Minutes of Mtg 12/16/80 of Select Comm. Sub Committee on Admin. + Legal Issues Immig. + ECON. DEVELOPMENT

ALL SELECT COMMISSION MATERIALS

WRITTEN Views of
RAY MARSHALL &
Theodore Hesburgh
(letter - 9/80)

Guest Worker Proposal
by: Simkin, R.N
Weintraub, S.
+ Ross, S~~t~~
10/9/80

"Proposal to Phase out U.S.
Use of Foreign Temporary
Workers"
Weintraub
7/21/80

"Legalizing The Flow of Temp.
Migrant Workers from
Mexico: A Proposal"
~~C~~ Cornelius
7/80

4/81
NOTES ON
LEGAL IMPLICATIONS
of Select Comm. Rept.

NCLR package on rept. of the Select Commission

AMERICAN FRIENDS SERV. COMM. TESTIMONY

American Friends Service Committee
1501 Cherry Street, Philadelphia, Pennsylvania 19102 • Phone (215) 241-7000

August 13, 1981

Dear Participants in the National Immigration and Refugee Consultation:

The AFSC is happy to share its immigration statement with you. It was prepared for the Select Commission in June 1980, at a time when the harsh policies that are a part of President Reagan's proposals could not be foreseen.

In this testimony we make recommendations for some legislative measures. But the core of our message is that immigration law is not going to deal with the phenomenon of immigration. We analyze the relationship between Mexico and the United States in the hope of getting at the roots of the problems that expell people from their land and send them out on a perilous journey and a difficult life as an undocumented person.

We oppose policies such as the legislation proposed by this Administration and the interdiction of boats carrying Haitians in the high seas, because they are against the dignity of the human person. They are also impractical and naive.

We hope to be able to work with you in the future, within this newly formed network, in order to influence immigration legislation, a crucial set of laws and attitudes for the United States.

Sincerely,

Domingo Gonzalez, Mexico-U.S. Border Program

Aurora Schmidt, Mexico-U.S. Border Program

American Friends Service Committee
1501 Cherry Street, Philadelphia, Pennsylvania 19102 • Phone (215) 241-7000

TESTIMONY SUBMITTED TO

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

BY

AMERICAN FRIENDS SERVICE COMMITTEE

MEXICAN FRIENDS SERVICE COMMITTEE

San Francisco, California
June, 1980

AFSC/MFSC Testimony: Select Commission

SUMMARY STATEMENT FOR THE SELECT COMMISSION

The American Friends Service Committee and the Mexican Friends Service Committee request your thoughtful consideration of some positive governmental approaches to the undocumented workers problem and its fundamental causes.

With reference to workers now in this country: admit all beneficiaries of pending patterns for permanent residence; institute a moving registry date based on length of stay in the U.S.; simplify qualifications for suspension of deportation; admit immediate relatives of permanent residents unconditionally.

Change immigration policy procedures to: increase world and Mexico quotas; reorganize Immigration and Naturalization Service to apply consitutional rights to undocumented workers; restrict enforcement of Immigration Law to INS; reduce and clarify discretionary power of INS officials; make Immigration Court independent of INS; modify discretion of U.S. consular personnel and provide appeal procedures; call for periodic review of Immigration policy and quotas.

Substantial change in the U.S. immigration process, however, cannot significantly alter the forces which move people across the border. History shows that enforcement efforts cannot be made strong enough to stem such movement without provoking violence and a breakdown of international relations. Concerted long-term attention must be given to the economic and political structures which make migration necessary, with special focus on foreign investment and development aid.

For long range amelioration and eventual solution: encourage collective bargaining organization among all workers in low-pay occupations; strengthen enforcement of labor laws and apply them to all workers; require "migratory impact" statements for all U.S. investment, trade agreements and public aid in Mexico; develop bi-national procedures to regularize treatment of migrating workers -- with participation of worker representatives and to share costs of emergency aid and maintenance of family integrity.

American Friends Service Committee

Mexican Friends Service Committee

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INTRODUCTION. This testimony is respectfully submitted by the Mexico-U.S. Border Program, a joint venture of the Comité de Servico de los Amigos (Mexican Friends Service Committee) and the American Friends Service Committee.

Both our organizations were founded by representatives of the Religious Society of Friends coming from a broad spectrum within that Society. Our governing boards continue this representation. The purpose of both organizations is to provide an instrument for carrying out in life the principles, testimonies and concerns for Friends (Quakers), particularly as they relate to peace, justice and the relief of human suffering. No group can presume to speak for all Friends.

Mexico

Work in Mexico, involving Friends from both countries under the Service Committee name has been continuing since 1939. From the beginning, attention has been focused upon the people in rural settlements with a view toward helping them analyze their economic and and social situation and gain access to the human, technological and economic resources that would enable them to live more securely and contribute more fully to the national well-being.

These communities are characterisic of those from which people in great numbers have been forced by the need to survive to leave and travel to wherever there seems to be a chance to gain an income and provide for their families. Many of them come to the U.S. border; many of them cross it.

U.S.A.

Since the early fifties the American Friends Service Committee has worked with seasonal farm workers in the United States in support of their efforts to improve their environment and working conditions, to strengthen the social and economic structure of their home communities, to open up and take advantage of opportunities for alternative ways to live, and in general to gain more control over their destiny. Our involvement started in the great valleys of California and has spread to the Pacific Northwest, the East Coast,

Florida and the Midwest, and for more than ten years has been strongly concerned with the lower Rio Grande Valley in Texas.

AFSC has participated in the development of self-help housing, rural legal services, consumer-controlled health facilities, cooperative work crews, cooperatives of family farmers, child care centers, training for participation in community organization.

THE MEXICO-U.S. BORDER PROGRAM. The Mexican and American Friends Service Committees identified the need for a joint approach to the problems revealed along the border. The two National Offices, in Mexico City and Philadelphia, coordinate the overall effort and plan public education work. Each center publishes a newsletter with analyses of events involving the two countries.

In Florida the Border Program works with a growing community of Mexican and Mexican American farmworkers, who are rapidly replacing the black labor force in the citrus industry. The Florida Program offers many services, concentrating on representation before the Immigration and Naturalization Service (INS). The program has a broad community education component to assist development of humane social policy through increased public understanding.

The Texas Border Project assists communities along the Texas border to gain economic resources. Community organizing is done in the spirit of profound respect for the self-determination of these people. With staff in Brownsville, Laredo and El Paso, this project aims at unifying the communities in one single struggle.

In California the Border Program concentrates on the working rights of undocumented workers. Our constituencies here are churches, who play a crucial role in helping the new immigrant in the process of settling and being accepted. In Northern California the AFSC has had a long tradition of support to the non-violent organizing movement of the United Farm Workers. The Border Program has been strengthened by its communication with the farm labor movement.

The Mexican Friends Service Committee conducts many projects of rural and urban development, fostering self reliance and

economic growth. The Center for Information on Migratory and Border Affairs of the MFSC has played a unique role in developing and analyzing data that would otherwise go largely unnoticed. Here as in other parts of the Border Program we are helping people to be heard.

The Border Program has initiated an exploration into the working conditions of women in maquiladoras, the U.S. operated partial-assembly plants that employ 93,500 women in Northern Mexico. The special focus of a project in Reynosa has been health and safety. It is possible that similar projects will soon be started elsewhere.

A detailed description of the Mexico-U.S. Border Program is attached.

THE IMMIGRATION PROJECT OF THE MEXICO-U.S. BORDER PROGRAM. Immigration is a key issues for the Border Program. We welcomed the creation of the Select Commission on Immigration and Refugee Policy, being deeply aware of the inadequacy of the law. We formed a special task force that has been active since October,1979 in studying immigration.

AFSC has testified previously on issues related to migration: the Bracero Program, H-2 Contract Labor System, Refugee Policy and the O'Brien Rider. We found AFSC's statements on those matters to be of great value in pointing the way for our present task. Just as in the case of previous testimonies, the basis of this paper is our direct experience with the affected communities: the Mexican immigrants and the rural communities in Mexico.

