, Arch. Committee Latin America
Fr. Jim Colleran, Cluster, St. Vitus Parish
Catholic Social Services
Chicago Committee for the Bill of Rights

National Center for Immigrant Rights
Hermandad Mexicana Nacional
National Immigration Coalition
Mexican-American Legal Defense Fund
LULAC — National Organization
U.S. Congressman Edward Roybal
Social Justice Comm. Archdiocese San Francisco
Board of Education, Berkeley, Calif.
City Council of Berkeley, Calif.
U.S. Congressman Jerry Patterson

TEN IMPORTANT REASONS WHY THE SIMPSON-MAZZOLI BILL MUST BE DEFEATED

1. **IT REQUIRES ALL AMERICANS, BE THEY NATIVE-BORN, LEGALLY IMMIGRATED OR UNDOCUMENTED, TO CARRY A NATIONALLY CONTROLLED IDENTIFICATION WORK PERMIT.**

2. **EXTENDS TO LOCAL POLICE, SHERIFFS, STATE OR LOCAL AUTHORITIES THE POWER TO ENFORCE IMMIGRATION LAWS, DETAIN AND TURN OVER TO IMMIGRATION ALL PERSONS SUSPECTED OF BEING HERE WITHOUT DOCUMENTS OR VISAS.**

3. **Authorizes EMPLOYERS, FOREMEN, LABOR CONTRACTORS IN THE FIELDS, UNION HIRING HALL DISPATCHERS, AND EMPLOYMENT AGENCIES TO FIRE, SUSPEND, REFUSE TO HIRE OR DISPATCH, AND REFER PERSONS BELIEVED TO HAVE NO VISAS.**

4. **CONSTITUTES AN ATTACK ON LABOR UNIONS WHOSE MEMBERSHIPS OFTEN INCLUDE LARGE NUMBERS OF IMMIGRANT AND MINORITY WORKERS AND THEIR FAMILIES.**

5. **REDUCES OR ELIMINATES MANY OF THE PROVISIONS BY WHICH REFUGEES, FLEEING FROM BRUTAL PERSECUTION OR OPPRESSION IN THEIR HOMELANDS, COULD SEEK ASYLUM IN THE UNITED STATES.**

6. **ESTABLISHES A NEW, MASSIVE FOREIGN WORKER IMPORTATION PROGRAM WHICH WILL DESTABILIZE THE UNITED FARMWORKERS UNION, LED BY CESAR CHAVEZ.**

7. **REDUCES DRASTICALLY THE RIGHTS AND AVENUES BY WHICH FAMILIES WHO ARE EITHER U.S. CITIZENS OR PERMANENT RESIDENTS CAN UNIFY THEIR FAMILIES BY IMMIGRATING HERE AS IMMEDIATE RELATIVES . . . ESPECIALLY ASIANS, BLACKS OR LATINS.**

8. **SEVERELY LIMITS COURT APPEALS AND CONSTITUTIONAL RIGHTS OF PERSONS DETAINED BY IMMIGRATION AGENTS ON THE JOB, IN THE STREETS OR IN HOMES.**

9. **INCREASES DISCRIMINATION BY AUTHORITIES AGAINST ALL MEXICAN, LATINO, BLACK, ASIAN AND NON-WHITE PERSONS ON THE JOB OR AT SERVICE AGENCIES.**

10. **CHANGES OUR IMMIGRATION POLICIES FROM THE UNIFYING OF FAMILIES TO THE PERSECUTION AND DENIAL OF RIGHTS TO IMMIGRANTS AND THEIR FAMILIES.**

ACTIONS WE MUST TAKE TO STOP THE SIMPSON-MAZZOLI BILL!

IN SENATE: S2222 IN HOUSE OF REPRESENTATIVES: HR 6514

1. LOBBY OUR CONGRESSMAN OR WOMAN NOW DURING THE RECESS PERIOD WHICH RUNS THROUGH THE ELECTIONS AND CLEAR THROUGH TILL NOVEMBER 29, 1982.

   Congress persons, even though they be defeated, will be voting on these bills during the Lame-duck session. It is important that you visit their offices and try to speak directly to your Congress Representative and ask him or her not to vote for this unworkable and hastily drawn-up bill that will create such confusion and chaos.

2. MOUNT A MASSIVE LETTER-WRITING CAMPAIGN, TELEPHONE OR TELEGRAM CAMPAIGN DIRECTED AT:

   HOUSE SPEAKER "TIP" O'NEIL,
   HOUSE OF REPRESENTATIVES
   WASHINGTON, D.C.

   CONG. CARL PERKINS, CHAIRMAN
   HOUSE COMMITTEE ON LABOR AND EDUCATION
   HOUSE OF REPRESENTATIVES
   WASHINGTON, D.C.

   CONGRESSMAN GEORGE MILLER, CO-CHAIRMAN
   HOUSE COMMITTEE ON LABOR AND EDUCATION
   HOUSE OF REPRESENTATIVES
   WASHINGTON, D.C.

   CONGRESSMAN RICHARD BOLLING, CHAIRMAN
   HOUSE COMMITTEE ON RULES
   HOUSE OF REPRESENTATIVES
   WASHINGTON, D.C.

3. ORGANIZE TO SUPPORT THE PARADES, DEMONSTRATIONS AND PICKETING THAT ARE BEING ORGANIZED IN LOS ANGELES, THE SAN FRANCISCO BAY AREA, AND IN OTHER PARTS OF THE U.S. AGAINST THE PASSAGE OF THE SIMPSON-MAZZOLI BILL.

4. CONTACT YOUR LOCAL CHURCH AND ASK YOUR PASTOR OR PRIEST TO ALLOW YOU TO ASK THE CONGREGATION TO SEND LETTERS AND WIRES TO CONGRESS OPPOSING IT.

5. CONTACT YOUR UNION OFFICIALS, YOUR UNION EXECUTIVE BOARD AND ASK THEM TO ALSO TAKE A POSITION OR RESOLUTION AGAINST THIS BILL.

6. TAKE THESE LETTERS TO YOUR COMMUNITY, TO YOUR CIVIC AND SOCIAL GROUPS AND FINALLY TO THE HOUSEHOLDERS IN YOUR NEIGHBORHOOD, ASKING FOR SIGNATURES ON FORM LETTERS THAT CAN THEN BE FORWARDED TO THE ABOVE CONGRESSMEN.

7. FORM EMERGENCY COMMITTEES IN YOUR TOWN OR COMMUNITY TO CARRY OUT THE ABOVE ACTIONS AS BROADLY AS POSSIBLE.

Mayor Gus Newport, Berkeley, Calif.
Board of Supervisors of Alameda County, Calif.
Archbishop John Quinn, San Francisco, Ca.
Farm Labor Organizing Committee, Toledo, Ohio
U.S. Senator Edward Kennedy
U.S. Senator Alan Cranston
Secretariat for Hispanic Affairs, USCC
Southern Cal. Ecumenical Council
Committee On Chicano Rights, San Diego
Texas Immigration & Refugee Network
Oregon Coalition for Imm. & Refugee Rights
United Meth. Church, Bd. of Church & Society

Network, A Catholic Social Justice Lobby
Council of Coalitions for Visas & Rights
Mexican-American Political Assn., Calif.
American-Arab Anti-Discrimination Committee
Haitian Refugee Project
Fifth Preference Coalition
Centro de Trabajadores de Canerias, San Jose

Union of Democratic Filipinos
National Immigration & Refugee Network
P.A.D.R.E.S., Nat. Pres. Fr. Ramon Gaitan
Natl. American G.I. Forum
Education Para Adelantar, EPA, Alameda County
Kanter, Williams, Merin & Dickstein, Attys., Sacramento, Ca.

Francis A. Quinn, Bishop of Sacramento
Spanish International Television Network
Board of Supervisors of San Diego County
National Committee Against Repressive Legislation
American Civil Liberties Union
Fr. Luis Balbuena, Mary Immaculate Parish
Fr. Cuchulain Moriarity, Holy Redeemer Parish

UPC-AFT-AFL-CIO Local 1593, Sacramento
Assemblyman Howard Berman, Los Angeles
Fr. Keith Kenny, Guadalupe Church, Sacramento
Congressman Julian Greene, Los Angeles
Congressman Mervyn Dymally, Los Angeles
Frank Gurule, Pres., Local 721, Carpenter Teamsters Local 208

Furniture Workers Union Local 1010
Coalition Pro Visas & Rights, Los Angeles
Coalition Pro Visas & Rights, Orange County
Organization of Salvadoran Professionals & Technicians
National Hispanic Chamber of Commerce
Hispanic Democrats, Orange County
Hispanic Businessmen & Professional Assoc.
United Neighborhood Organization
Synod of So. Cal. & Hawaii, United Presbyterian Church

Fr. Allan Figueroa Deale
Committee for Salvadoran Refugees
Filipino Immigrants Rights Organization
People United for Human Rights, San Jose
Nadia Bledsoe, Pres., AFSME Local 1728
Pablo Cadillo, Secretariat for Hispanic Affairs, USCC
United Church of Christ

Rev. Don Romero, U.C.C.
Rev. Hector Lopez, U.C.C.
Rev. Elias Galvan, United Methodist Church
Congressman Marty Martinez
Esteban Torres
Richard Alatorre, Assemblyman, Calif.
Art Torres, Assemblyman, Calif.

IMPORTANT LOCAL AND REGIONAL TRADE UNIONS THROUGHOUT THE UNITED STATES HAVE ALSO OPPOSED THIS BILL.

Congressman Peter Rodino
U.S. House of Representatives
Washington, D.C. 20202

Dear Congressman Peter Rodino:

We would like to take this opportunity to inform you that Local 208 of the International Brotherhood of Teamsters passed a resolution strongly opposing the Immigration Reform and Control Act of 1982 (S 2222/HR 6514) as a threat to the social well-being of all union members and working people generally, in the general membership meeting of August 15, 1982.

We ask you to seriously consider the following points as debate on the bill is initiated in the House Judiciary Committee:

- It makes a mockery of every measure asserting equal employment opportunity and prohibiting discriminatory hiring and lay-off policies.
- In some workplaces labor unions will face decertification as their undocumented members are fired and/or deported.
- Local union hiring hall dispatchers and business agents will be obligated to enforce immigration laws as unions will be liable for referring undocumented members for employment.
- It will significantly relax existing standards protecting U.S. workers from unfair competitions, standards which an employer must meet to demonstrate a need for temporary foreign workers.
- It will create a "bracero" program by back door while diminishing legal immigration and asylum rights on the pretext of "controlling immigration."
- Under this legislation the use of foreign contract workers annual could feasibly increase to 300,000, thus spelling the death of unionizing efforts in the agricultural sector nationally.
- Additionally, these contract workers would be prohibited the right to organize, bring family members, nor could they receive any social program benefits, yet they would be obligated to pay into all tax programs.
- It will effectively discourage labor organization or complaints about wages and working conditions by the undocumented.
- Workplace and neighborhood I.N.S. raids and sweeps will be augmented.
- No *guarantee* or *right* of legalization will be provided. It will merely allow the Attorney General to legalize people at his discretion. This will intensify the fear and exploitability of those who remain undocumented.
- It will result in greater violations of the civil rights of U.S. citizens, legal residents, and even the undocumented.
- There will be increased intrusions and controls by government in the private and social life of all people working in the U.S. as a result of this legislation's passage.

We find it difficult to define this legislation as anything else but anti-labor, and thus truly not to the benefit of the vast majority of Americans and residents.

We ask you and fellow Representatives to prevent its passage in the House.

Sincerely yours,
TEAMSTERS LOCAL FREIGHT DRIVERS
LOCAL UNION NO. 208
Archie J. Murrietta
President

FOR MORE INFORMATION ABOUT THE SIMPSON-MAZZOLI BILL, WRITE OR CALL:

AMERICAN FRIENDS
SERVICE COMMITTEE
980 N. Fair Oaks
Pasadena, Ca. 91103
(213) 791-1978

NATIONAL IMMIGRATION
COALITION
8601 Lankershim Blvd.
Sun Valley, Ca. 91352
(213) 768-1171

COUNCIL PRO VISAS &
RIGHTS FOR UNDOCUMENTED
(213) 266-2690
(714) 541-0250
(714) 980-3235

CRLA to fight police turning aliens over to border patrol

2-23-83

By Sam Ramirez

CALEXICO — The California Rural Legal Assistance is considering a lawsuit in an effort to stop Calexico police from turning over suspected undocumented persons to the U.S. Border Patrol.

The CRLA made the announcement after a meeting with numerous other Valley organizations Tuesday to form a coalition to oppose the police action.

The coalition was madeup of representatives from CRLA, the United Farm Workers (UFW), Mexican American Political Association (MAPA), Neighborhood House, Los Ninos from Mexicali and the Imperial Valley Immigration Project.

The policy would "create a virtual state of seige, with many citizens being forced to stay home for fear of being harassed by the police," according to a written statement from the coalition. The group said it would make known its opposition to the City Council Tuesday.

Last week, Police Chief J. Leonard Speer announced that his department would crackdown on crime which Speer attributed to people illegally crossing the border from Mexico.

The chief said people would be detained for minor penal code violations and if they turned out to be undocumented persons, they would be turned over to the U.S. Border Patrol for deportation.

Since announcing the policy Feb. 15, police have handed over about 30 suspected undocumented persons to the border patrol.