The Immigration Task Force has met twice for three-day workshops: one in Atlanta, November,1979 and the second in Washington, D.C. in April, 1980. Each member of the task force has come to the workshops representing a constituency. There have been wide consultations all along, with other AFSC/MFSC staff, committee members, academicians, labor and church leaders. This testimony represents the intense work of many individuals.

We are profoundly aware of the confusion and fear associated with immigration in the public opinion. The recent arrival of refugees from Southeast Asia and Cuba has been met with resentment and distrust. At the same time there are other refugees who are altogether rejected, as are Haitians, because their country of origin is not oppressed by a

Communist* regime. We know what an enormous job the Select Commission has been given as a mandate. Yet we believe there is room for change. We accept the challenge of presenting this testimony in the hope that a look at our immigration policy will be a unique opportunity to look at ourselves as a nation and at the refugees and immigrants as members of one human family.

MIGRATION FROM MEXICO TO THE UNITED STATES. It is important to discuss several factors which are at the root of migration from Mexico to the United States. Mexico-U.S. migration is a natural response of a labor sending area of high unemployment and grave internal economic imbalances to fill a vacuum created by the economic patterns of a receiving area characterized by a significant market for cheap labor. While the individual's decision to migrate might be a rational option, immigrants are alienated from the structures that make migration necessary. Although this pattern is not unique to the relation between the United States and Mexico, it is peculiar to these countries. It reflects their geographical proximity and their historical involvement. The majority of Mexican immigrants settle in a land that was Mexico before 1848. Even after the Treaty of Guadalupe-Hidalgo that ended the war, the border was a porous line. In this century the migration that culminated in the Bracero Program (1942-1964) formalized the pattern of temporary employment of Mexicans, and deepened the ties of migrants to communities in the United States. At the same time the constant influx of Mexicans gave a great vitality to the Mexican-American culture in the border area.

The migrant stream cannot be characterized totally as beginning in rural areas in Mexico and ending in the fields of the United States. It is a multi-faceted flow of migrants that originates in a high unemployment area of Mexico and goes wherever there is a demand for workers who will accept low wages. We can no longer talk about unskilled jobs for migrants. Many jobs in agriculture and other sectors of the economy demand a special skill, but continue to be low-wage, dead-end jobs. The construction industry is a good example: as construction costs have risen, so has the number of undocumented workers in the industry. Marginal factories which have to compete with cheaply produced foreign goods have also relied on undocumented workers. The garment industry is the best example here.

*In spite of the new legislation the old concept remains operative.

It is not likely that the Mexican economy will be able to provide a decent job for every member of its workforce in the foreseeable future. Between 40% and 50% of Mexico's total workforce of 18 million are unemployed or underemployed. This situation provides a pool of available low-cost workers. They are young and eager to work. They are defenseless, so they can be easily exploited. They produce for a country that has not borne the cost of creating that manpower. As a bi-national program with roots in Mexico, with a staff of Mexican origin and Mexican nationality, we are profoundly aware of what Mexico loses through emigration. Immigrants are young, usually healthy, hard-driven, productive members of the Mexican society. At the same time we represent a constituency that is directly affected by Mexican immigration in a way that is difficult to assess, as the Select Commission recognizes:

> There is a strong popular belief held by many that illegal migrants have an overall negative impact on the economy, but there is a large body of expert opinion - not without opposition from other experts which contradicts the more popular view.1

In our experience the labor impact of immigrants is different in different areas of the country. There is no question that the availability of a labor pool that is captive and defenseless makes it difficult for labor organizing efforts to succeed among Chicano minorities. This seems to be especially true in Texas.

We recognize the difficulties involved in estimating the size of the Mexican undocumented population in the United States, and concur with the conclusions of the Census Bureau in the paper "Preliminary Review of Existing Studies of the Number of Illegal Residents in the U.S." requested by the Commission in December 1979. An educated guess might dispell some of the fear created in the public by vague and malicious estimates.

All too often discussions of the Mexican undocumented migration place the blame on the immigrants while neglecting to identify the powers and structures actually responsible for the situation than sends them on their search. We attempt to identify those structures in the document that follows.

We have divided this testimony into four parts:

I. Recommendations for changes in immigration policy.

II. Considerations on temporary workers programs and employer sanctions.

III. An analysis of the economic relationship between the United States and Mexico.

IV. Conclusion.

I. Recommendations For Changes In Immigration Policy.

Immigration legislation alone will not resolve immigration problems. We make the following recommendations knowing well that they cannot offer long term solutions to the plight of immigrants and refugees. They are an effort to deal with the inhumane conditions in which undocumented workers are in this country, and with other difficulties that the immigrants encounter in the process of settling in the United States.

1. Eliminate the backlog by admitting all beneficiaries of pending petitions.

The basic philosophy of immigration law regarding family unification is defeated by the number of years family members have to wait because of the backlog of the preference system. In October 1979 there were 225,000 beneficiaries of petitioners under the Mexican quota. In 1978, 900,000 were waiting for immigrant visas.[2] Eliminating this backlog would alleviate the suffering of many families and would provide an opportunity for the INS to work without the burden of old applications.

2. Establish a moving date of registry based upon the length of stay of the immigrant in the United States.

The only requirement for granting alien resident status would be:

a. Five year residency or domiciliary in the United States.

b. Good moral character, defined as the absence of conviction of any serious crime. There will be no hardship proof requirement and no discretion exercised by the judge to determine whether the alien is worthy of the registry statutes.

This is a generous amnesty program which is simply a realistic recognition of the benefits that immigrants who have been in this country for several years have contributed to this nation. It is an "amnesty program" designed to avoid the punishment implicitly contained in most "amnesty" plans which have the dual purpose of admitting some immigrants permanently and expelling those who would not qualify.

An underlying consideration in the admission of immigrants who have been here a long time is that they are already part of the economic and social system, and that the clandestine nature of their work and existence should be removed, allowing them to participate in the political and social processes of this country. There is no evidence to substantiate the claim of Commissioner Ray Marshall that the departure of these workers would free jobs for unemployed legal residents.

3. Admit immediate relatives of citizens (of any age) and permanent residents outside of any quota system.

If the goal is family reunification, it has to apply to citizens and to permanent residents. If the citizen is a minor this applies even more forcefully.

4. Institute a periodic review of immigration policy every ten years.

Immigration legislation has to respond to changing world conditions. A very important part of this changing picture are quotas. Should there be one overall world quota? When numbers respond to population predictions this flexibility might be even more important, since there are so many variables in demographic considerations. The United States median age is now 35 years, pointing to the need for younger elements in the population around the 1990's. Flexibility is also needed to accomodate for refugee intake based on humanitarian considerations.

5. Reorganize the Immigration and Naturalization Service including the following provisions:

a. INS enforcement procedures should be held to the same constitutional standards applied to other enforcement agencies including the right to due process and the right to counsel.

b. INS should not accept referrals from police.

c. Previously obtained warrants must be required for all raids, whether residential, in public places, or in places of work.

d. The power of field personnel to grant voluntary departures to deportable aliens must be restricted in order to protect:

1. people who qualify for administrative relief from deportation.

2. People with approved visa petitions.

3. Anyone with a signed G-28 form indicating that they are represented by an attorney.

e. No system of incentives should be used for the border patrol that is based on the number of apprehensions or arrests. Border patrolmen should not bear arms.

The administrative and moral bankruptcy of the INS accounts for many of the problems related to immigration to the U.S. We are aware of the efforts at reorganizing its structure and hope that they will be successful. Contrary to some opinions in the press, we believe that what is wrong is not the lack of computerized systems of information or lack of equipment for the border patrol, but a disregard for rights or human dignity. The INS is a service agency. Its enforcing function should be carried out with respect to the human dignity of the immigrant.

6. Open the option of citizenship to all residents without requiring a knowledge of English.

This will give political representation to many residents, many of whom are women, and who live in areas where English is not necessary for daily business.

7. The Immigration Court should be independent of the INS.

The Immigration Court should be a free and separate entity and maintain a critical distance from the structure of the INS, to best perform its duty.

8. The complete discretion of U.S. consular personnel in the issuance of visas should be eliminated. Some system of appeals should be available to applicants.

Consular personnel are not necessarily immigration experts. The discretion margin is too wide. There is an element of whim in consular decisions concerning immigration.

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II. Considerations On Temporary Workers Programs and Employer Sanctions.

We spent considerable time designing "an ideal temporary workers program". We are aware of the legislation being introduced in support of a temporary workers program. We know the power of groups for which such a plan would provide cheap temporary labor. We feel the pressure building in Mexico for a legal way of protecting the Mexican workers. Finally, we too have been tempted to see in a guest workers program a way of eliminating the illegality of undocumented employment which allows for exploitative practices. Because we gave this program our full consideration we present to the Select Commission the reasons why we rejected it. We believe that sharing this process will be more useful to the Commission than simply sharing the fact of our dismissal of it.

Many of the following considerations reflect our consultation with members and friends of the AFSC/MFSC who have had a direct experience of the Bracero Program or the present H-2 system.

Under the Bracero program hundreds of thousands of Mexican workers were admitted annually from 1945 to 1964. Under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act approximately 30,000 agricultural workers are presently admitted, and there is every indication that agricultural employers want to see expanded use of the H-2 statutes. In the case of both programs admission is granted the alien "upon petition of the importing employer". Without the petition and assurance of work by the employer the alien cannot be admitted. The employer is thus guaranteed a captive workforce; one that is well aware of the employer's power to admit or reject the worker. Deportation of "non-submissive" workers is routine; the employers are known to maintain lists of workers who should not be allowed to return for "violations", such as complaining about food, housing and work hours. (A minute of the AFSC Board of Direcors giving AFSC's views on the Bracero program is appended.)

Perhaps one of the most difficult problems in the design of a temporary workers program is to determine its size. A program with a large or indefinite number of visas will surely have a negative impact on the domestic labor market. A program with a reduced scope will have no appreciable effect in deterring undocumented immigration. Most likely, a temporary workers program of any size will stimulate immigration outside the system. This was the well-documented experience of the Bracero Program.

The plans for a temporary workers program fail to explain how the time of departure will be enforced. Overstaying a temporary workers program permit could be as easy as overstaying a tourist visa. Or it could be enforced by the limited methods presently employed by the INS, which we believe should be avoided. The suggestion of some legislation of having a bond posted in the place of origin of the worker is offensive to workers and their countries. It is a measure which belongs with the mentality that conceives of the employer as a benefactor and the worker as the recipient of a favor.

The most convincing argument against supporting a temporary workers program as part of our recommendations was the realization that the Labor Department has failed to provide the conditions that would prevent the exploitation of workers in the H-2 program and the earlier Bracero system. Any temporary workers program relies heavily on the kinds of controls that only a well enforced labor law can provide. Yet there is no assurance that such controls would exist or prevail over the tendency to extract productivity from the worker at the lowest possible cost.

The European experience shows inequality between guest and native workers. It should be the responsibility of any immigration policy to give equal status and equal rights to all immigrants. A temporary worker is not likely to partake of such equality.

For the sending country a temporary workers program cannot be perceived as a long term solution. That country must still solve its unemployment problems and compensate for the exodus of a substantial number of able men and women.

Finally, we are still left with the problem of determining the net effect of temporary workers programs on those communities in the United States that are still providing the secondary labor force. Although we do not believe in one-to-one displacement (one immigrant takes one job away from one native worker) we know there is an impact on organizing efforts, on wage rates and working conditions of legal resident or citizen workers. A formal system that would allow the constant flux of new foreign workers who do not build equity in this society would be a very special threat to these marginal groups.

Employer Sanctions

AFSC opposed employers sanctions in its testimony in 1978 before the Senate Judiciary Committee on the Carter Proposals. We quote from the text.

The effect of making it unlawful for employers to hire non-citizens who do not have proper papers is to require employers to discriminate among applicants on a nationality basis. This makes it much easier for an employer not to hire people who look or sound foreign or who have Spanish surnames.

At a minimum it means that any person who falls into one of those categories would face an obstacle to employment that others don't even though he or she is a citizen or a legal alien authorized to work. This obstacle is proof of identity -- and the employer is the judge. No matter what the appeals procedure or anti-discrimination rules might be, one group of the population would have to go through more diffculties to get a job than all others.

Where discrimination exists against people of the Hispanic ethnic group, employer sanctions would add to it. Where discrimination is not now so evident, it might well grow as non-Hispanics seek advantage in the job market. Wherever there is a sizeable immigration from Caribbean countries, the Black community would come under the the same burden of additional discrimination. Participants in the New York State Advisory Committee to the U.S. Civil Right Commission public meeting February 17 and 18, 1978 cited examples of the problems already created by INS surveillance and raids.

A nationality test for eligibility to work would provide another instrument for facilitating divisiveness and unfair practices.

Since it would be impossible to keep tabs on every employer and since the present experience shows that some employers find it very advantageous to hire workers outside the law, the sanctions against employers would not altogether halt employment of undocumented alien workers. Because of the added risk to the employer

> and the reduced opportunities for the worker, the abuse of such workers who do not find employment might become worse.

Michael Piore believes that employers sanctions could have the effect of promoting violations of labor and work standards laws. He argues that in the present system an employer does not risk anything by hiring an illegal immigrant, while they do risk substantial penalties in tax evasions and labor law violations. Were employers to accept the risk of hiring undocumented workers, "they might as well take full advantage of the profits to be made". [3]

The use of employers sanctions would most likely require the issuance of a national identity card for all citizens. Such a measure is repugnant to our traditions and is a high price to pay for the doubtful benefits it might bring.

III. An Analysis Of the Economic Relationship Between The United States and Mexico.

> The root causes of this emigration have to be found on both sides of the border, in the structure and superstructure of both countries.
>
> Elaine Levine[4]

> The most popular and widespread explanation associated with the phenomenon of Mexican migration to the United States focuses on the realities of rural Mexico: a traditional, backward, underdeveloped area. We intend to offer an alternative analysis: the exodus of Mexicans to the United States is linked to the very process of Mexico's development.
>
> Francisco Alba[5]

As the Select Commission recognizes in its Semi-Annual Report on March 1980, the problems of immigration cannot be dealt with exclusively through immigration law. Rather, this legislation has to reflect a perception of the United States' role in the world, its values and its assessment of other countries. In the process of examining the phenomenon of Mexican migration we have come to the realization that, short of an overt repressive action, no immigration law or practice will prevent undocumented immigration from Mexico for as long as it continues to be an intelligent choice for the worker. We do not attempt to examine here the historical, economic, and political intervention of the United States in Mexican affairs. The following analysis is rather a sketchy horizontal view of the Mexican economy and the role of the United States in initiating, supporting and protecting economic development practices that benefit U.S. capital sources and a Mexican minority, to the detriment of the majority of the Mexican people. This analysis yields implications for domestic and foreign policy which are spelled out at the end of the paper in the form of recommendations.

According to the World Bank, Mexico is the 19th largest economy in the World. Its rate of economic growth is between 6.5% and 7%. With a population of 70 million, 18 million constitute Mexico's work force. A report from the Mexican Institute of Financial Executives states that in 1980 over one million Mexico workers will be unemployed, while half of the economically active population will be underemployed. This represents

9½ million people, one third of whom are inhabitants of Mexico City, the largest city in the World, growing at a rate of 5% per year. Ten percent of Mexico's population take 45% of the country's income; the lower 40% take 10%. The foreign debt is 40 billion dollars. By any standards, this is a picture of economic and social crisis. Emigration and political unrest are some of the rational options for the impoverished majority of Mexicans.