Today, Speer said his officers were just picking up people violating the law. "We don't just pick up suspected undocumenteds," he said.

When announcing the policy last week, Speer said he would abide by the U.S. Attorney General's opinion in 1979 that stated only the U.S. Immigration and Naturalization Service (INS) was responsible for apprehending suspected illegal immigrants.

Speer said the reason the detainees were turned over to the border patrol instead of being prosecuted is because such prosecution for minor penal code violations would "tie up the criminal justice system."

Nevertheless, the coalition said such action was the responsibility of INS. "It should be made clear that it is not the duty of the police to enforce federal immigration laws," the coalition said.

"Although the police (department) has a clear duty to arrest those suspected of committing a burglary, it clearly should not begin arresting 'suspected aliens' without probable cause (that) a crime has been committed. One of the unfortunate repercussions of this policy would be to scare away Mexicali shoppers... further aggravate the local economy," according to the group's release.

CRLA Attorney Merced Martin said Tuesday the organization would consider filing one of two lawsuits if police continue to detain suspected undocumented persons with the intention of turning them over to the border patrol, he said.

One lawsuit could be a taxplayers' lawsuit, which charges local tax money is used to illegally detain people which is the job of immigration, he said.

Martin said a second lawsuit would be filed if a legal resident is detained by police to determine documentation status. That lawsuit would charge violation of constitutional rights, he said.

"If such a person comes to us, we will represent them," Martin said. If the practice is so widespread that it affects the community as a whole, there is the possibility we could go to federal court to get an injunction (against the police)."

But the council will have a chance to reassess the situation and make any changes before any litigation occurs, Martin added.

"Our basic feeling is that the City Council should have the first opportunity to change policy without need for litigation," he said.

Calexico Latino Police Officers Association (CLPOA) President Gilbert Grijalva said even before Speer formally announced the detention policy, police had been detaining suspected undocumented persons.

"It's something we've done all along. But because of the economic times, more people are aware of it," Grijalva said. He said both border patrol and police are shorthanded. "We try to help each other out."

Council opposing police-border patrol

By Sam Ramirez 2-24-83

CALEXICO — A majority of the City Council has come out in support of the California Rural Legal Assistance contention that city police should not act as unofficial border patrol agents.

Councilman William L. Moreno, who supported the CRLA statement, said if necessary the council will make a formal direction to the police department to preserve law and order, but not to act as the border patrol.

Following CRLA's threat to sue the city to stop its aggressive action against suspected aliens, Moreno said, "CRLA is right. We're law and order, but not immigration. There has to be (council) direction, to get out of the lawsuit."

Today, embattled police Chief J. Leonard Speer said preserving law and order was all he was trying to do when he made the statement at last week's council meeting that he would crackdown on undocumented aliens.

Speer attributed much of the city's crime to people illegally crossing the border.

Speer, however, said police would only detain people for penal code violations. If the detainees turned out to be suspected illegal aliens they would be turned over to the border patrol for deportation.

But a coalition of Valley organizations Monday opposed Speer's policy. Soon after, CRLA announced it would consider the lawsuit to stop such police action.

Today, City Councilman Tony P. Tirado and Mayor Fernando R. Torres said police should not be involved in immigration duties.

"I firmly believe the police department should not be involved in apprehension of undocumented aliens as unofficial border patrolmen," Tirado said.

Torres added, "We're not going to have our police dedicated to just picking up illegal aliens." He suggested the coalition talk with Speer about the issue.

Speer agreed. "I appreciate them coming in and talking with me. I don't conduct business in the newspapers. I'm going to do my job.

"We're not border patrol officers and we're not going to enforce federal (immigration) law."

Speer added he did not feel formal direction from the council was necessary to uphold law and order. "The council contracted me to protect life and property, that's what I'm doing."

Speer added the coalition was "jumping on the bandwagon to get publicity." But he said, "I invite them to come in and talk and even ride along with the officers."


THESE GUYS LOOK LIKE CRIMINALS AND ILLEGALS!
SDPD
WELL, LOCK THEM UP AND WE'LL DEPORT 'EM.
SDPD
CHIEF
POLICE CHIEF JERRY SANDERS
BUT... BUT, WE DIDN'T DO ANYTHING!
SO WHAT, YOU LOOK GUILTY!!
SDPD
CHIEF
93 © Cleaves

Hoobler

15.11

CITY of SAN DIEGO

MEMORANDUM

FILE NO.: 15.11

DATE : May 8, 1973

TO : All Personnel

FROM : R. L. Hoobler, Chief of Police by Eugene Gordon, Legal Advisor

SUBJECT: APPREHENSION OF ILLEGAL ALIENS

A legal opinion has been received from the U. S. Department of Justice in Washington, D. C. giving approval of our practice of detaining and questioning possible illegal aliens. The opinion states that police officers have the legal authority to detain for investigation persons suspected of being in this country illegally. Provided officers have a reasonable suspicion that the particular individual is eluding examination or inspection by immigration officers, a detention for investigation would be proper, and if probable cause exists to believe that the individual is evading immigration, officers may turn the individual over to the Immigration Service.

It is to be remembered that local police officers do not possess the broad authority of immigration officers to apprehend illegal aliens. Illegal presence in this country is a misdemeanor and any detention for investigation must be based on a good faith rational suspicion that the person may be an illegal alien. If after investigation the officer is convinced that the person detained is present in the country illegally, Immigration should be notified promptly.

CITY of SAN DIEGO

MEMORANDUM

FILE NO.:

DATE : May 18, 1973

TO : City Manager Kimball Moore

FROM : Councilman Jim Bates

SUBJECT: Apprehension of Illegal Aliens

As the Councilman representing the Eighth District, which has the largest Mexican-American constituency in the City of San Diego, I was extremely concerned regarding statements made with respect to the apprehension of illegal aliens, by Police Sergeant G. T. Reed of the Police Department and Assistant Police Chief Robert Jauregui, as quoted in the San Diego Union of 4/26/73.

I am particularly concerned that the arrest rate of illegal aliens is 35 times higher than it was 10 years ago.

I think this matter is a policy question which should be handled by elected officials who are directly accountable to the citizens of this City, especially in view of the questionable interpretation (see attachment) of Federal immigration laws (Immigration & Nationality Act, as amended (Title 8, United States Code)) According to these documents, local enforcement officers are not empowered to make arrests under the Federal Immigration Statutes which are non-criminal in nature and which relate to deportation and the deportation process.

Furthermore, since becoming the Councilman for the South Bay area, which is adjacent to the Mexican border, I have received 20 to 30 calls and/or complaints each working day regarding this matter.

I have met repeatedly, with various segments of the Mexican-American community and attempted to alleviate their frustration, hostility and despair regarding this matter, all to no avail.

FORM CO-160

It would seem to me, with the increase in crime--particularly those crimes where a victim is involved--that we should emphasize apprehension of criminals, rather than pursuing a course of selective enforcement of non-victim crimes which are a matter of Federal concern and only accelerate the impression given to many Mexican-Americans that racial discrimination has been institutionalized in our Police force.

I would further call for a concurrent or separate Council conference which would deal with problems being experienced between the Police Department and San Diego residents of Mexican-American ancestry of this City.

I deem this problem to be serious, and urge my colleagues to join me in attempting to reach a reasonable solution.

JIM BATES

JB/k
attachment

cc: Mayor & Council

CITY of SAN DIEGO

MEMORANDUM

FILE NO.: 15.11

DATE : May 8, 1973

TO : All Personnel

FROM : R. L. Hoobler, Chief of Police by Eugene Gordon, Legal Advisor

SUBJECT: APPREHENSION OF ILLEGAL ALIENS

A legal opinion has been received from the U. S. Department of Justice in Washington, D. C. giving approval of our practice of detaining and questioning possible illegal aliens. The opinion states that police officers have the legal authority to detain for investigation persons suspected of being in this country illegally. Provided officers have a reasonable suspicion that the particular individual is eluding examination or inspection by immigration officers, a detention for investigation would be proper, and if probable cause exists to believe that the individual is evading immigration, officers may turn the individual over to the Immigration Service.

It is to be remembered that local police officers do not possess the broad authority of immigration officers to apprehend illegal aliens. Illegal presence in this country is a misdemeanor and any detention for investigation must be based on a good faith rational suspicion that the person may be an illegal alien. If after investigation the officer is convinced that the person detained is present in the country illegally, Immigration should be notified promptly.

Border Patrol probe off; can't find victim

CALEXICO — A probe into a Sunday accident involving a man and a U.S. Border Patrol unit has been halted because police said they have been unable to locate the man who was hit by the unit.

Police said if the man could have been located and a statement obtained from the victim, there was the possibility results of the investigation would have been turned over to the county District Attorney's office for possible prosecution of the border patrol unit's driver, Michael A. Lewis.

The victim of the accident, however, gave authorities three names and addresses. Police went to the addresses in Mexico Tuesday morning and discovered the addresses were false.

The man, who identified himself to police as Emilino Chavez, 18, Mexicali, was struck by a unit driven by Agent Lewis in the United Farm Workers compound, 221 W. Second St.

Lewis told police Chavez swerved in front of his patrol unit.

But numerous witnesses said Chavez was deliberately struck by the vehicle while Chavez was fleeing apprehension as a suspected illegal immigrant, police were told.

El Centro Chief Patrol Agent W.S. King Jr. said the man identified as Chavez was treated for minor injuries at Calexico Hospital and afterwards the man voluntarily returned to Mexico.

King said the border patrol has begun its own investigation into the accident. But King said according to initial reports of the incident, there was no intention to hit the fleeing man.

King added the man also gave wrong names and addresses to the border patrol. He said the U.S. government would pay for the costs of the man's medical treatment.

2-20-83

Herman,

thought you might be interested in these stories. Shows you how backwards things are here. Some rumblings from local people but nobody will probably speak out.

I witnessed the one where the guy got hit. We know how to get ahold of him but I suspect they didn't really want to talk to him.

Say hello to everyone

Mike

Mexican American Legal Defense and Educational Fund

28 Geary Street
San Francisco, CA 94108
(415) 981-5800

MALDEF

August 23, 1978

Mr. Herman Baca, Chairperson
Committee on Chicano Rights, Inc.
1837 Highland Avenue
National City, CA 92050

Dear Herman:

Enclosed, please find copies of the material which we discussed during our telephone conversation. I have segregated the enclosed material into two sections as follows:

(1) Tab A-The subject material is regarding the issue(s) of local police departments enforcing federal immigration law.

(2) Tab B-The Legal Memorandum discusses several questions as presented by the facts in the Hanigan case. The material may be helpful if litigation is initiated against the KKK for cooperating with the Border Patrol.

I hope the information is useful. If I can be of further assistance, please do not hesitate to contact me.

Atentamente,

J. Manuel Sanchez

J. Manuel Sanchez

jmq

A - MATERIALS ON LOCAL LAW ENF. & IMMIG. LAW &

B - Legal Memo - CIVIL RTS LITIGATION (HANNIGAN CASE)

INS MEMO TO LOCAL LAW ENF. w/ INS FORMS

JUNE 23, 1978 - FOLLOWING STATEMENT DISTRIBUTED BY THE JUSTICE DEPARTMENT THIS AFTERNOON

Attorney General Griffin B. Bell today reaffirmed the Department of Justice policy that the responsibility for enforcement of the immigration laws rests with the Immigration and Naturalization Service and not with state and local police.

INS officers are uniquely prepared for this law enforcement responsibility because of their special training and because of the complexities and fine distinctions of immigration laws, Mr. Bell said.

The Attorney General stated that the Department would continue to urge state and local police forces to observe the following guidelines:

1. Do not stop and question, detain, arrest or place "an immigration hold" on any persons not suspected of crimes, solely on the grounds that they may be deportable aliens;
2. Upon arresting an individual for a non-immigration criminal violation notify the Service immediately if it is suspected that the person may be an undocumented alien so that the Service may respond appropriately;

INS officials will continue to work with state and local law enforcement officials to carry out this policy.

# # # # # #

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D.C. 20536

PLEASE ADDRESS REPLY TO

AUG 9 1978

AND REFER TO THIS FILE NO.

CO 105C

MALDEF NATIONAL HDQTRS.
RECEIVED
AUG 14 1978
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

Ms. Vilma S. Martinez
President and General Counsel
Mexican American Legal Defense
and Education Fund
28 Geary Street
San Francisco, CA 94108

Dear Ms. Martinez:

This is in response to your letter of January 11, 1978 to the Attorney General concerning enforcement of the Immigration and Nationality Act by state and local police officers.

Our study of the question leads us to conclude that state and local peace officers are not precluded by the United States Constitution, the Immigration and Nationality Act, or any other federal law from making arrests for violations of the immigration laws. In our opinion, their authority or lack of it depends on the law of their respective states. Since we are aware of no state law which gives state or local peace officers authority to make arrests for violations of those provisions of the immigration law for which the penalty is deportation, it is our view that any authority they may have to make arrests for violations of the immigration laws is limited to the criminal provisions.

The Attorneys General of California and Texas have determined that local and state peace officers in their respective states have authority to make arrests for violations of the criminal provisions of the immigration laws when certain conditions have been met, while the Attorney General of Oregon has determined that Oregon peace officers lack that authority. These are questions of state law.