A look into the state of agriculture and industry in Mexico will show a common pattern of concentration and monopolization of capital, internal and external to the country.

Agriculture

The last phase of the Mexican Revolution of 1910 gave it the character of a radical agrarian reform. The institutionalization of the tenets of the revolution has assured the prominence of land distribution in the program of every administration since the 1920's.

Today, in spite of the fact that there is a ministry of agrarian reform, the government has recognized that "Mexico's problem is one of production, not of land distribution".[6]

Close to half of Mexico's labor force work in agriculture (40.3%) and 20 million Mexicans depend on it for their livelihood. Half of all agricultural workers do not own land. Of the rest, a very small percentage are ejidatarios, that is, beneficiaries of the land distribution system. The ejido is collectively owned. According to the director of the Center for Agrarian Research in Mexico[7], the ejido is currently operating at a 33% of its capacity. In the same interview the director of this center states that 3½ million peasants are landless while 70 million hectares belong to less than 4,000 owners. Most of ejidos depend on seasonal rains for production. Last year's draught, coupled with a freeze and inflation, created a situation of real despair in rural Mexico. It should be no surprise to know that 65 out of every 100 young peasants are expected to migrate.[8] Productivity is low. Eighty percent of the campesinos do not use improved seeds or fertilizers.

On the other hand, grants for commercial agriculture have increased Mexico's foreign debt by billions of dollars. The government has provided irrigation systems, roads, communications, credit and to an extent, agricultural training. Seventy percent of the agricultural technicians that Mexico educated are employed by transnational corporations

(mostly U.S. based) involved in commercial agriculture.

For Mexico's culture, corn is a most important crop. It has been the source of daily bread since pre-European times. The decline of the corn harvest in Mexico and the consequent need to import this grain signaled an economic and cultural crisis. Sorghum for animal feed (and ultimately meat for export and limited domestic markets) is rapidly replacing corn, as a more profitable product. While grain imports represented 9% of total food imports in 1965, by 1980 they accounted for 80%. Close to 10 million tons of basic grains were imported into Mexico from the United States this year, the grain that was to be sold to the Soviet Union. All this happens while half of the winter vegetables consumed in the United States are grown in Mexico.

Until last March there was a deliberate choice on the part of the Mexican authorities to give preference to the amelioration of the balance of payments through agricultural exports. A professor in a Mexican school of agriculture has observed:

> Since the mid 70's there is a noticeable reduction in the acreage devoted to cultivate basic products: corn, beans, rice and wheat. At the same time the production of other products such as sorghum, carthamus, and fruits and vegetables increased. Most of these products are destined to be processed by agroindustries dominated by foreign capital. It should be noted that these products are grown in the best irrigated land in the country. 9

Mexico's unprecedented purchase of grain stressed the dangers of what a Mexican scholar has called "the dependence of the stomach". Were Mexico to continue applying the development policies, economists said, it would be exchanging oil for food by the end of this century, with a net gain of zero for the country. In these conditions the sovereignty of the nation is in question.

On the other hand the media carries news of peasant unrest. Even if fragmented, the peasant movement serves to remind the public sector of its revolutionary commitments.

On the 18th of March, as President López Portillo commemorated the anniversary of the oil expropriation, he announced the launching of a Sistema Alimentario Mexicano (SAM)(Mexican

Nutritional System) which expects to emphasize the production of food for internal consuption and the reactivation of non-irrigated land. The SAM promises to produce 13 million tons of corn and 1.5 million tons of beans in 1982. It will require a subsidy of 85 billion pesos but a good part of that sum might be otherwise spent in the purchase of U.S. grains. The goal of the program is to combat malnutrition, the lot of 35 million Mexicans, 9 million of whom are children. But the implications of a nutritional program at such scale go beyond the diet. The coordinator of the SAM, Cassio Luisselli, has said that "the best remedy for malnourishment is work".[10] The document that describes the creation of the SAM states:

> This "marginalizing" process of modernization has contributed,not exclusively but in a very important way, to the agricultural crisis of our country, a crisis that began 15 years ago with the collapse of seasonal corn crops and its substitution for sorghum and soybeans.[11]

Commentators point out the pressure exerted by consumers in the United States is a definite factor in deciding what to grow. In this context, SAM is an effort directed toward independence and self-sufficiency. It is possible that the plan is insufficient and that it will be riddled with problems in its implementation. It still represents a commendable effort towards income redistribution.

Agriculture and Transnationals

Parallel to the agriculture of the peasant economy, there is a capital intensive agriculture in Mexico, largely dominated by the interests of transnational corporations, most of which are based in the United States.

Here are some facts related to the transnational control of agriculture in Mexico:

- Five transnational corporations control the production of balanced feed for animals in Mexico.

- Six firms, three of them transnationals, control 95% of the poultry industry.

- In 1978 these monopolies increased the price of poultry in 70% by systematically reducing supplies.

- Transnationals are involved in the meat industry, which has encouraged the abandonment of corn cultivation in favor of grazing land for cattle. Animal husbandry uses 80% less manpower than agriculture. A good deal of the meat is exported to the United States or consumed by a very small number of Mexicans.

- One Houston firm buys 80% of Mexico's cotton crop. Cotton seed meal is a protein supplement and a major ingredient in balanced feed. Control of this commodity means a good deal of control over meat production and marketing.

- One transnational corporation extended a large loan to a fishing cooperative in Mexico with the provision that the entire shrimp harvest be sold to the lender, thus gaining control of the project and destroying the cooperative's traditional markets.

- Transnational corporations receive government subsidies of $150.00 pesos for each ton of sorghum. This is only one of the many protectionist practices transnationals enjoy. It is estimated that transnationals obtain between 40 and 60% of their raw materials from CONASUPO (Comisión Nacional de Subsistencias Populares, a government agency that insures the availability of basic staples for popular consumption, often buying supplies at a loss.)

- CONASUPO rents warehouses from corporations and pays with grain, once again subsidizing transnational corporations activities.[12]

There is no question that the effect of monopolization of capital in transnational corporations has been harmful for Mexico. Many corporations have bought smaller Mexican industries, buying at the same time a well established market. The food production industry controlled by transnationals favors products that are often alien to the Mexican diet, offer little nutritional value, are more expensive than the foods they tend to replace and offer the conveniences of saving time and energy in a context in which such conveniences are irrelevant. Advertising plays a key part in persuading the public to satisfy needs that they do not have.

The Mexican producers of vegetables have been accused of "dumping" their products on the U.S. market, depressing prices. Mexico's Association of Vegetable Producers points

out that transnational corporations based in the U.S. are responsible for price speculation. Three transnational corporations control 30% of the vegetable financing and 60% of the trade processes.

In central Mexico some of the most fertile flatland are devoted to the production of cocktail onions and strawberries for export to the U.S. while the rocky slopes are planted with corn, the basic staple of the people.

Campesinos growing corn are dependent on rainfall as a recent report from the United States Embassy indicates:

> Perhaps no more than 10 percent of the total corn area is irrigated while the remaining 90 percent is totally dependent upon nature for essential precipitation.[13]

The export market, controlled by transnational corporations, demands larger landholdings and mechanization, depriving more and more people of a livelihood and concentrating resources and profits in the hands of the few. Land, credit, irrigation, technology have gone to export agriculture in the last decade.

Industrialization of agriculture is pushing formerly self-sufficient peasants off the land. An example of this is the recent purchase of ten thousand tractors by the Mexican government (from the United States) which critics say:

> could displace between 150,000 and 200,000 campesinos who would thus begin to seek employment perhaps in the overcrowded cities.[14]

To a great extent the Mexican culture is a peasant culture. To lose the land is to lose one's roots. In Mexico's powerful and vital Indian culture "root" also means "meaning" and "belonging". Transnational corporations have no roots in the land. Decisions are made many miles away. Computers are efficient in counting their profits and planning their growth. But they do not belong.