In view of our conclusion that local and state peace officers may have authority under their state law to make arrests for violations of federal law, including violations of the criminal provisions of the immigration laws, we cannot accede to all of the requests made by MALDEF on page 4

d1304

(2)

of its April 19, 1978 letter to the Assistant Attorney General, Civil Rights Division. However, at least partly as a result of our recommendations, the Department of Justice issued a press release on June 23, 1978; a copy of which is attached.

We appreciate your concern and the research you have done and provided us with on this subject.

Sincerely,

David Crosland
General Counsel

Attachment

STEPHEN R. ELIAS
ROBERT K. MILLER
KATHY POPOFF
NANCY SAMS
California Rural Legal Assistance
719 Main Street
Delano, California 93215
(805) 725-4350

VILMA S. MARTINEZ
J. MANUEL SANCHEZ
MORRIS J. BALLER
LINDA HANTEN
Mexican American Legal Defense
and Educational Fund
28 Geary Street, 6th Floor
San Francisco, California 94108
(415) 981-5800

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

SANTOS GALVAN, et al., Plaintiffs, vs. ROBERT E. DUKE, et al., Defendants.	No. 146110 CONSENT DECREE

I. STATEMENT OF THE CASE

This case involves allegations of violations of constitutional, statutory and civil rights of citizens and permanent resident aliens lawfully present in the United States by defendants, the Police Chief and unnamed police officers of the city of Wasco, California. Class representatives bring this action for injunctive relief for the class as a whole; no money damages are sought or claimed for

plaintiffs or for the class as a whole. The class consists of citizens and permanent resident aliens of Latin American descent who are living or working within the city of Wasco, Kern County, California. Plaintiffs allege that the defendant law enforcement officials, in their attempt to enforce the immigration laws by detention and apprehension of persons unlawfully present in the United States, have violated rights of citizens and resident aliens under the Fourth Amendment and under 42 U.S.C. Sections 1983 and 1985(3) by interrogating, stopping, detaining, arresting and incarcerating such persons without arrest warrants, probable cause, or reasonable suspicion that such persons were unlawfully present in the United States. Plaintiffs further allege that the defendant city officials were unlawfully attempting to enforce the immigration laws independent of the Immigration and Naturalization Service in violation of Article I, Section 8 of the United States Constitution and 8 U.S.C. § 1103, which make such enforcement exclusively a federal function. Defendants have denied the allegations of unlawful activities.

II. TERMS OF THE DECREE

Plaintiffs Santos Galvan, Ramon Galvan, Silvestre Galvan, Elvira Galvan, Rafael Gutierres, Francisca Gutierres, Refugio Rodriguez, Jose Gutierres Torres and defendant police officials Robert E. Duke, Chief of Police for the City of Wasco, and other members of the Wasco Police Department, being in agreement on the manner for resolving the controversy between them, and such agreement being in the interests of the parties in avoiding further controversy,

litigation, and expense, and the substance of this agreement having been found acceptable to this court as a fair and reasonable disposition of the controversy between the consenting plaintiffs and defendant city officials, it is therefore hereby ORDERED, ADJUDGED, and DECREED THAT:

1. Defendant Robert E. Duke, Chief of Police for the City of Wasco, in his official capacity as the senior law enforcement official of Wasco, California, his successors in office, his and their agents, employees, and persons acting under his control or direction, are permanently enjoined from initiating, or from permitting to be initiated:

a. Any law enforcement action by officers of the Wasco Police Department designed to detect the presence of unlawfully admitted aliens to the United States;

b. Interrogations by officers of the Wasco Police Department of persons for the purpose of ascertaining their immigration status;

c. Questioning by officers of the Wasco Police Department of persons detailed or arrested in connection with misdemeanor, traffic or other state-law violations about their immigration staus.

2. Law enforcement officials of the City of Wasco, their successors in office, agents, employees, and all others acting under their control or pursuant to their instructions, are permanently enjoined from participating in law enforcement activities initiated by the Immigration and Naturalization Service.

3. This agreement is premised on the proposition that law

enforcement activities initiated independently by the City of Wasco directed at the enforcement of the immigration laws are precluded by the United States Constitution and federal law. Defendants accept this proposition as accurately expressing the state of the law.

4. To effect this decree, defendants, within 60 days of the entry of this consent decree, will issue new law enforcement regulations or policies approved by plaintiffs' counsel which are consistent with its terms and will undertake appropriate steps to insure that all persons under their control are informed of the limitations imposed herein.

5. Upon reasonable notice, plaintiffs' counsel or designated representative shall have the right to inspect, within normal business hours, such non-confidential documents and records in the possession of the City of Wasco as may be necessary to a full investigation of the City of Wasco Police Department's compliance with this consent decree. Plaintiffs shall not abuse this right by frequent, unnecessary or unreasonably inspections. Defendants may delete from any such documents supplied to plaintiffs any names or addressed which would compromise presently active undercover law enforcement officials or reveal the names of informers presently on active assignments not related to such law enforcement activities.

6. Defendants shall issue publicly the statement attached hereto as Exhibit A.

7. Defendants shall expunge the arrest records of the plaintiffs reflecting the instances specified in the Complaint.

8. Defendants shall submit to plaintiffs a summary of actions taken, including copies of all instructions, regulations, or policies promulgated to implement this Decree within three months of its approval and adoption by the Court.

9. In the event that a dispute arises as to the meaning of this Consent Decree, its application to the city of Wasco Police Department, practices regarding enforcement of federal immigration law or compliance with its terms, the parties by counsel shall make every good faith effort to resolve the dispute informally and among themselves. Either plaintiffs or the City of Wasco Police Department may apply to the Court for enforcement of the decree's provisions only after their attorneys have fully exhausted all possibilities for resolution of their dispute.

10. The defendant in this action shall pay to plaintiffs' counsel, California Rural Legal Assistance, a corporation, and to the Mexican American Legal Defense and Educational Fund, a corporation, the combined sum of eleven thousand five hundred and fifty dollars ($11,550.00) as costs and attorney's fees pursuant to this action. Payment of said sum shall fully satisfy all claims for costs and attorney's fees on plaintiffs' behalf.

11. This Consent Decree is a final judgment and is effective as of the date it is executed, and filed by the Court. The Court will retain jurisdiction of this action for five years to insure compliance with the Consent Decree. The provisions of this Decree shall be binding upon defendants Robert E. Duke and other police officers of the city of Wasco, and all others acting under their

control or pursuant to their instructions.

FOR DEFENDANTS:

_____

Gordon A. Drescher
1420 Seventh Street
Wasco, California 94280

Dated:_____

FOR PLAINTIFFS:

_____

California Rural Legal Assistance
719 Main Street
Delano, California 93215

Dated:_____

_____

Mexican American Legal Defense
and Educational Fund
28 Geary Street, 6th Floor
San Francisco, California 94108

Dated:_____

room in juvenile hall
reatened the victim,
rate unambiguously
e if necessary. When
him and struck him
nony of the victim
ntially corroborated
ner occupants of the
ently incredible. The
es therefore raises a
nst him by the trier

n the record is that
felonious intent are

that the minor may
xcess of four years.
commitment order
tified copy thereof
hority. As modified,

[Crim. No. 9046. Third Dist. June 21, 1978.]

THE PEOPLE, Plaintiff and Respondent, v.
ELEAZAR BARAJAS, Defendant and Appellant.

SUMMARY

Acting on information provided by, and a request from, an agent of the United States Immigration and Naturalization Service, police officers arrested defendant as an illegal alien for the felony of reentering the United States after deportation. While searching defendant for weapons and contraband before transportation, one of the officers felt something in defendant's pocket, and took out a wax paper wrapping containing 5.5 grams of heroin. The arresting officers had previously arrested defendant for a traffic violation and for possession of a knife; when questioned as to his residence status at that time, he said that he had a "green card" but it was at home, and that he did not know the location of his home. While defendant was in jail, a conversation in Spanish between defendant and a woman was monitored and tape recorded by the police. The jury convicted defendant of possession of heroin for sale (Health & Saf. Code, § 11351). (Superior Court of San Joaquin County, No. 28142, Chris Papas, Judge.)

The Court of Appeal affirmed. The court rejected defendant's claims that local police could not make arrests for violations of 8 U.S.C. § 1325, making it a misdemeanor for an alien to enter the country illegally, or 8 U.S.C. § 1326, making it a felony for an alien to reenter the country after deportation without permission from the Attorney General. The court held since there was no limitation on local police power relative to §§ 1325 and 1326, the police officers had the power to arrest defendant for their violations. The court further held the failure of the officers to comply with the warrant requirements of 8 U.S.C. § 1357, did not render the arrests unlawful; that statute applies only to officers or employees of the Immigration Service, and the legality of an arrest by local officers, in

the absence of a specific law regulating the mode of such an arrest, is determined by the law of arrest of the state in which it occurs, unless such law conflicts with the federal Constitution. The court also rejected defendant's argument that there was no reasonable cause for the officers to believe that a felony had been committed. The court held that the search of defendant was justified as an accelerating booking search. The court further held that a tape recording and transcript of defendant's conversation in jail were properly admitted into evidence, and that the trial court correctly denied defendant's request to represent himself. (Opinion by Paras, Acting P. J., with Evans, J., concurring. Separate dissenting opinion by Reynoso, J.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) Aliens' Rights § 14—Immigration, Exclusion, and Departation—Procedures—Arrest—By Local Officers.—Since 8 U.S.C. §§ 1325 and 1326, making it a misdemeanor for an alien to enter the country illegally, and a felony for an alien to reenter the country after deportation without permission from the Attorney General, contain no limitations relative to the powers of local police to make arrests for their violation, local police officers had the power to arrest defendant for violating those statutes. While under the supremacy clause Congress has preempted the field of immigration, the states, in the absence of a limitation, are bound under the supremacy clause to enforce violations of the federal immigration laws.

[See Cal.Jur.3d, Aliens' Rights, § 18; Am.Jur.2d, Aliens and Citizens, § 84.]

(2) Aliens' Rights § 14—Immigration, Exclusion, and Deportation—Arrest—By Local Officers—Warrant Requirements.—Defendant's arrest for violation of statutes pertaining to illegal aliens (8 U.S.C. §§ 1325 and 1326) was not invalid for failure of the local arresting officers to comply with the warrant requirements of 8 U.S.C. § 1357. That statute, defining the power of officers or employees of the Immigration Service, applies only to such officers or employees, and does not govern arrest by other law enforcement officials. In the absence of a specific law regulating the mode of such an arrest, the legality of an arrest by local officers is determined by the law of

arrest of the state in which it occurs, unless such law conflicts with the federal Constitution.

(3) Arrest § 41—Without Warrant—Reasonable or Probable Cause—Information Obtained From Others—Official and Similar Reports —Illegal Alien.—Information supplied to local police officers by an agent of the immigration service that defendant had entered the country illegally after deportation (8 U.S.C. § 1326), together with their own knowledge of prior evasive conduct by defendant consisting of use of a false name, claim to possession of a "green card" at his home, and lack of knowledge as to location of the home, gave the police officers probable cause to arrest defendant for violation of the immigration laws.

(4) Searches and Seizures § 68—Without Warrant—Search of Person —Incident to Booking or Incarcerating Suspect.—A search of defendant incident to his arrest for violation of the immigration laws (8 U.S.C. §§ 1325 and 1326), which revealed a packet of heroin in defendant's pocket, was justified as an "accelerated" booking search where defendant was arrested for a felony, and booking is the normal and standard procedure in such a case, where defendant would have been booked even in the absence of discovery of the heroin, and where the booking search would have uncovered the heroin had there been no field search.

(5) Criminal Law § 565—Appellate Review—Presenting and Reserving Objections—Evidence at Trial—Objecting on Specific Grounds.—A defendant in a criminal action waived his objection to the introduction of a tape-recorded conversation into evidence on the ground the tape was not properly authenticated and that the chain of custody was not shown, where defendant failed to object on that ground in the trial court.

(6) Criminal Law § 362—Evidence—Admissibility—Intercepted Communications—Between Persons in Custody—Transcript of Tape Recording—Best Evidence Rule.—The introduction into evidence in a criminal action of a translated transcript of a tape recording of a conversation of defendant while he was in jail did not violate the best evidence rule.

(7) Criminal Law § 362—Evidence—Admissibility—Intercepted Communications—Between Persons in Custody—Tape Recording and

Transcript.—A tape recording and translated transcript of a conversation by defendant while he was in jail was admissible in his criminal prosecution even though certain portions of the tape may have been unintelligible or inaudible, where the unintelligible or inaudible portions were clearly so even for those jurors who may have understood Spanish, and where the carefully prepared translation left no doubt as to the evidence in the record.

(8) Criminal Law § 87—Rights of Accused—Aid of Counsel—Self-representation—Denial.—The trial court properly found that a criminal defendant could not intelligently waive his right to counsel and invoke his right to self-representation, and therefore properly denied his request to do so, where, when the trial court asked defendant whether he understood the charges against him, he said "I don't understand," where defendant did not answer when he was asked whether he understood the nature and the elements of the offense and was aware of the penalties, and where defendant's only defense was a technical one involving the validity of a search and the admissibility of a tape recording.

COUNSEL

Eleazar Barajas, in pro. per., and Kevin Regan, under appointment by the Court of Appeal, for Defendant and Appellant.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, Arnold O. Overoye, Assistant Attorney General, Marjorie Winston Parker and Paul H. Dobson, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

PARAS, Acting P. J.—Defendant appeals from the judgment following conviction by a jury of possession of heroin for sale in violation of Health and Safety Code section 11351.