The emergence of transnationally-controlled agriculture in Mexico is the final phase of a process of deterioration that had begun before them. They in effect took advantage of a perfect ferment for their work. The control that they impose is harder to overcome than the problems that had

plagued rural Mexico in the past: lack of credit resources, and technology. Yet it is hard to conceive of a future for Mexico in the present conditions of transnational control. As the Mexican economist Gustavo Esteva warns:

> If we do not reclaim the initiative of our history to direct our development, especially production and consumption patterns, according to the needs and capacities of the majority, we will continue to cede control of the process to an ever smaller number of producers who, according to the logic of their position, will be able to direct the country into producing what it does not need and loosing the ability to acquire what it does need. This process would inevitably be part of a general social breakdown.15

Industry

> The great North American enterprises come and pour their capital on us! They give us managers, we pay them back with workers...
>
> Herberto Castillo-16

Mexico's industrial system is geared toward the production of consumer goods for a minority of the population. In this sector there is a similar concentration of capital to that observed in agriculture. Eighty percent of all factories generate 5.8% of the value of the total industrial output. Though the Mexican government has pledged a new emphasis on the creation of jobs in future development, industrialization in the immediate past has been created by capital intensive rather than labor intensive development. The influence of transnational corporations and powerful Mexican industrial groups on the national economy, abetted by local and international banking interests, indicates that there will be continuing pressure for capital intensive development.

- Petroleum

From the experience of other oil-rich countries we have learned that this wonderful resource cannot be expected to transform the internal structures of a developing country, nor to immediately provide a large number of jobs. The development of the extracting infrastructure has cost Mexico a foreign debt of 3 billion dollars. Dependency on foreign

technology has further complicated Mexico's ability to follow a free policy on oil. President López Portillo has proposed to the United Nations and to the Organization of American States a method for a rational utilization of fuels as part of a common, human heritage. So far the reactions are pressure to sell and extract more crude oil. The head of the Mexican Workers Party, Heberto Castillo, insists that oil must be used to create employment in Mexico:

> Behind each barrel of oil and each cubic foot of natural gas that are exported we send our brothers searching for the jobs that our fuel produces there. In this way we export indirectly a virginal adult workforce created here at our own cost, and once matured, sent to a foreign land to be brutally exploited.[17]

At the moment the extraction of oil is producing inflation. Perhaps in a few years, when the petrochemical industry has expanded substantially, oil will be a source of employment. Today less than 10% of the total cost of petrochemical development goes for labor.

Many analysts agree in recognizing the temptation for Mexico of extracting its oil more rapidly. There are international pressures to do so, especially coming from the United States. The ceiling that the administration had committed itself to respect in oil production and exports has been lifted. This acceleration is inflationary, yet Mexico needs dollars to create the infrastructure that will allow it to retain the job-producing crude oil. Already the publicly-owned Mexican oil monopoly has a foreign debt of 38 billion pesos.[18] Pemex is creating a liquidity to revitalize other areas of the economy, but in the process it is creating great problems. As always, the negative effects of this policy are especially burdensome to those who live on the edges of the economic system, for whom inflation in the last two years has meant the difference between minimal subsistence and hunger. The editorialist of a well known Mexican magazine describes Mexico's choices with respect to oil extraction in this way:

> A nation that would export 1.1 mbd in 1982 would be very different from a nation exporting 3 mbd, an escalation being considered by Pemex. The economy of the first Mexico, perhaps, would

> not show a spectacular growth. But it would be a nation that would have understood its severe problems of justice and productivity in the organization of its economy and society, a nation that has found a way of facing those problems responsibly, a way in which oil exports may play an important but not a fundamental role.[19]

- Wages

Before and after the devaluation of the Mexican currency in 1976 (by almost 100%) large amounts of domestic capital left the country. One of the policies adopted by the administration to encourage the return of this capital and the interest of foreign investment was a freeze on wages. Since 1976 it is estimated that the prices of basic commodities have gone up by 200%. During the same period the national average minimum wage deteriorated by 7%. Yet profits in the private sector have been rising steadily. A policy of frozen wages is a policy that in essence lets the working class subsidize the economy. It is no wonder that the first few months of this year saw an unusual number of major strikes in factories and universities[20]. But the achievements of organized labor have been minimal, and the Mexican worker continues to be the most attractive profit-building element of production for local and foreign investment in Mexico.

- Maquiladoras

The termination of the Bracero Program in 1964 presented a challenge to absorb a large labor pool. At this time unemployment along the Mexico border area had risen to between 40 and 50%. The Border Industrialization Program (BIP) emerged as a plan to increase foreign investment in the area that could then create job opportunities for Mexicans. In 15 years the maquiladoras,[21] mostly subsidiaries of U.S. based transnationals in the fields of electronics and garments, have established themselves in Northern Mexico and have had a social, economic and political impact that could not have been foreseen. Having been created primarily with the purpose of providing jobs the BIP has actually increased the statistical figures reflecting the unemployment, since maquiladoras employ mostly women who had not previously entered the labor force.

Here are some facts about maquiladoras:

- In October, 1979, there were 536 maquiladoras, mostly U.S. owned and operated.

- They employ over 110,000 workers.

- They pay over 7 billion pesos in salaries.

- Eighty-five percent of maquiladora workers are women.

- Labor costs are 5 or 6 times cheaper in Mexico than in the United States.

- Worker productivity in the garment and electronic industries at the border is from 25 to 40% higher than in the United States plants. This is related in part to highly selective dexterity tests. A large number of applicants for each vacancy allows the industry to set its standards high.

- In 1974 at the time of the economic crisis in the United States, 60 maquiladoras closed their doors, and many reduced their operating capacity. Over 30,000 workers were unemployed.

- Maquiladoras use a negligible amount of raw materials or packaging produced in Mexico. They do not create ancillary industries.

- The age of women workers fluctuates between 16 and 25 years.[22]

- Seventy percent of all the members of the maquiladora workforce are migrants.

Anthropologist Patricia Fernández Kelly has studied the social impact of the presence of the maquiladora industry in Mexico's northern frontier. She stressed the importance of female employment as a new social factor within the family (very often the migrant family) who depends on the young woman for its livelihood. "An average of five relatives (and, in a few cases, friends) came to Ciudad Juarez for every migrating maquila worker", says Fernández Kelly. It is important to stress here that many women who migrate searching for a maquiladora job are not employed. The demand for jobs is large, and it accounts partially for the special docility of this labor force. But only the hope of finding a job is necessary to migrate. The border urban centers are growing at a rate only surpassed by Mexico City.

What happens to the male members of the family of the migrant maquiladora worker? Many of them cross the border to the United States without documents. By the same token, many mothers of young children whose husbands

or male supporters have emigrated to the U.S., are forced to look for employment in the maquiladora industry. Fernández Kelly believes that, although managers explain the preferential hiring of women as based on their greater patience and fine small muscle coordination, there are deeper reasons for such a practice:

> The incorporation of women with acute economic needs into the maquiladora industry represents, in objective terms, the use of the most vulnerable sector of the population to achieve greater productivity and larger profits. The employment of men to perform similar operations would imply higher wages, better working conditions and more flexible work schedules, all of which would increase labor costs and reduce capitalist gains.[23]

Maquiladoras can easily threaten and blackmail both the workers and the Mexican government to obtain what they need. It is a situation in which Mexico's dependency on U.S. capital could be particularly painful. Border cities that were not able to provide electricity, piped water, paved streets and sewage for al of its dwellers are compelled to provide those services to maquiladoras at all costs. In this situation of power many maquiladoras get away with very poor practices, such as:

- Paying minimum wages for strenuous work. Mexican minimum wages vary by region and are roughly equivalent to a 1/6 of the U.S. minimum wage.

- Conducting massive firings.

- Employing workers on a temporary basis.

- Blacklisting workers and opposing organizing efforts.

- Enjoying privileges, subsidies and fiscal exemptions.

- Maintaining poor health and safety standards in the assembly plants.

When a maquiladora leaves the country (sometimes looking for even more advantageous conditions in other countries) they do not leave much behind. The workforce has not been trained in skills that are applicable to other types of work. Maquiladoras, like transnationals, have no commitment to Mexico, no roots, no relation to the people.

There is total alienation between worker and industry. The final product does not even stay in the country. The BIP is a source of meaningless, difficult but badly-needed jobs, having a grave social impact for which it takes no responsibility.

IV. Conclusion

We have made suggestions for short term legislative remedies that may help alleviate the suffering of many immigrants. We have spoken against what some groups perceive as possible solutions to the problem of undocumented immigration: the temporary workers program and employer sanctions. We have presented an analysis of the Mexican economy and the United States part in it. What follows are a few basic recommendations that tend to deal with the root causes of immigration policy.

Domestic Policy

What makes undocumented workers so vulnerable is their inability to speak against injustice. A policy of full protection for workers, regardless of their origin, would eliminate the unfair competetive advantage undocumented workers have, and would defend them from exploitation. The Labor Department must enforce all labor laws including minumum wage, health and safety requirements, etc., for all workers.

Eliminating the availability of workers powerless to resist exploitation is a long term international aspiration. Setting and maintaining work standards adequate for residents of the United States is a reasonable domestic goal. Both undertakings uphold basic human rights. Both merit consideration in designing U.S. immigration policy.

Organizing for collective bargaining is a need, and a hard-won right. In this respect we support the abolition of Section 14-B of the Taft-Hartley Act, the so-called "right to work" provision which undermines workers right to organize for better wages and working conditions.

Foreign Policy

> It is up to us Mexicans to solve Mexico's problems. Mexico is not isolated from the world or the hemisphere, but it must be all alone when the time comes to face the task of solving the contradictions of its own growth .....
>
> Carlos Fuentes[24]

1. Federal policy should discourage the vertical integration of the agricultural industry. The domination of grain trade in the world by five U.S. family firms should be examined in its domestic and global impact.

2. To the extent that the U.S. government supports conglomerates and transnationals in the U.S. in their acquisition of the nation's resources (water, land, capital) through favorable tax laws, and allows them to dominate this country's economy, our policies will encourage their dominance of other economies such as Mexico's. We must recognize that their power over our food production and distribution is unhealthy and control them accordingly, thus limiting their impact over foreign economies.

3. In the past the United States has influenced the World Bank and the International Monetary Fund (IMF) to make loans to Mexico conditional upon meeting certain requirements. The "austerity program" that was demanded by the IMF increased malnutrition and hunger because it required recipient countries to impose wage controls and higher food prices, while limiting social services to the poor. Other loans have required population control programs or the purchase of technology. These practices disregard the real needs of the Mexican people. The same is true of the support that the United States has given the Mexican government in thwarting the natural process of social change. "Stability" has been maintained at the cost of lost opportunities for the restructuring of society, but most of all, at the cost of real oppression of groups who dissent.

4. The United States should not pressure Mexico to develop its oil industry at a faster pace than Mexico deems necessary, nor to sell preferentially to the United States; nor to join the General Agreement on Trade and Tariffs (GATT); nor to always agree with the U.S. on foreign policy.

Mexico has shown clear signs of its desire for independence in the negotiations of the sale of natural gas; in its refusal to join the GATT; in its decision not to re-admit Mohammed Reza Pahlevi in the country. Mexico is painfully searching for its place in the community of nations and looking for its own model of development. This effort commands support and respect.

Notes

[1]Select Commission on Immigration and Refugee Policy. Semi-Annual Report. March 1, 1980. P. 19

[2]Ibid. P. 1

[3]Michael Piore. "Undocumented Workers and U.S. Immigration Policy". A paper presented at the Consultation on Over-stayed and Undocumented Persons. May, 1978.

[4]Elaine Levine. "Causas de la emigración". A paper read at the International Conference in Defense of the Undocumented Worker. Mexico City: April, 1980.

[5]Francisco Alba. Indocumentados. Mitos y Realidad. México, Colegio de México: 1979. P. 12

[6]José López Portillo in his presidential campaign, 1976.

[7]Uno más Uno. México: marzo 20, 1980

[8]Proceso. México: marzo 24 de 1980.

[9]Elaine Levine. "Causas....".

[10]Crítica Política. México: abril 15-30 de 1980. No. 3. P.11

[11]Carlos Pereyra. "EL SAM, repuesta a la urgente necesidad de cambiar". In Proceso. México: abril 7 de 1980.

[12]Data is taken from attached article by Ed Krueger "Migration of Mexican Campesinos" to be published in the forthcoming issue of Migration Today. New York: April, 1980. And from Federico Gómez Pombo. "Las transnacionales imponen ya criterios de producción en el campo". In Proceso. México: marzo 17 de 1980.

[13]United States Embassy to Mexico. "Mexico: Annual Agricultural Situation". Mexico City: January 26, 1979. P.2

[14]Ibid. P.29

[15]Gustavo Esteva. "The Future of Rural Mexico". Translated for AFSC by Mary Day Kent. Philadelphia: June, 1980.

[16]Heberto Castillo. "México, estado asociado?". Proceso. México: marzo 17 de 1980.

[17]Ibid.

[18]Editor. "Petróleo y gas asociado: nuevos signos de subordinación a Estados Unidos". Crítica Política. México: marzo 15 de 1980.

[19]Editor. "Petróleo: difícil salida". Razones. México: marzo 10-23, 1980

[20]Editor. "5 huelgas peculiares". Razones. México: marzo 10-23, 1980.

[21]Patricia Fernández Kelly, in her paper "Mexican Border Industrialization, Female Labor Force Participation and Migration". September 1978, defines maquiladora:

> Article 32 of the Mexican Customs Code defines maquiladora (also known as 'twin plant', 'in-bond plant', 'off-shore production plant' or 'runaway plant') as an industrial enterprise which: (1) with temporarily imported machinery whatever the manufacturing costs, exports its total production or, (2) with a permanent industrial plant installed to supply the domestic market, directs part or all of its production for exportation, and the direct manufacturing cost of its product at the time of exportation does not reach 40% (Bustamante, 1976:8).

[22]Fransisco Ortiz Pinchetti. "Las maquiladoras: enclave del poder de Estados Unidos en México". Proceso. Mexico: marzo 17 de 1980.

[23]Patricia Fernández Kelly. op. cit., P. 23-24

[24]Carlos Fuentes. Tiempo mexicano. México, Joaquín Mortiz: 1975. p. 187.

Appendix A

The following principles, developed by the Ecumenical Convocation on Ministry with Undocumented Workers. (San Diego, 1979), were adopted by the AFSC/MFSC Immigration Task Force and are reflected in our recommendations.

Immigration policy guidelines.

- Respect the dignity of the individual

- Protect the basic family unit.

- Respect the right of every individual to seek a better life.

- Give priority to persons under duress (economic, political or the result of a natural disaster).

- Protect the skills and labor pools of donor and recipient nations in a balanced and just manner.

- Give consideration to the New International Economic Order in the design of long-term immigration policy.

- Assure protection of all immigrants by the U.S. Constitution and Bill of Rights and all labor laws.

Appendix B

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Working Paper

Select Commission on Immigration and Refugee Policy

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Restructuring the Preference System:

Goals, Categories and Immigrant Characteristics

Among the major goals of an immigration law are economic growth, cultural enrichment, family reunion, refugee resettlement, and the promotion of the American ideals of opportunity and freedom. Some of these goals are interrelated, some may conflict, some may be considered more important than others and the weights given each may change as domestic and world-wide conditions evolve. Important criteria in evaluating the structure of the immigration law and alternatives are (1) the degree of consistency between the goals and the actual effects of the law and (2) how humanely and efficiently conflicts among goals are resolved. In this paper two immigration systems are proposed; one which retains the basic percentage preference structure and country ceiling of the current law, but alters some categories; another which establishes a three category system without country limits combined with a multi-characteristic point system for certain groups of immigrants.