On April 28, 1976, Tony Zuniga, an auxiliary police officer with the Lodi Police Department, assisted another officer in arresting defendant for a traffic violation and for possession of a knife. After being advised of his *Miranda* rights defendant falsely identified himself as Francisco

Rubio Perra (he v
questioned as to h
but that it was at
home. He was give

The next day Zu
of what had trans
Martin made a t
Naturalization Ser
check by giving de
and receiving wor
two prior occasior
informed that defe
information was
introduced into ev

Kerr telephonec
then leave his offi
officer) arrest defe
United States after
deported, he coul
special permission
where such permi
Kerr worked were

After Martin re
vehicles to the 100
arrest defendant.
standing outside th
the cafe. Zuniga r
saw defendant by
short distance dov
that he had a roo
room there. While
the hotel, Martin s
transportation. Wh
left front pocket.
pure heroin in a w

Martin, through
Miranda rights. D
the street, and not

Rubio Perra (he was known to Zuniga by the name of Eleazar). When questioned as to his residence status, he said that he had a "green card" but that it was at home; he did not, however, know the location of his home. He was given a misdemeanor citation and released.

The next day Zuniga informed a fellow officer, Detective John Martin, of what had transpired. Suspecting that defendant was an illegal alien, Martin made a telephone inquiry of United States Immigration and Naturalization Service Agent James Kerr in Stockton. Kerr ran a record check by giving defendant's vital statistics to his main office in Livermore and receiving word in return that defendant had been apprehended on two prior occasions, one of them on September 25, 1975. He also was informed that defendant had been "formally deported" at that time. Such information was taken from an "apprehension report" which was introduced into evidence as People's exhibit No. 1.

Kerr telephoned Martin with this information; he said he could not then leave his office and asked that Martin (or any other Lodi police officer) arrest defendant, telling Martin that it was a felony to reenter the United States after deportation. Kerr knew that even though a person was deported, he could nonetheless reenter the country legally by obtaining special permission from the Attorney General, something rarely given; where such permission was obtained, sector offices such as that in which Kerr worked were not notified.

After Martin received this information, he and Zuniga drove separate vehicles to the 100 block of North Sacramento Street in Lodi in order to arrest defendant. As Zuniga parked his vehicle, he noticed defendant standing outside the Royal Cafe. When defendant saw Zuniga, he entered the cafe. Zuniga radioed Martin, then himself entered the cafe where he saw defendant by the bar and arrested him. Martin then took defendant a short distance down the street to a hotel in which defendant indicated that he had a room. However, once inside, defendant denied having a room there. While Zuniga further investigated the asserted residence at the hotel, Martin searched defendant for weapons and contraband before transportation. While patting down defendant, he felt something in the left front pocket. A search of the pocket revealed 5.5 grams of 34 percent pure heroin in a wax paper wrapping.

Martin, through Zuniga (who spoke Spanish) advised defendant of his *Miranda* rights. Defendant then asserted that he had found the heroin on the street, and not knowing what it was, put it into his pocket.

Later, after being booked into jail, defendant was visited by Mary Silva. Their conversation, which was entirely in Spanish, was monitored and tape-recorded by Martin and Zuniga. On the tape, which was translated, transcribed and played to the jury, defendant stated that he had been caught with "Chiva" and that he had passed two grams to a person named "Chivo" because "he was going to be holding. . . ." He indicated that he could not "throw it away" when he was sitting at the bar and that they found it in his pocket. He claimed it was about one gram. The translator of the tape testified that the term "Chiva" in the context of the conversation was street language for heroin.

There was expert testimony that the normal dosage for a user of heroin was one-half to three-quarters of a gram of 3 percent to 4 percent pure heroin. The 5.5 grams of 34 percent pure heroin in defendant's pocket was of high quality and, if broken into street dosages, would be worth about $2,750. The expert testified that the amount of heroin was more than a street dosage and of sufficient quantity to be possessed for sale.

Defendant makes the following contentions on appeal:

1. Local Police cannot make arrests for violations of 8 United States Code sections 1325 or 1326.

2. His arrest was unlawful under the provisions of the Federal Immigration and Naturalization Act.

3. There was no probable cause to believe he had committed a felony.

4. There was no misdemeanor being committed in the arresting officer's presence.

5. The fruits of the unlawful arrest should have been suppressed.

6. The search of his person incident to the arrest was excessive in scope and therefore unlawful.

7. The tape recording of his conversation while in custody was erroneously admitted into evidence.

8. His right to represent himself was improperly denied.

I

(1) Defendant claims that local police cannot make arrests for violations of 8 United States Code sections 1325 or 1326. Section 1325

makes it a misdemeanor for an alien to enter the country illegally (a "subsequent commission" is a felony), and section 1326 makes it a felony for an alien to reenter the country after deportation without permission from the Attorney General. The argument is based upon a conclusion reached in a recent article, *Illegal Aliens and Enforcement: Present Practices and Proposed Legislation* (1975) 8 U.C. Davis L.Rev. 127, 145-146.

That article points out that in 8 United States Code section 1324 Congress specifically included local law enforcement officials among those who could arrest for violation of that section. It reads: "No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, *and all other officers whose duty it is to enforce criminal laws.*" (Italics added; 8 U.S.C. § 1324, subd. (b).) The article then notes that section 1325, unlike section 1324, does not say anything about local enforcement; the article concludes: "Since both of these sections deal with illegal entry into the United States and since both were considered by the same Congress, the legislators apparently intended one to be enforced by all enforcement officials and one to be enforced only by the INS." (8 U.C. Davis L.Rev., *supra*, at p. 146.) The argument is fallacious. Sections 1324, 1325 and 1326 were all three enacted on June 27, 1952, and were before the Congress as sections 274, 275 and 276 respectively of H.R. No. 5678 (82d Cong., 2d Sess.). the Immigration and Nationality Act of 1952. As originally drafted, none of the three contained any language of limitation or exclusion regarding the power of arrest (see H.R. No. 5678, Oct. 9, 1951, pp. 89-90). Then section 1324 was amended (see H.R. No. 5678, Rep. No. 1365, Feb. 14, 1952, p. 92) to add "No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service ... and all other officers *of the United States* whose duty it is to enforce criminal laws." (Italics added.) At that point the intention cannot be misunderstood; arrests for violation of section 1324 were to be made only by federal personnel, while by clear implication section 1325 and 1326 arrests were to be made by state and local officers as well. Further in the legislative process, however, as the law review article itself notes (8 U.C. Davis L.Rev., *supra*, at p. 145), the words "of the United States" were stricken by further amendment from section 1324 (see H.R. No. 5678, Apr. 28, 1952, p. 89). That can only mean that the scope of the arrest power under section 1324 was enlarged; in no way can it mean that the scope of arrest under the other two sections was restricted. Such an acute nonsequitur

would attribute to the Congress both serious inconsistency and profound lack of logic.

Defendant's reliance upon the supremacy clause of the federal Constitution is misplaced. It is true that under the supremacy clause, Congress has preempted the field of immigration. (See *De Canas* v. *Bica* (1976) 424 U.S. 351 [47 L.Ed.2d 43, 96 S.Ct. 933]; *Hines* v. *Davidowitz* (1941) 312 U.S. 52 [85 L.Ed. 581, 61 S.Ct. 399].) And as the law review article points out, there are reasons why Congress might choose to limit local enforcement (e.g., enforcement of immigration laws sometimes has international overtones). But Congress has not done so. The supremacy clause is a two-edged sword, and in the absence of a limitation, the states are *bound* by it to enforce violations of the federal immigration laws. The statutory law of the United States is part of the law of each state just as if it were written into state statutory law. (*Hauenstein* v. *Lynham* (1880) 100 U.S. 483, 490 [25 L.Ed. 628, 630-631]; *People* ex rel. *Happell* v. *Sischo* (1943) 23 Cal.2d 478, 491 [144 P.2d 785, 150 A.L.R. 1431].) Since there is no limitation relative to sections 1325 and 1326, the Lodi police officers had the power to arrest for their violations.

II

(2) Defendant's second contention is that his arrest was unlawful because the police officers did not comply with the warrant requirements of 8 United States Code section 1357. But that section defines the powers of officers or employees of the immigration service, and by its express terms applies only to them. It does not govern arrests by other law enforcement officials. In the absence of a specific law regulating the mode of such an arrest, the legality of an arrest by local officers is determined by the law of arrest of the state in which it occurs, unless such law conflicts with the federal Constitution. (*Ker* v. *California* (1963) 374 U.S. 23, 37 [10 L.Ed.2d 726, 740, 83 S.Ct. 1623].)

Defendant argues that permitting local police officers to make warrantless arrests (under Pen. Code, § 836) for immigration violations undermines the congressional warrant policy expressed in section 1357 and will permit federal officials to avoid the warrant requirement whenever they choose by simply asking a local police officer to make the arrest. The short answer is that Congress has the power to make the warrant requirement applicable to all arrests but has not done so. We are certainly

in no better position than Congress to decide whether its policies are or are not undermined by existing law.

III

Defendant argues that there was no "reasonable cause" (as required by Pen. Code, § 836) for the officers to believe that a felony had been committed. He admits that such "reasonable cause" may be supplied by hearsay information received by the arresting officers through "official channels." (*People* v. *Lara* (1967) 67 Cal.2d 365, 371 [62 Cal.Rptr. 586, 432 P.2d 202].) But he points out that in such a case not only the arresting officer, but also the officer who initiates the arrest (in this case Kerr), must have probable cause to believe a felony has been committed. (*Id.*, at p. 374; *Remers* v. *Superior Court* (1970) 2 Cal.3d 659, 666-667 [87 Cal.Rptr. 202, 470 P.2d 11]; *People* v. *Rodgers* (1976) 54 Cal.App.3d 508 [126 Cal.Rptr. 719].)

In support of his argument that Kerr did not have reasonable cause, defendant cites the testimony of Glen Smith, the border patrol agent in charge of the Stockton office. Smith stated that defendant's immigration file, upon which Kerr based his information, revealed that defendant had received a deportation hearing and was required to leave the United States on September 27, 1975. However, he was not deported, but left as a result of an order requiring him to leave in lieu of deportation. Also in the file was a warrant for defendant's arrest and an order for another hearing set for October 2, 1975. However, Smith could not tell whether that hearing was held or whether defendant was deported because of it. Smith stated that the documents (labeled as People's exh. #1) indicated "*very possibly* the man was previously deported back in August of 1968, at which time he had been charged with a felony and at that time prosecution was declined. But no doubt deportation was set up." (Italics added.) Smith admitted, however, that the records were not conclusive.

Based upon such this testimony, defendant asserts that the records were insufficient for Kerr to reasonably conclude that he had been deported or was in the country illegally. (3) We disagree. The reasonableness of inferences to be drawn from these records was a question of fact, and we will not disturb the trial court's implied finding, on disputed evidence, that Kerr's interpretation was reasonable.

Moreover, the arresting officers had information in addition to that supplied by Kerr. Their knowledge of defendant's evasive conduct (use of

a false name, claim to possession of a "green card" not on hand but at home, and lack of knowledge as to location of home so as to allow production of the card) during the April 28 incident, coupled with Kerr's information, gave them ample probable cause to arrest for violation of 8 United States Code section 1325 or 1326.

IV and V

Our above conclusion makes it unnecessary to consider defendant's argument that there was no misdemeanor being committed in the officer's presence and that the fruits of the arrest should have been suppressed.

VI

Defendant argues that the search incident to the arrest was excessive in scope. Relying upon *People* v. *Brisendine* (1975) 13 Cal.3d 528, 539 [119 Cal.Rptr. 315, 531 P.2d 1099], *People* v. *Superior Court (Simon)* (1972) 7 Cal.3d 186, 201-202 [101 Cal.Rptr. 837, 496 P.2d 1205], and *People* v. *Millard* (1971) 15 Cal.App.3d 759, 762 [93 Cal.Rptr. 402], he argues that since the immigration crime for which he was arrested did not involve contraband and there were no fruits or instrumentalities of the crime, the officers were only entitled to search for weapons; yet Martin testified that the heroin did not feel like a weapon.

Of course, as part of being booked into jail (which later took place), defendant was subject to a full body search in order to "provide for the safety of police personnel and other prisoners, to prevent the introduction of weapons and contraband into the jail, and to inventory the entering prisoner's property." (*People* v. *Maher* (1976) 17 Cal.3d 196, 201 [130 Cal.Rptr. 508, 550 P.2d 1044].) Therefore the heroin would have been discovered later, unless somehow disposed of by defendant en route to the jail. (4) Can the search therefore be justified as an "accelerated" booking search? We so hold.

Brisendine, supra, 13 Cal.3d at page 536, notes that *People* v. *Superior Court (Simon), supra,* 7 Cal.3d at pages 199-201 (which invalidated a contraband search incident to a traffic violation detention), divided traffic offenders into three discernible groups for purposes of searches incident to arrest: "(1) those who are merely cited and immediately released (Veh. Code, §§ 40500, 40504), (2) those who may or must be taken before a magistrate and given the option to post bond (Veh. Code, §§ 40302, 40303), and (3) those who are arrested for felonies and booked according

to the general Penal Code provisions on felony arrests (Veh. Code, § 40301; Pen. Code, § 7, subd. 21)." (See also *People* v. *Maher, supra*, 17 Cal.3d at p. 199.)

In a subsequent series of cases involving misdemeanor offenses similar to the first category identified in *Simon* but subject to the citation procedures of Penal Code section 853.6, our Supreme Court struck down "accelerated booking searches" on the ground that "a full booking search is 'inappropriate in the context of an arrestee who will never be subjected to that process.' " (*People* v. *Longwill* (1975) 14 Cal.3d 943, 950 [123 Cal.Rptr. 297, 538 P.2d 753] (public drunkenness); see *People* v. *Norman* (1975) 14 Cal.3d 929, 934 [123 Cal.Rptr. 109, 538 P.2d 237] (evading arrest for a traffic infraction); *People* v. *Maher, supra*, 17 Cal.3d 196 (public drunkenness); *People* v. *Brisendine, supra*, 13 Cal.3d 528, (illegal open campfire).) In that regard, noting that the People have the burden of demonstrating that the police intended to take the defendant to jail for booking (*People* v. *Longwill, supra*, 14 Cal.3d at pp. 949-950), the Supreme Court expressed itself as follows: "The People, however, seek to justify the instant search as a form of 'accelerated booking search.' The reasoning proceeds from the premise that a full custody search is permissible at the stationhouse prior to booking, and therefore it is not a significantly greater intrusion into the sanctity of the person of the arrestee if the search is conducted in the field. *We have no quarrel with this rationale if in fact the individual is to be subjected to the booking process.*" (Italics added; *People* v. *Longwill, supra*, 14 Cal.3d at p. 948.)

Indeed, where booking is anticipated as is generally the case in felony arrests (see Witkin, Cal. Criminal Procedure (1963) Proceedings Before Trial, §§ 113, 114, pp. 110-113), it takes place at the jail facility (cf. *People* v. *Maher, supra*, 17 Cal.3d at pp. 199-201), with the attendant possibility that an unsearched arrestee may, before or during the booking process, pass contraband to others or secrete it for later retrieval. Under such circumstances, it is permissible for the officers to conduct a contraband search prior to arrival at the jail facility.

A collective reading of Penal Code sections 849, 851.5 and 11112, along with section 7, subdivision 21, leads to the conclusions on the facts of this case that (1) in felony arrests, booking is the normal and standard procedure, (2) would have taken place here in the absence of the heroin, and (3) would have uncovered the heroin had there been no field search. Under the circumstances, the search was lawful and not of the type

condemned by *People* v. *Superior Court (Simon), supra,* 7 Cal.3d 186, and its progeny.

Defendant argues that an early search cannot be justified because "There always exists the possibility that between arrest and booking, facts will become known which will cause the arresting officers to release an accused from custody." This contention is too speculative for serious consideration.

VII

Defendant contends on three separate grounds that the tape recording of his conversation with Mary Silva was erroneously admitted. First, he argues that the tape was not properly authenticated as required by Evidence Code sections 1400, 1401, because the "chain of custody" was not shown.

The conversation was monitored by Martin and Zuniga. Martin recorded while Zuniga contemporaneously translated for Martin's benefit. Martin testified that he then marked the cassette tape and placed it in the evidence locker "until the next day in which it was translated by Officer Zuniga to a stenographer and then typed in English." At trial, Martin identified the cassette as the one he took of the conversation. Over defendant's objection on "chain of custody" grounds, the tape was admitted into evidence.

One day after the tape was admitted into evidence, it was played for the jury, following which an investigator for the district attorney's office, Tony Martinez, testified that he had translated it into English. His translation was then also introduced into evidence and read to the jury. Prior to the playing of the tape, defendant's counsel made objections based upon the "best evidence" rule and upon the ground that parts of the tape were unintelligible. He did not however at that time object on the ground that no chain of custody was shown before the tape came into Martinez' hands.

On appeal, defendant now for the first time argues that in the absence of such a showing "there is no way of ascertaining whether the recording Mr. Martinez translated was in fact the one made by Martin at the Lodi Police Station, or, even assuming it was the same one, whether any changes in the contents of the tape took place in the interim."

(5) By failing to object in the trial court, defendant has waived this objection and may not raise it on appeal. (*People* v. *Fujita* (1974) 43 Cal.App.3d 454, 472 [117 Cal.Rptr. 757].) In any event, the contention lacks merit. Martin's identification of the tape cassette as the one he had used and Martinez' identification of the same cassette as the one from which he had prepared his transcript provided sufficient authentication. Any significant alteration of the tape could have been discovered by comparison of the Zuniga and Martinez translations, both of which were available to defendant. No claim of alteration was made until the appeal, making it mere speculation.

(6) Second, defendant argues that the "best evidence rule" (Evid. Code, § 1500) prevented use of a written transcript of the tape, and that under Evidence Code section 753, subdivision (a), which permits translations, Martinez should have been forced to make a contemporaneous oral translation without using the written transcript. Such an argument prefers formalism over accuracy. The transcript was admissible and did not violate the best evidence rule. (*People* v. *Fujita, supra*; *People* v. *Finch* (1963) 216 Cal.App.2d 444, 454 [30 Cal.Rptr. 901].)

(7) Third, defendant argues that the tape recording was required to be fully audible and intelligible before any of it could be admitted, relying upon *People* v. *Stephens* (1953) 117 Cal.App.2d 653 [256 P.2d 1033]. In *Stephens,* several tapes, portions of which were inaudible or unintelligible, were played for the jurors with obvious confusion on their part as to what was actually said. The district attorney had made a transcript after "... hours and hours of checking and very careful electronic work ..." (117 Cal.App.2d at p. 662), but refused to show it to defense counsel and did not offer it in evidence. The appellate court stated "how many different and varied interpretations were plaeed upon what the recordings conveyed by the various jurors is a matter of pure conjecture." (At p. 662.) Moreover, the witnesses who participated in the taped conversations were available to testify. (At p. 662.) On such facts, the court reversed the judgment, stating that the usual justification for admitting recordings—that they are more reliable and satisfactory evidence than testimony of conversations given from memory by those who overheard them—was inapplicable. (At p. 660.)

Stephens is thus highly distinguishable. The unintelligible or inaudible portions of the tape in the present case were clearly so (even for those jurors who may have understood Spanish), and the carefully prepared translation left no doubt as to the evidence in the record. There was no

occasion for confusion of the sort involved in *Stephens*. In *People* v. *Finch*, *supra*, 216 Cal.App.2d at pages 452-453, certain passages of the recordings admitted into evidence were apparently unintelligible and defendant had objected on the ground that the records were incomplete. The court held that in the absence of a showing that any statement heard in the playing of the recording was a misstatement or that material statements were missing from the conversation, the recordings were admissible.

We hold that the tape recording and the transcript were properly admitted into evidence.

VIII

Finally, defendant argues that his right to represent himself was improperly denied.

On November 15, 1976, the day before trial, his attorney informed the court that defendant had written a letter to Judge Woodward indicating that he wanted new counsel who could speak Spanish; he also wanted a 60-day continuance because he was not ready for trial. Defendant himself then told the court that he wanted to be rid of his attorney because there was no evidence to justify his arrest. The court inquired as to whether motions pursuant to Penal Code sections 1538.5 and 995 were made and was informed that they had been. Defendant then stated that he wanted another attorney because his present one had done nothing for him; the reason for doing nothing was that defendant should not have been arrested for something he did not possess. He repeated again that he wanted another attorney.

(8) On November 16, the day of trial, defendant made another request, this time to represent himself. When the court asked him whether he understood the charge against him, he said, "I don't understand, but I don't want the attorney." The court then asked whether he understood the nature and the elements of the offense and was aware of the penalties. Defendant did not answer these questions; instead he asserted that his attorney had helped him with nothing and was not needed. Defendant then asked the court, "What right do you have to take me to a jury trial when you don't have the —." At this point, the court interrupted and found that defendant was not competent to represent himself

Later in the day, just prior to commencement of trial, defendant renewed his motion to relieve counsel or in the alternative to represent himself. He also indicated that he wanted a 60-day continuance to get another attorney and that he had explained to Judge Woodward why he wanted another attorney.

On such record, the trial court properly found that defendant could not intelligently waive his right to counsel and invoke his right to self-representation. (*Faretta* v. *California* (1975) 422 U.S. 806 [45 L.Ed.2d 562, 95 S.Ct. 2525].) Defendant's only defense was a technical one involving the search and the admissibility of the tape recording. He was clearly incapable of adequately representing himself. His request was obviously nothing more than an attempt to delay the proceedings.

The judgment is affirmed.

Evans, J., concurred.

REYNOSO, J.—I dissent. The majority faces, and incorrectly decides, the issue of local police authority to arrest an alien for violation of the immigration statutes of 8 United States Code section 1325[1] (misdemeanor for an alien to enter the country illegally) and section 1326[2] (felony for an alien to reenter the country, without permission from the United States Attorney General, after a formal deportation).

[1]Unless otherwise noted all references are to 8 United States Code section 1325 reads as follows: "Any alien who (1) enters the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000, or both."

[2]Section 1326 reads as follows: "Any alien who—

"(1) has been arrested and deported or excluded and deported, and thereafter

"(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously excluded and deported, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act, shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000, or both."

The basis of my dissent is two-fold: First, we deal with a manifestly important policy as it affects the relation of our country to foreign nations, particularly those countries at our borders. In turn, the policy affects the relation of local police to resident citizens and aliens. The majority's holding that local officers can arrest on the basis of alienage misinterprets the national legislative scheme. Second, I dissent on the peculiar facts of this case. I conclude that the local police officer had no probable cause to arrest defendant. On this record, as a matter of law, the Immigration and Naturalization Service Agent acted unreasonably in advising the arresting local police officer that defendant had committed a felony (reentry after deportation) and was subject to arrest. Thus, the arrest was unreasonable and the evidence should have been suppressed.

A

Local police officers do not have the authority to arrest individuals suspected of being aliens present in the United States without permission from the United States Government, that is, aliens who are in violation of sections 1325 and 1326. I cite two separate but dependent reasons. First, in dealing with a delicate issue of foreign affairs the supremacy clause dictates that federal power be left "entirely free from local interference." (*Hines* v. *Davidowitz* (1941) 312 U.S. 52 [85 L.Ed. 581, 61 S.Ct. 399].) In implementing immigration and naturalization laws, which affect foreign nations, national uniformity is required. The Constitution mandates that Congress, not the states, shall have authority. (U.S. Const., art. I, § 8, cl. 3.) Second, attempts by local police officers to enforce immigration laws pose an inherent danger to United States citizens and resident aliens mistaken for illegal entrants.

1. *Need for Uniformity in Dealing With Immigration and Naturalization*

Because of the necessity of uniformity in the area of international relations, Congress had been granted exclusive authority to regulate and establish a uniform policy of immigration and naturalization. (U.S. Const., art. I, § 8, cls. 3-4; *Fong Yue Ting* v. *United States* (1893) 149 U.S. 698 [37 L.Ed. 905, 13 S.Ct. 1016]; *Hines* v. *Davidowitz, supra*, 312 U.S. at p. 62 [85 L.Ed. at p. 584].) The exclusivity of this federal power has been recently affirmed by the United States Supreme Court: "Control over immigration . . . is entrusted exclusively to the federal government. . . ." (*Nyquist* v. *Mauclet* (1977) 432 U.S. 1, 10 [53 L.Ed.2d 63, 71, 97 S.Ct. —].) Such exclusive authority includes the power to regulate immigration. (*De Canas* v. *Bicas* (1976) 424 U.S. 351, 354 [47 L.Ed.2d 43, 48, 96 S.Ct. 933].)

Since the power is exclusively with the federal government, no such power lies with the states. (*Takahashi* v. *Fish Comm'n* (1948) 334 U.S. 410, 419 [92 L.Ed. 1478, 1487, 68 S.Ct. 1138].)

Unlike the majority, I conclude that the arrest and detention of aliens for violation of federal law is so clearly a matter of international relations and exclusive federal governmental activity as to effectively preclude the states from acting. "[T]he constitutional separation of the federal and state powers makes it essential that no state be permitted to exercise, without authority from Congress, those functions which it has delegated exclusively to Congress." (*Hines* v. *Davidowitz, supra*, 312 U.S. 52, quoting from *Spector Motor Service* v. *O'Connor* (1951) 340 U.S. 602, 608 [95 L.Ed. 573, 578, 71 S.Ct. 508].) In fact, Congress has exercised its authority by enacting the Immigration and Nationality Act of 1952. In turn, the act created the Immigration and Naturalization Service (INS) and entrusted to it and its agents the sole authority of enforcing the Immigration and Nationality Act.

INS regulations and Internal procedure spell out the function and duty of its agents. Such agents receive intensive instruction in immigration and naturalization law; are trained in the service's operational tactics, and receive extensive field training. Those agents who will be operating near the United States-Mexican border are required to be fluent in Spanish and are trained to be sensitive to the Mexican culture. (See, statement of Leonard F. Chapman, Jr., Commissioner, Immigration and Naturalization Service in Hearings on Law Enforcement on the Southwest Border, before the Subcomm. on Legislation and Military Operations of the House Comm. on Government Operations, 93d Cong., 2d Sess. (July 10, 11, 16; Aug. 14, 1974.) p. 39.) In my view, Congress has enacted such a comprehensive scheme that states may neither contradict nor complement without specific congressional mandate.