I. PROBLEMS WITH THE PRESENT LAW

Presently U.S. immigration law accords advantages to certain individuals to seek to obtain permanent resident status in the United States based solely on a single personal characteristic, either a relationship to a person already in the United States or a "needed" skill. No attention is paid to attributes of the person other than the one for which he/she qualifies--language ability, non-market skills, experience, age. Of these criteria, the goal of maintaining family groups has long dominated U.S. immigration policy. In 1978, 61 percent of all immigrants qualified because of a close relationship to a person already in the United States; another 33 percent qualified as accompanying relatives of new immigrants. Only 6 percent of legal immigrants qualified without reference to family relationships.

U.S. immigration law appears to establish priorities (preferences) regarding who should qualify for a U.S. immigrant visas through a preference system with numbered categories and percentage allowances. However, the actual distribution of immigrants does not reflect such priorities because of the coexistence of (1) a "trickle down" provision whereby unused visas in a higher category may be used by immigrants qualifying in a "lower" preference category and (2) country ceilings. As a result of "trickle down," for example, while 58,000 visas are allowed for the first preference (under 21, unmarried children of U.S. citizens) and 69,600 for the fifth preference category (brothers and sisters of adult U.S. citizens and their spouses and children), in 1979 only 5,600 came in as first preference immigrants, to presumably reunite a nuclear family, while 98,100 entered as siblings of adult citizens in fifth preference. Perhaps more importantly, the spouses of many permanent resident aliens (second preference) have to wait many years for admission if they apply from oversubscribed countries while specialty cooks, say, from countries with limited visa demand or few U.S. relatives gain admittance easily (sixth preference category).

The current backlog of over 1 million qualified visa applicants is a result of the conflict and interaction between country ceilings and family preference percentages as well as of inflexibility.

The single criterion system of the current law also does not take into account the economic, social or demographic impact of most immigrants, those coming in under the family preference categories or as family members affiliated with skilled or "needed" workers. While it would not likely be desirable to impede the reunification of nuclear family members (as the interaction between country ceilings and the preference system does) on economic or demographic grounds, such characteristics may not be irrelevant for more distant or more independent kin of legal U.S. residents, who now come in solely on the basis of their family ties.

Finally, the current law provides few opportunities for persons to come to the United States who do not have family attachments here or who have no special skill considered in limited supply, especially if such a person applies from a country in which visa demand is high because of family reunification opportunities.

THE CANADIAN IMMIGRATION LAW: THREE CATEGORIES AND A POINT SYSTEM

Canadian immigration law classifies immigrants and refugees into three groups: (1) family class immigrants, (2) convention refugees, and (3) independent immigrants. The immigration law also establishes a point system, applicable to the second and third groups only, which awards points to immigrant applicants according to multiple selection criteria. The point system introduces a great deal of flexibility into the law since the criteria for admission of immigrants as well as total ceilings can be adjusted to fit needs within Canada for immigrants with specific characteristics.

The three immigrant groups and their respective uses of the point system are:

1. Family class
   Any Canadian citizen who is eighteen years or older may sponsor the following:

   a. spouse and spouse's accompanying unmarried children under 21;

   b. unmarried children under 21;

   c. parents or grandparents 60 or over, along with accompanying dependents;

   d. parents or grandparents under 60 who are widowed or incapable of working, along with accompanying dependents;

...

e. unmarried orphaned brothers, sisters, nephews, nieces or grandchildren under 18; and

f. fiance(e) and accompanying unmarried children under 21.

Immigrants who qualify for the family class category are not assessed under the point system, although they must meet basic standards of good health and character.

2. Convention refugees

The refugee classification is based on the UN Convention definition.

Like family class immigrants, Convention refugees are not assigned a rating under the point system. However, they are assessed according to the criteria of the point system, and the assessment is used to evaluate their general ability to adapt sucessfully to Canadian life. This assessment helps determine whether the refugees should be admitted to Canada.

3. Independent and other immigrants

This third group of immigrants includes assisted relatives (people other than members of the family class who have kin in Canada willing to help them get established), retirees, entrepreneurs, the self-employed and other independent immigrants applying on their own initiative. The point system is used to determine whether to admit these immigrants. Admission criteria emphasize anticipated or prospective behavior on the part of the new entrant, i.e., that he or she will invest, work in specified occupation and/or remain in a particular geographical area after entering the country.

Immigrant selection criteria are fashioned under the point system to reflect demand within Canada for immigrants with particular characteristics. The composition and weighting of various factors have been designed to bring immigration in line with Canadian labor market needs. The most emphasis is placed on practical training, experience and capability so that employment-related factors now account for almost one-half of the total possible rating points that can be awarded.

The ten selection criteria under the Canadian system:

- Education
- Specific vocational preparation
- Experience in occupation
- Occupational demand
- Arranged employment or designated occupation (prospective)
- Location (prospective)
- Age
- Knowledge of English and French
- Personal Suitability
- Relative

Not every independent immigrant must meet all ten criteria. Applicants are assessed only according to those factors which actually relate to their ability to become successfully established in Canada, i.e., entrepreneurs are not assessed on occupational demand.

To be admitted as a permanent resident, each immigrant chosen under the point system must be awarded a minimum number of points. Entrepeneurs must receive at least 25 points. Assisted relatives must earn 20 to 35 points depending on who has agreed to sponsor them. All other immigrants selected under the point system must earn 50 points out of a possible 100 before they are issued immigrants visas. In addition, visa applicants must meet certain mandatory requirements concerning job experiance and occupational demand factors.

I. PROPOSALS

PROPOSAL A: ADJUST THE CURRENT PREFERENCE SYSTEM

1. Options

a. Exampt the present first and second preference category immigrants from the numerical limitation; lower the numerically limited ceiling appropriately.

Rationale

Removing the first and second preference categories would be consistent with the idea of family reunification. Removal from the numerical limitation should permanently reduce the backlog of visa petitions.

Problems

Without removal of the country ceilings, many spouses of U.S. legal residents would still have to wait many years for permission to enter the U.S. This "quick fix" does not address the other problems of the current law and indeed reduces the control over the total number of people who are allowed into the United States.

b. Option a with removal of country ceilings

PROPOSAL B: THE "THREE CATEGORY" SYSTEM OF IMMIGRANT VISA ALLOCATION WITH A POINT SYSTEM

The Three Category System for determining to whom visas should be issued n any stated period divides all immigrants to the United States into family unification, refugees, and "independent" immigrants. In turn, these categories are subdivided into groups. Each of the three category ceilings could be lexed in response to changing conditions.

A. Family Reunification Category:

The first and largest category would be concerned with the reunification of families. In this category, preference would be determined in strict "order of kinship" or closeness. There would be no country limits in this category, nor would there be any proportional allocations according to "degree of closeness" preference. The guiding principle would be that nuclear families should be left intact and, within the total ceiling, there would be no limit to the number of immigrants accepted under the first "kinship closeness" preference. Only after all demand for that first preference was filled, would applications for the second preference be considered. One example of a family reunion preference system is:

1. Spouse and unmarried children of U.S. citizens;
2. Spouse and unmarried children of permanent resident aliens;
3. Parents of adult citizens;
4. Parents of permanent resident aliens;
5. Married children of U.S. citizens; their spouses and children;
6. Unmarried brothers and sisters of U.S. citizens.