Independent local enforcement of federal immigration and naturalization laws, outside the control of the Immigration and Naturalization Service, undermines the concept of a comprehensive and uniform enforcement scheme. Local police officers have no training or expertise in immigration and naturalization laws and regulations. These statutes and regulations are as ever changing as are those of the Department of Internal Revenue. Much of the enforcement is done by internal operating procedures. Delicate legal and factual determinations must be made distinguishing between "legal" and "illegal aliens;" among those who are "illegal" there are categories of persons who are nondeportable and

others who are deportable. Difficult issues of alienage appear. If a person is a citizen, he may not be deported; if he is not a citizen, he may be deported. Citizenship, in turn, often depends on the citizenship of the parents, place of birth, registry or nonregistry of the individual's birth. Suffice it to say the complexities are not those within the competence of local enforcement officers. Attempted enforcement, by such inexpert police personnel, conflicts necessarily with the Congressional purpose and objective of uniformity. (Cf. *Hines* v. *Davidowitz, supra*, 312 U.S. 52; *Ray* v. *Atlantic Richfield Co.* (March 6, 1978)* — U.S. —, — [— L.Ed.2d —, —, — S.Ct. —].)

Effectuation of federal immigration policy is not a matter that can be left to the vagaries of state arrest and detention law nor to the discretion of the local police officer. Even within a state, local police departments may and do operate under separate and distinct standards for arrest and detention. Thus, the San Diego County Sheriff's Department has policies respecting aliens which differ from those of the San Diego City Police Department. (See, *Illegal Aliens and Enforcement: Present Practices and Proposed Legislation* (1975) 8 U.C. Davis L.Rev. 127, 128.) Such erratic enforcement policies, when dealing with a federal matter, cannot be.

The relation of the power to arrest on the part of local officials to foreign affairs is underscored when heads of foreign states lodge official protests with the United States government regarding the treatment of their nationals. Such protests have been filed from time to time by the Mexican government. Local law enforcement can but exacerbate that situation. (See 8 U.C. Davis L.Rev., *supra*, at p. 148.)

I turn to the one statute which forms the basis for the majority's analysis. Section 1324, subdivision (b), provides that: "all other officers" in addition to officer-employees of the Immigration and Naturalization Service, whose duty it is to "enforce criminal laws" may arrest "any persons, including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who" bring aliens into this country illegally or illegally harbors them. INS and other officers are given the power to arrest the perpetrators of the crime. That is, the "other officers whose duty it is to enforce criminal laws" are empowered to arrest a person who has committed a crime (illegally bringing in and harboring certain aliens) on the basis that that person has violated the law. Note that the basis for the arrest is *not* that the person

*Advance Report Citation: 46 U.S.L.Week 4200, 4201.

being arrested is an alien. If an alien is being smuggled into this country on a ship or is being assisted in wading across a river, it is quite natural that Congress would give the port authorities or other officers likely to personally observe such activities the power to act under those narrowly prescribed exigent circumstances.

It is on this very narrow ground that Congress has authorized agents, other than INS, to arrest. In fact, the statute merely authorizes those officers to act respecting a criminal act as they would act respecting any other criminal act. I again note that the arrest is not on the basis of alienage. Such arrests can affect the relationship of this country to others and it is found within the immigration and naturalization statutory scheme. Accordingly, it is an "exception" wherein Congress has specifically and expressly authorized the non-INS officers to act.

The Immigration and Nationality Act nowhere authorizes arrest by local police on the basis of alienage. The majority would have us believe that this overwhelming silence in the entire act is corrected by section 1324 and that we must infer that Congress intended local officers to be able to enforce all federal immigration violations. In view of the supremacy argument and the need for uniformity, the majority's conclusion is untenable. Rules of statutory construction dictate a result exactly opposite that reached by the majority. Where in one part of the statute Congress specifies an exception to a general rule and in another omits such express provision, it means to exclude the exception. (See *Passenger Corp.* v. *Passengers Assn.* (1974) 414 U.S. 453, 458 [38 L.Ed.2d 646, 652, 94 S.Ct. 690].) Further, "[t]here is no reason . . . to assume that Congress intended to invoke by omission in [one section] the same [power] which it explicitly provided by inclusion in [another]; the reasonable inference is quite the contrary." (*Federal Trade Comm'n* v. *Sun Oil Co.* (1963) 371 U.S. 505, 515 [9 L.Ed.2d 466, 476, 83 S.Ct. 358]; Accord, *United States* v. *Culbert* (Mar. 28, 1978)* — U.S. —, —, fn. 9 [— L.Ed.2d —, —, — S.Ct. —].)

... For the above reasons the conclusion is compelled that the federal government has exclusive control over the question of when and who can arrest aliens on the basis of their alienage and that it has chosen to exclude local officers.

*Advance Report Citation: 46 U.S.L.Week 4259, 4261, fn. 9.

2. *Danger to the United States Citizens and Resident Aliens*

As has been discussed, local police officers have no training or expertise in the complexities in enforcing immigration and naturalization laws. Their awkward attempts to enforce such laws has resulted in numerous complaints of harassment from citizens and resident aliens mistaken for illegal entrants. (See, *Illegal Aliens and Enforcement: Present Practices and Proposed Legislation*, *supra*, 8 U.C. Davis L.Rev. 127, 144.) Such incidents, oftimes outrageous in character, are reported by the media with unfortunate regularity. One such practice came to the attention of the federal courts in *United States* v. *Mallides* (9th Cir. 1973) 473 F.2d 859, 860. There the local police apparently made it a practice to "stop 'all cars with Mexicans in them that appear to be sitting [erect] and packed in [three in the front and three in the back]. . . .' " (*Id.*, at p. 860.) The Ninth Circuit Court was not amused. INS agents, themselves far more expert, have recognized the difficulty of distinguishing among citizens, resident aliens and illegal entrants. (See testimony of Raymond Farrell, Commissioner, Immigration and Naturalization Service, in Hearings on Illegal Aliens before Subcomm. No. 1 of the House Comm. on the Judiciary 92d Cong., 2d Sess., Ser. 13, pt. 5 at p. 1308 (1972).)

The concern is, of course, that once we establish the rule for detention and arrest, the affected individuals will include many citizens and resident aliens who will be subjected to the same investigative procedures for identification purposes. California has millions of citizens of Mexican descent. Some are descendants of early day Californios who preceded the United States conquests. Others are descendants of 19th and 20th century immigrants. Yet others are recent arrivals. In a state like California, therefore, the authority to arrest in the hands of the unskilled is a danger. Even the tactics of the skilled, the INS agents, have captured the unflattering attention of Congress. One congressman reported that "I not only received written complaints but I went down into the area [where INS searches had occurred] and I tell you, there is no greater bone of contention in Los Angeles and in San Ysidro and in National City and in Chula Vista among Americans who are of Mexican descent . . . they are being stopped all the time." (8 U.C.Davis L.Rev., *supra*, 135, fn. 61; Hearing before the Subcomm. on Immigration, Citizenship and International Law of the House Comm. on the Judiciary, 93d Cong., 1st Sess., Ser. 22, at 45 (1973).) Illegal entrants, naturally, normally live and work in areas populated by people of similar characteristics. The need for care and caution in setting down the proper rules for detention and arrest bear close scrutiny. Congress, after such scrutiny, has decided not to give such power to local officers.

II

The majority holds that the police officer had probable cause to believe that defendant had committed a felony. The record, in my view, does not support that conclusion. Absent such probable cause, the arrest was unreasonable.

The issue of whether there was probable cause for the arrest was submitted to the superior court (pursuant to a Pen. Code, § 1538.5 hearing), on the preliminary hearing transcript, on the testimony of Border Patrol Officer Glen Smith and on one exhibit.

The majority holds that probable cause existed on the basis that the agent who initiated the arrest, INS Agent Kerr, had probable cause to believe that a felony had been committed. Further, the arresting officer had independent information, which coupled with that given by INS Agent Kerr, provided ample probable cause for the arrest. Such independent information was defendant's evasive conduct during the April 28 incident.

My analysis begins with Penal Code section 836, subdivision 3. That section requires the officer to have "reasonable cause to believe that the person to be arrested has committed a felony," whether or not a felony has in fact been committed. The record is clear that, in fact, no felony was shown. That is, the record contains no evidence that defendant had been deported prior to his reentry. Accordingly, his reentry could not be a felony.

We appear to be agreed that the officer who initiates the arrest must have probable cause to believe that a felony had been committed. I accept the majority's premise that the initiating officer was INS Agent Kerr. I conclude that Kerr did not have probable cause to believe that a felony had been committed.

At the preliminary hearing, Agent Kerr testified that he had a file (marked People's exh. No. 1) which he identified as "our apprehensions report." The exhibit is not part of the record on appeal. That report, he indicated, showed that defendant had been apprehended by "us" (presumably the Immigration and Naturalization Service) on two occasions and that on the second occasion, which was on September 25, 1975, "we formally deported him to El Centro." Accordingly, Agent Kerr testified that he told Officer Martin (the arresting officer) that "we had

formally deported" Barajas. On cross-examination, Agent Kerr referred to a portion of the report which mentioned a "hearing in El Centro" on October 2, 1975. I find the testimony confusing. We will agree there can be no deportation to El Centro, California. Apparently, the officer was testifying that the defendant was sent to El Centro for a deportation hearing.

The events in El Centro are picked up by the testimony of INS Agent Glen Smith at the Penal Code section 1538.5 hearing. While the deportation hearing to be held in El Centro had been set for early October, in fact defendant was given the opportunity of "voluntary departure" and on that basis left the country before the scheduled hearing date on his own, paying his own way. That is, he was never deported. Smith testified that aliens "sometimes in lieu of order of deportation . . . are granted voluntary departures." The notation in the file that defendant had departed voluntarily and had not been deported appeared in People's exhibit No. 1 at the time Agent Kerr had the file. On the basis of this record, I conclude, as a matter of law, that there was no reasonable cause to believe that defendant had committed a felony. No reasonable officer could have so concluded. The testimony of Agent Kerr is puzzling but the facts are clear.[3]

Finally, the allegedly buttressing information was gathered during an incident (defendant was given a citation) which took place prior to the arrest which is the subject of this appeal. That "information" is the evasive response of defendant to questions pertaining to his name and residence. The information, the majority holds, provided probable cause to arrest defendant. However, this reasoning is premised on the propriety of the arrest based on defendant's alienage. Since, in my view, no such power lies, I cannot agree that "evasive conduct" can provide reasonable cause.

Defendant's motion to suppress evidence should have been granted. First, the local arresting officer had no authority to arrest on the basis of

[3]A warrantless arrest could have been made by Agent Kerr (or an officer on his behalf) if there was reasonable cause to believe that defendant was likely to flee jurisdiction. (§ 1357.) However, Agent Kerr testified that he had no knowledge that defendant was likely to flee. Thus, there appears to be no basis for the arrest.

The mere assumption that an illegal entry has taken place is not sufficient grounds for arrest. (See *United States* v. *Doyle* (2d Cir. 1950) 181 F.2d 479, 480.) It is a rare case, not including this case, where a police officer will have probable cause to arrest for violation of section 1326. Such probable cause requires knowledge that a prior deportation has occurred.

defendant's alienage. Second, there was no reasonable cause for defendant's arrest. Accordingly, the trial court erred in its failure to suppress the illegally obtained evidence.

Mexican American
Legal Defense
and Educational Fund

28 Geary Street
San Francisco, CA 94108
(415) 981-5800

MALDEF

July 14, 1978

Michael J. Herbolich, Esq.
Ryan, Herbolich & Carnagher
Post Office Box 4077
Douglas, Arizona 85607

Dear Mr. Herbolich:

Enclosed please find a copy of the Legal Memorandum regarding the Hanigan case which I drafted for Mr. Morris J. Baller of our office. Tony Bustamante of the Antioch School of Law told me he spoke with you briefly over the phone and that it was suggested for the sake of expediency that I mail a copy of said memo to all cognizant parties, which I have done.

Regarding the memo itself, I researched the civil rights statutes, specifically 42 U.S.C.A. §§ 1985(3) and 1986 to determine whether a cause of action is to be found on behalf of your clients under any one of these sections. I took particular note that at the time of the alleged incident, the plaintiffs were illegally in this country. As you will note from a reading of the memo, I concluded that there is a very strong probability for a civil recovery for your clients under a §1985(3) cause of action. However, there may be some obstacles to overcome during the litigation of the issue(s). It may be worthwhile to note that 42 U.S.C.A. §1988 provides for the recovery of attorney's fees to the prevailing party when filing suit under the civil rights statutes.

The above discussion prompts me to comment on the role which MALDEF may share in the Hanigan case. I trust we can reach a mutually acceptable agreement as to a role MALDEF could play, recognizing the need to defer to the wishes of local counsel. I may add that although MALDEF does not have unlimited resources, we are in a position to thoroughly research and prepare all of the issues assigned to us; that is, assuming that it is agreed that MALDEF is to have a committed role in the Hanigan matter.

Because the time for filing an amended complaint to include a §1985(3) cause of action draws near, I will call your office in the latter part of next week, in the hopes that we will be able to resolve some of the questions still pending. I sincerely wish that our mutual desire for a civil recovery for your clients is accomplished, thus some form of justice will be realized in the Hanigan case.

Sincerely,

J. Manuel Sanchez
Staff Attorney

JMS:cp
Enclosure

cc: Andrew R. Sherwood
John J. Flynn
Buxton D. Wechsler
Antonio D. Bustamante
Morris J. Baller
Esther Estrada

Mexican American
Legal Defense
and Educational Fund

28 Geary Street
San Francisco, CA 94108
(415) 981-5800

MALDEF

MEMORANDUM

TO: MIKE BALLER

FROM: J. MANUEL SANCHEZ

RE: HANIGAN CASE

DATE:

First Question Presented

The first question presented in the instant case is whether there is civil liability under the coverage of sections 42 U.S.C., 1985(3) and 1986 for damages against persons engaging in purely private conspiracies to deprive others of equal rights. Section 1985(3) provides:

> If two or more persons in any State or Territory conspire or go in disguise on the premises of another, for the purpose of depriving either directly or indirectly a person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws,... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of

> having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Section 1986 provides:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in Section 1985 of this title, are about to be committed and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. [emphasis added]

Statute of Limitations

42 U.S.C. §1986: The events of the Hanigan case took place on August 18, 1976.[1/] A reading of the face of the statute clearly indicates that the time has lapsed in which to file a civil rights suit for damages under §1986; and such is supported by case law dealing specifically with this point. Any action under this section providing for liability of persons neglecting or refusing to prevent or aid in preventing

---

1/ Report to the United States Commission on Civil Rights, submitted by the National Coalition on the Hanigan Case, at page 3.

certain civil rights violations is barred by expiration of the one-year limitations period. Wilkinson v. Hamel, 381 F. Supp. 766 (D.C. Va. 1974). Accord, Bell v. St. Regis Paper Co., 425 F. Supp. 1126 (N.D. Ohio 1976); Pollard v. U.S., 384 F. Supp. 304 (N.D. Ala. 1974).

In the instant case we would be barred by the one-year limitation period from bringing a civil action for damages under §1986. I have discussed §1986 because in many instances such is read in tandem with §1985(3); and is so characterized in the correspondence between the cognizant groups currently researching the possible legal theories under which a civil action can be filed in the Hanigan case. The section has been discussed merely to point out that it has not been overlooked.

42 U.S.C. §1985(3): Since this section of this title does not define the time within which suits thereunder must be brought, the court must look to applicable state statute of limitations. Johnson v. Dailey, 479 F. 2d 86 (8th Cir. 1973).

The memorandum correspondence in the Hanigan file indicates that the state law for filing civil rights actions and which the federal court must apply is a two-year limitation period, hence the statute of limitations for the Hanigan case expires August 17, 1978. The foregoing discussion regarding the possible legal theory or theories under

which to file a civil rights action in the instant case reflects bringing the action under §1985(3).

Analysis of Whether State Action is Required Under §1985(3):

The issue is twofold. The entire question is whether (i) Congress has the power under either §2 of the Thirteenth Amendment or §5 of the Fourteenth Amendment to enact legislation that proscribes interference with the "equal protection of the law" by (ii) purely private conspiracies. The United States Supreme Court has provided a clear answer only as to the latter.

State action is not required; purely private conspiracies to deprive others of their equal rights are covered under §1985(3). Griffin v. Breckenridge, 403 U.S. 88 (1971). Cf. United States v. Price, 383 U.S. 787 (1966); United States v. Guest, 383 U.S. 745 (1966).

In Griffin, the plaintiffs were blacks who, while riding with a white whom defendants allegedly mistook for a civil rights worker, had been attacked and beaten on the highway by private white citizens. The initial question was the applicability of §1985(3) to private conspiracies. The Court concluded that state action or involvement was not necessary for the injured blacks to state a claim under the statute against the whites. The terms of the statute were literally applicable to purely private conspiracies.

It should be pointed out that the Griffin Court had

little difficulty with the constitutionality of §1985(3) when it stated:

> Our cases have firmly established that the right of interstate travel is constitutionally protected, does not necessarily rest on the Fourteenth Amendment, and is assertable against private as well as governmental interference.

Griffin v. Breckenridge, supra, 403 U.S. at 105. Moreover, the Court further underlined its holding by commenting that "It is thus evident that all indicators--text, companion provisions, and legislative history--point unwaveringly to §1985(3) coverage of private conspiracies." Id., at 102.

However, the Griffin Court did not resolve the issue of whether the Thirteenth or the Fourteenth Amendment would support the statute regulating purely private conspiracies.

Second Question Presented

Whether the constitutional authority of §1985(3) is to be found pursuant to the Thirteenth or Fourteenth Amendment.

Fourteenth Amendment: The issue is whether the source of constitutional authority for §1985(3) is to be found in the Fourteenth Amendment. If the answer to that question is in the affirmative, it means that Congress has the power under §5 of the Fourteenth Amendment to reach conspiratorial discriminations directed against all forms of invidious interference with "equal protection of the law".

In addition, the Court must find that Congress, by their enactment of §1985(3), while acting pursuant to the said Congressional power, has specifically legislated against purely private conduct that denies equal protection of the laws; thereby enabling §1985(3) to be literally applied to reach conspiratorial discrimination directed against all forms of invidious denial of equal rights, WITHOUT imposing a state action requirement. Griffin v. Breckenridge, supra. Thus, §1985(3) may then be literally applied to proscribe private conspiracies from interfering with "equal protection of the laws". [emphasis added]

In Griffin, the complaint alleged that the purpose of the defendant's actions was to interfere with their rights protected under the Thirteenth and Fourteenth Amendments. The Griffin Court, in identifying the congressional source of power through the Thirteenth Amendment and through Congressional regulation of interstate commerce as providing adequate constitutional authority for the statute [§1985(3)], specifically noted that:

> In identifying these two constitutional sources of power, we do not imply the absence of any other. [emphasis added]. More specifically, the allegations of the complaint in this case have not required consideration of the scope of the power of Congress under §5 of the Fourteenth Amendment.

Griffin v. Breckenridge, supra, 403 U.S. at 107. Thus, the Court in Griffin left the proper construction of §1985(3) as regards it applicability to protect Fourteenth Amendment rights an open question.

We would argue that even though the Griffin Court held that the said two sources of congressional power provided adequate constitutional authority for the statute, §1985(3) was apparently enacted pursuant to the Fourteenth Amendment. Moreover, we would emphasize that the Griffin Court specifically noted that, "In construing the exact criminal counterpart of §1985(3), the Court in United States v. Harris, ... observed that the statute ... 'was framed to protect from invasion by private persons, the equal privileges and immunities under the laws, of all persons and classes of persons'". Id. at 98, quoting from United States v. Harris, 106 U.S. 545, 637 (1883).

In Harris, the Court specifically noted that the [statute] "...[I]s not limited to take effect only in case the State...deprive(s) any person of life, liberty or property without due process of law, nor deny to any person the equal protection of the laws. It applies, no matter how well the State may have performed its duty. Under it, private persons are liable to [criminal] punishment for conspiring to deprive any one of the equal protection of the laws." Id., at 640 [emphasis added].

The Court in United States v. Price, 383 U.S. 787 (1966), again construed the exact criminal counterpart of §1985(3). The Price Court stated that, "On the basis of an extensive re-examination of the question, we conclude...that §241 must

be read as it is written--that this language includes rights or privileges protected by the Fourteenth Amendment." Id. at 799. The Court unanimously held, without the aid of a concurring opinion or contrast with a dissenting opinion, that, "The language of §241 is plain and unlimited. As we have discussed, its language embraces all of the rights and privileges secured...by all of the Constitution and all of of the laws of the United States." Id. at 801. [emphasis added].

The Price holding provides us with broad and sweeping language wherein the Court has construed the exact criminal counterpart of §1985 to include all of the laws of the United States and the Constitution. Arguably, it includes rights under the Fourteenth Amendment. But, it must be pointed out that in Price, the complaint was, "an allegation of state action which, beyond dispute, brings the conspiracy within the ambit of the Fourteenth Amentment." Id. at 800. Albeit the exact counterpart of §1985(3), the Court nevertheless was construing a criminal statute.

Although the courts are not in agreement, there is substantial authority which holds specifically that §1985(3) was constitutionally enacted pursuant to the Fourteenth Amendment. Action v. Gannon, 450 F.2d 1227 (8th Cir. 1971); contra, Bellamy v. Mason's Stores, 508 F.2d 504 (4th Cir. 1974). Moreover, the holding in United States v. Guest, supra, and Action v. Gannon, supra, are two potential cases that provide us with colorful and persuasive arguments that §1985(3) protects Fourteenth Amendment rights from being violated by purely private conspiracies.

In Guest, six justices--Warren, Black, Douglas, Clark, Brennan and Fortas--expressed the view that Congress has power under §5 of the Fourteenth Amendment to punish private conspiracies that interfere with Fourteenth Amendment rights. Action v. Gannon, supra, 450 F.2d at 1235, en banc.

"[I]t is, I believe, both appropriate and necessary under the circumstances here to say that there now can be no doubt that the specific language of §5 empowers the Congress to enact laws punishing all conspiracies--with or without state action--that interfere with Fourteenth Amendment rights." Id. at 1235, quoting United States v. Guest, 383 U.S. at 762.

The complaint in Action, a suit between solely private parties, alleged that the district court had no jurisdiction under §1985(3) because that section does not provide a civil remedy for wholly private conspiratorial acts. In Action, the en banc court considered, inter alia, several questions. First, whether §1985(3) is to be construed to give federal courts jurisdiction over this [type of] conspiracy. The Court held that it is to be so construed. Action v. Gannon, supra, 450 F.2d at 1231. Second, the Court considered whether there exists a constitutional source of power to reach this [type of] conspiracy. The Action Court stated, "We believe that Congress was given the power in §5 of the Fourteenth Amendment to enforce the rights guaranteed by the Amendment against private conspiracies." Id. at 1235. The Action Court acknowledged that, "While the Court in Griffin left the door open for a re-examination of Guest, we do not believe that it will reject the majority views expressed therein. The Fourteenth

Amendment and §1985(3) construed in Griffin, are too closely related with respect to date of passage, authorship and purpose to permit such a result with consistency." Id. at 1236. "Viewed in its proper perspective, §5 of the Fourteenth Amendment appears as a positive grant of legislative power; authorizing Congress to exercise its discretion in fashioning remedies to achieve civil...equality for all," id. at 1236, quoting United States v. Guest, supra, 383 U.S. at 782-784.

The only clear limitation imposed on §1985(3) is that, "The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirator's action." Lopez v. Arrowhead Ranches, 523 F.2d 924, 926 (1975), quoting Griffin v. Breckenridge, supra, 403 U.S. at 102.

The Court in Griffin makes it clear that §1985(3) is not intended to cover all conspiracies to interfere with the rights of others when it stated that:

> "That the statute [1985(3)] was meant to reach private action does not, however, mean that it was intended to apply to all tortious, conspiratorial interferences with the rights of others... The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirator's action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all."

Id. at 102-103. Accord, Action v. Gannon, supra; Lopez v. Arrowhead Ranches, supra. The gravamen of the complaint in

the instant case is the type of human evil that epitomizes the intent of §1985(3) and the Fourteenth Amendment which have as their aim the protection against deprivations of the equal enjoyment of rights secured by the law to all.

Conclusion

It seems that the weight of authority indicates that §1985(3) reaches private conspiracies that violate Fourteenth Amendment rights. However, one must proceed with caution regarding how the complaint is characterized. Clearly, it must be argued that the defendants' actions in the instant case are class-based, with an invidiously discriminatory animus behind the conspirators' action that had as its aim a deprivation of the equal enjoyment of rights secured by the law to all. It must be pointed out that the motivation aspect of §1985(3) focuses not on scienter in relation to deprivation of rights, but [centers on] invidiously discriminatory animus. Griffin v. Breckenridge, supra, fn. 10, 403 U.S. at 103.

Counter Analysis

There is authority that holds that there must be some state action in order to pursue a civil action under §1985(3). Bellamy v. Mason's Stores, Inc., 508 F.2d 504 (4th Cir. 1974). "Although it is clear that state action is not necessarily an essential ingredient under this statues [1985(3)], nevertheless, we think that some state involvement is necessary in this

particular application of the statute in order to maintain a cause of action." Id., 508 F.2d at 506. In Bellamy, the complaint alleged that the employer violated plaintiff's right of free association by firing him for his membership in the Ku Klux Klan. The complaint relied, inter alia, on the civil rights statute [1985(3)] granting cause of action to any person denied equal protection of the laws by conspiracies. The district court denied the §1985(3) action, and the appellate court affirmed.

For the basis of its holding, the Court in Bellamy stated that:

> It is not hard to reconcile what six members of the Court said in Guest--that Congress may punish private conspiracies to violate the Fourteenth Amendment guarantees--with what the Court held--that if the language of such a statute simply tracks that of the Fourteenth Amendment and there is no other source of the claimed 'right' to be vindicated, it will be held to include the element of state action or at least some minimal state involvement.

Id., at 507. But, see, Richardson v. Miller, 446 F.2d 1247 (3rd Cir. 1971).

Nevertheless, the Bellamy Court, as in Griffin, supra, did leave as an open question whether the Fourteenth Amendment provides the constitutional basis for §1985(3). The Court in Bellamy discussed Action v. Gannon, supra, and observed that:

> Thus, the Eighth Circuit...combined the incorporation doctrine of the due process clause, Griffin's reading of section 1985(3) and Justice Brennan's Guest concurrence to eliminate the 'state action limitation'...Although the result achieved by the Eighth Circuit is an appealing one, we are unable to make the several jumps--without further guidance from the Supreme Court--...to application of that amendment to private persons, and while on our way jettison state involvement...

Bellamy v. Mason's Stores, Inc., supra, 508 F.2d at 507.

Thirteenth Amendment

Two problems are ostensibly encountered if the constitutional authority for §1985(3) is found in the Thirteenth Amendment. The first problem is whether the protection afforded by the Thirteenth Amendment is to be limited to blacks. There is limited authority which has interpreted the statutory protection of the Thirteenth Amendment and held that it cannot be extended much beyond protecting blacks against race discrimination. The "purpose of the [Thirteenth] Amendment was, of course to abolish African slavery and practices related or analogous thereto," Holt v. Sarver, 309 F. Supp. 362, 369 (E.D. Ark. 1970), affirmed, 422 F.2d 304 (8th Cir. 1971). Thus, if the Thirteenth Amendment is deemed to protect blacks only, and if §1985(3) finds its authority solely in the Thirteenth Amendment, it may mean that §1985(3) will be limited to conspiracies directed toward the denial of rights to blacks, hence we could not prevail under §1985(3) in the instant case.

However, there is substantial authority that holds that the Thirteenth Amendment is not limited to blacks. In discussing such authority, we focus on our second problem. Our second problem can best be characterized by asking, "Is the prohibition against slavery the only protection afforded by the Thirteenth Amendment?" We are faced with this question

because there is substantial authority that holds that the Thirteenth Amendment, adopted immediately after the Civil War, abolished slavery and nothing more because it provides explicitly that:

> Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S. Constitutional Amendment XIV, §2.

"The 13th Amendment has respect, not to distinction of race, or class, or color, but to slavery." Civil Rights Cases, 109 U.S. 24 (1883). [emphasis added]. In Hodges v. United States, 203 U.S. 1 (1906), with regard to the meaning of the Thirteenth Amendment, the Court stated:

> The meaning of this is as clear as language can make it. The things denounced are slavery and involuntary servitude, and Congress is given power to enforce that denunciation. All understand by these terms a condition of enforced compulsory service of one to another. While the inciting cause of the Amendment was the emancipation of the colored race, yet it is not an attempt to commit that race to the care of the nation. It is the denunciation of a condition, and not a declaration in favor of a particular people. It reaches every race and individual, and if in any respect it commits one race to the nation it commits every race and every individual thereof. Slavery or involuntary servitude of the Chinese, of the Italian, of the Anglo-Saxon, are as much within its compass as slavery or involuntary servitude of the Africans.

Id. at 16-17 [emphasis added].

Regarding our second problem, we would argue that the

Thirteenth Amendment, thus §1985(3), abolished all deprivative practices pertaining to racial or other CLASS-BASED conduct aimed at a denial of equal enjoyment of basic rights. The key distinction is the invidious discriminatory animus pertaining to racial or other class-based conduct, regardless of what results from the invidious action. Classification of whether it is slavery, or another form of compulsory service is of no consequence. The thrust of our argument is that: provided it is racial or other class-based conduct, and which is aimed at a denial of equal emjoyment of basic rights, then such invidious conduct is abolished by the Thirteenth Amendment.

The Court in Bobilin v. Board of Education, State of Hawaii, 403 F. Supp. 1095, (D. Hawaii, 1975), agrees in part that, "Hodges teaches that the elimination of African slavery, [was] the prime motivating cause of the Thirteenth Amendment," while further commenting that said prime motivation, "nevertheless does not demark the outer limits of that Amendment's application." Id., at 1101 [emphasis added].

We would argue that the defendants' actions in the instant case are within the outer limits of the Amendment's application, thus §1985(3). Bobilin v. Board of Education, State of Hawaii, supra. We would argue that though we are not faced with an instance pertaining to African slavery, we are definitely dealing with an invidious discriminatory animus which is class-based and aimed at a denial of equal enjoyment of basic rights.

Our overall position is twofold. First, that we have read the Thirteenth Amendment very carefully and nowhere noted its restriction to any particular race or ethnic group, thus the protection afforded is to all without a distinction of race, class or color. Hodges v. United States, supra.

Secondly, we would argue that the only limitation of the Thirteenth Amendment [thus §1985(3)] is that the deprivative practices pertain to racial or other class-based conduct aimed at a denial or equal enjoyment of basic rights. Dryer v. Jalet, 349 F. Supp. 452, 465 (S.D. Tex. 1972), affirmed, 479 F.2d 1044 (5th Cir. 1973). Moreover, that a §1985(3) cause of action respecting a "'conspiracy to deprive persons of rights and privileges does...by its terms give cause of action for conspiracy to deny...deprivation of equality or of equal privileges and immunities under the law,' and to recover, plaintiff must show invidious discrimination." Jayce v. Ferrazi, 333 F.2d 931, 932 (1st Cir. 1963)[emphasis added], quoting Collins v. Hardyman, 341 U.S. 651, 661 (1951). See also, Whittington v. Johnston, 201 F.2d 810 (5th Cir. 1953), (civil rights action against defendant who conspired and caused plaintiff to be declared insane and confined when in fact plaintiff was sane); certiorari denied, 346 U.S. 867 (1953); McNutt v. United Gas, Coke & Chemical Workers of America, 108 F. Supp. 871 (N.D. Ark. 1952) (cause of action only for damages for personal injuries suffered).

Conclusion

The weight of authority indicates that §1985(3) reaches private conspiracies that violate Thirteenth Amendment rights. Griffin v. Breckenridge, supra. However, one must proceed with caution regarding how the complaint is characterized.

Clearly, as with our Fourteenth Amendment position, it must be argued that the conspiracy in the Hanigan case was class-based, with an invidiously discriminatory animus behind the conspirators' actions aimed at denial of equal enjoyment of basic rights. Dryer v. Jalet, supra. Moreover, that the protection of the Thirteenth Amendment extends to all, without distinction as to race, or color, or class. Hodges v. United States, supra.

Third Question Presented

The question presented is whether Mexican nationals who are illegally in this country are able to bring a §1985(3) civil action when acted upon in identical circumstances that enables a citizen or permanent resident to bring a civil action under said statute. For the following discussion, this memo assumes we can prevail on the three following critical factors:

1. That for a §1985(3) civil action, there is no state action requirement; thus purely private conspiracies are covered under the statute. Griffin v. Breckenridge, supra.

2. That regardless of whether the constitutional basis for §1985(3) is to be found in the Thirteenth or Fourteenth Amendment, a civil rights cause of action can be maintained provided that the conspiracy is racial or class-based, with an invidiously discriminatory animus aimed at denial of equal

enjoyment of basic rights secured by the law to all. Action v. Gannon, supra; cf., Dryer v. Jalet, supra.

3. That the conspiracy in the Hanigan case was class-based, with an invidiously discriminatory animus behind the conspirators' actions whose aim was to deprive tha plaintiffs [Mexican nationals] the equal enjoyment of rights secured by the law to all. United States v. Guest, supra.

The above bears repeating because there is no apparent case law under §1985(3) that has dealt squarely with the question of whether illegal aliens have standing to bring a cause of action under §1985(3). However, there is case law authority under 42 U.S.C.A. §1981 which has held that the provision of §1 of the Fourteenth Amendment declaring that no state shall "deny to any person within its jurisdiction the equal protection of the laws" secures to every person within the jurisdiction of the state, though not a citizen or even a resident, the protection of its law equally with its own citizens and entitles him to the same remedies.

In the case of Commercial Standard Fire and Marine Co. v. Galindo, 484 S.W.2d 635 (Tex.Civ. App. 1972), dealing with a workman's compensation case under §1981; wherein the plaintiff admitted his illegal entry into this country, the defendant took the position that an illegal alien from Mexico could not be an employee within the meaning of the Worker's Compensation statutes, and that due to plaintiff's illegal status, said plaintiff was barred from receiving workman's compensation benefits. Judgment was entered for plaintiff on a jury verdict and affirmed on appeal.

The Court in Galindo found that plaintiff had violated the immigration law by his illegal entry, and by reason thereof, he was subject to penalties and deportation. However, the Galindo Court stated that:

> To sustain the contentions of the defendant it would be necessary to hold that an illegal alien has no legal capacity to enter into contractual obligations, nor any right of redress in the courts. In the absence of any decisions in this State, we have resorted to decisions of other jurisdictions in arriving at our decision [for plaintiff].

Id., at 635.

The Galindo Court provided the following decisions from other jurisdictions in arriving at their decision on behalf of the plaintiff; id., at 635:

> An illegal alien seeking recovery for work, labor and services contracted for after his entry into the United States was protected under the equal protection of the laws clause of the United States Constitution. Dezsofi v. Jacoby, 178 Misc 851, 36 N.Y.S.2d 672, (Sup. Ct. N.Y. 1942).

and

> An illegal alien is not barred from prosecuting his action for personal injuries. Janusis v. Long, 284 Mass. 403, 188 N.F. 228 (1933); Feldman v. Murray, 171 Misc. 360, 12 N.Y.S.D.2d 533 (Sup. Ct. Bronx Co. 1939); Catalanotto v. Palazzolo, 46 Misc.2d 381, 259 N.Y.S.2d 473 (Sup. Ct. N.T. Co. 1965).

Moreover, in Galindo, the Court took judicial notice that the plaintiff, being a citizen of Mexico, though an illegal alien in this country, is not an enemy alien. The Court then concurred that the coverage and protection of the §1981 clause

that provides for "full and equal benefit of all laws"; even though the enactment of this legislation was not for the purpose of protecting aliens, this provision has been held to apply to both aliens and illegal aliens. Martinez v. Fox Valley Bus Lines, Inc., 17 F. Supp. 576 (N.D. Ill. 1939); cf., Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948). Commercial Standard Fire and Marine Co. v. Galindo, supra, 484 S.W.2d at 635.

In Martinez, the Court held that:

> Congress has...at no time...declared that any alien, either lawfully or unlawfully within this country, shall be debarred from access to the courts. On the contrary, it [Congress] has expressly provided... that all persons within the jurisdiction of the United States shall have the same right in every State or Territory to... the full and equal benefit of all laws and proceedings for the security of persons and property as enjoyed by white citizens. This...was a constitutional exercies of the power of Congress to enact appropriate legislation for the enforcement of the provisions of the Fourteenth Amendment...

Martinez v. Fox Valley Bus Lines, supra, 17 F. Supp. at 577.

Conclusion

There appears to be sufficient authority to enable illegal aliens to bring a §1981 civil action. By analogy and direct comparison, we would argue that the right of access to the courts for the redress of wrongs as enjoyed by illegal aliens under §1981 is also enjoyed by illegal aliens under a

§1985(3) civil action.

The most direct authority to the contrary regarding access to the courts by illegal aliens under a §1981 civil action is found in Coules v. Pharris, 212 Wis. 558, 250 N.W. 404 (1933). In Coules, the Wisconsin Supreme Court reversed the lower court with instructions to dismiss plaintiff's case stating that an illegal alien has no right of redress in the courts, and that as a matter of public policy, an illegal alien will not be heard. However, the clear weight of authority is against the holding in Coules, for as another has observed, "The decision in this case [Coules] apparently stands alone, since it has not been cited with approval or followed. Roberto v. Hartford Fire Ins. Co., 177 F.2d 811, 813 (7th Cir. 1949). Other courts have reached the same contrary conclusion. Janusis v. Long, supra; Feldman v. Murray, supra; Martinez v. Fox Valley Bus Lines, Inc., supra.

Mexican American Legal Defense and Educational Fund

1636 West Eighth Street
Suite 319
Los Angeles, CA 90017
(213) 383-6952

MALDEF

March 2, 1983

Herman Baca, Chairperson
Committee on Chicano Rights, Inc.
1837 Highland Avenue
National City, California 92050

RE: Local Police Enforcement of
Federal Immigration Laws

Dear Mr. Baca:

Thank you for your letter of February 11, 1983, indicating your concern about increased law enforcement activities against undocumented residents of National City.

MALDEF has been actively involved in this issue since the problem first came to our attention. We have researched the legal and constitutional basis for such activities, as well as participated in litigation challenging the authority of local police to enforce immigration laws. At the same time, we have had numerous meetings with both federal officials and representatives from local law enforcement agencies on this controversial issue. So our commitment to resolving this problem is real.

In response to your inquiries, please take note that there is a case now pending before the Ninth Circuit Court of Appeals, addressing the question of local police authority to enforce federal immigration laws. Entitled Gonzales v. City of Peoria, the matter will be argued by Arizona Legal Services and MALDEF on March 17th in San Francisco.

Secondly, we have been in constant communication with both the United States Attorney General and the INS Commissioner since early last year concerning efforts to repeal the Bell memorandum. Just recently, we have been advised by representatives of the Administration that the Bell memorandum will be revoked. This decision was made public during the hearings on the Simpson-Mazzoli immigration bill, when INS Commissioner Alan Nelson testified before the Senate Subcommittee on Immigration and Refugee Policy.

In light of this information, any effort to reverse the policy decision will depend in part on the courts and public opinion. We will advise you of any further developments on this question.

Sincerely,

LINDA J. WONG
Attorney at Law

National Office
28 Geary Street
San Francisco, CA 94108
(415) 981-5800

Regional Offices
250 W. Fourteenth Avenue
Suite 308
Denver, CO 80204
(303) 893-1893

1636 West Eighth Street
Suite 319
Los Angeles, CA 90017
(213) 383-6952

517 Petroleum Commerce Bldg.
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

1411 K Street, NW
Suite 300
Washington, DC 20005
(202) 393-5111