Alternative preference systems within this category might combine close relatives of citizens and permanent resident aliens. Married brothers and sisters of U.S. citizens might also be included. The major principle is that highest priority be given to the closest relatives of citizens of permanent residents of the United States, without concern for country of origin or numbers involved, as long as the total ceiling is not exceeded. Given an overall target of at least 300,000, consistent with current flows, and visa demand, no immigrants qualifying under groups one through four would be impeded in joining their families.

In this proposed system, those qualifying under groups 5 and 6, but not able to obtain a visa under category A could qualify under category C without a wait if such persons had other desired characteristics. Within the third category, such persons, because of their kinship to a U.S. resident, would be given some advantages (see below). If limiting the number of immigrants from any one country were thought desirable, such criteria could also be reflected in the third category.

B. Refugees:

According to present law, the annual refugee limit is 50,000. Under the Three Category System, that number would be flexible as described in the new law but would be included under the overall immigration total for a specific year or period.

C. Independent Catecory:

The third group of independent immigrants would reflect the other goals of U.S. immigration law--economic development, cultural enrichment, and foreign policy priorities, as well as family attachments. Subject to specified criteria to meet these goals, the existence of this category would broaden the opportunities for persons seeking to make a new life in the United States who did not necessarily have family attachments here, although such linkages to U.S. families could be given positive weight in the determination of access.

As with the other two categories of family-reunification and refugee, a specific numerical limit would be allocated to "independent" immigrants. Two options are possible: a single "independent" category limit; or specified limits for groups, i.e., labor needs (old third and sixth preference, for example) within the 'independent' category. Either option would add up to the same ceiling.

In both options, a point system could be used to determine eligibility for entrance into the country. However, under Option A, the point system would be constructed in such a way so as to facilitate, at least in theory, the entry of persons from all groups. Under Option B, separate point systems would be derived as appropriate for specified, identifiable groups-labor, "investors," and "other" relatives. The point system for the third category is described below.

Rationale: The "Three Category" System of allocating immigrant visas would provide a more coherent, equitable and potentially flexible method of determining who should immigrate to the United States. Also, while all immigrants would be admitted under a total ceiling so there would be greater certainty of and improved planning for the number of immigrants admitted annually, the entry of close relatives of U.S. citizens and permanent resident aliens, refugees, and independent immigrants (workers, "new seed," and "other" family) would be facilitated. Immediate families would not be divided for long periods of time as is frequently the case under the current law because country ceilings and percentage limits would be removed from the first category and sufficient numbers of visas made available.

Although some less close family members such as brothers and sisters might have to wait for longer periods of time, this separation would be less detrimental to the family. Moreover, some of these persons as well as others who cannot qualify at all under present law would be able to enter under a third category "other" relative group. Also within the third category, the entry of needed workers and persons from countries with traditionally low immigration could be facilitated. The latter would bring in new immigrant groups, albeit in relatively small numbers, and potentially might reduce demand to migrate illegally from some countries since there would be a legal avenue.

It is preferable to use a point system only within the last category because close relatives of U.S. citizens and permanent residents and refugees would automatically receive sufficient points under a point system to qualify. Applying such a system would, therefore, create needless administrative work and potentially additional delays for these immigrants. The point system applied within the third category, however, would facilitate the entry of other potential immigrants more equitably than is possible under present law.

Problems: Some close relatives and refugees would still not be screened for labor market or other impacts they may have in the United States since they would be admitted on the sole basis of their relationship to a person in the United States, although to a lesser extent than under the current law. Additionally, some less close relatives whose entry is facilitated under current law, most notably brothers and sisters of adult U.S. citizens, might be delayed in their ability to immigrate since they would not have an assured percentage of the first category visa numbers as they do under the present fifth preference. This problem is mitigate somewhat by the fact that these are less close relatives, and that they might be able to qualify in the third category as well as the first.

a. The Point System for the Third Category

1. How it works: As in the Canadian Law, specified attributes of potential immigrants relevant to immigration are assigned points by statute or by regulation reflecting the priorities and goals of U.S. immigration law, not including immediate family reunification. The total score, the sum of the point-weighted attributes of the applicant, then establishes whether the applicant is "qualified" to be an immigrant and/or his/her priority for obtaining a visa.

Among the criteria might be those which are based on the indelible characteristics of the applicant--age, U.S. relatives, country of birth, sex--those based on characteristics which the individual could adjust or amend in his/her home country--English language ability, education, skill, experience, country of origin or nationality--and those which are based on prospective or anticipated behavior in the United States--working in specified occupations, geographical destination, investing in new enterprises.

2. Rationale

For immigrants not admitted for the purpose of reuniting the immediate or nuclear family of a legal U.S. resident, the point system recognizes that there are multiple goals of immigration law and that individuals have many attributes, some or all of which contribute to meeting those goals (some may detract). Use of amendable criteria creates incentives for applicants to

meet immigration goals and thus provides opportunities for motivated applicants to come to the United States. The point system allocates scarce visas in a manner which is easily understood and objective. The system would reduce the potential abuse of discretion in the visa issuance process since points would be granted on more standardized criteria; consular and INS decisions would thus be more consistent and potentially reviewable.

3. To Whom Does It Apply?

Two options exist for applying the point system to third-category immigrant applicants:

Cotional 1A: Principal Applicant

Application of the point criteria only for the principal immigrant, i.e., the person in a family unit (if applicable) who meets the standards for immigrant status.

Rationale:

This option retains the present principle of the existing law of family reunification within the third category. Except in rare cases where a family member is excludable and a waiver is not available, the qualifications of family members are not considered in determining eligibility for immigrant status.

Problems:

A major portion of all third group immigrants would still not be screened through the point system, thus frustrating the goal of fine-tuning the characteristics of immigrants to meet other goals. The impacts of spouses and children of qualifying immigrants could, thus, frustrate the attainment of goals otherwise met through the screening of all principal applicants. Spouses would apply separately and could be delayed in entry, as in the current law.

Cotion 1B: Family Averaging

Application of the point criteria to all prospective immigrants, including family members when relevant. Under such a system the spouse (if immigrating) would be evaluated along with the principal applicant based on the same criteria. The average of the total score of both spouses and any other adult family members would be used to determine their priority for immigration. Children could be excluded from the system, or additional points could be given or taken away for any children, depending on the criteria and point values set.

Rationale:

Such a system would recognize, at the outset, the family as a unit (if already formed). Adverse impacts due to immigration would be minimal; problems of future reunification would be obviated.

b. Sample Implementation

The "Three Category" System would include an overall annual (or periodic) numerical ceiling and possibly group limits as well. The following is an example of how such a system might appear:

Overall limit: Let us assume that an annual immigration limit of 600,000 visas has been set, (approximately the current number) in which all immigrants are included. (Alternatively, a five-year target of 3,000,000 visas could be established that would allow flexibility between years.)

Within the annual limit of 600,000, 50 percent could be reserved for family-reunification (300,000), 17 percent for refugees, (100,000), and 33 percent for "independent" immigrants (200,000).

The 300,000 allocation for family reunification would go first to spouses and children of citizens until that demand was complete; then visas would be issued to applicants in the second group until that demand was filled, and so on until all numbers allocated to the family reunification category were used on a first-come, first-serve basis.

The 100,000 expected, average allocation for refugees could be distributed according to specifications from the office of the Attorney General.

The 200,000 "independent" immigrants could either be selected according to an overall point system or through three point systems which would allocate visas to subgroups, i.e., 100,000 workers; 50,000 "new" immigrants and 50,000 "other relatives."

Select Commission on Immigration and Refugee Policy

Background Paper

May 9, 1980

THE ACCULTURATION AND ECONOMIC INTEGRATION OF IMMIGRANTS AND REFUGEES: AN ANALYSIS OF 1976 DATA

This paper provides information on two basic questions regarding the acculturation and economic integration of immigrants and refugees in the United States:

1. How long does it take new immigrants to acquire the average patterns of behavior and economic success of comparable native-born Americans?

2. Are there significant differences in adaptation, integration, and acculturation among immigrants from different countries, controlling for length of time in the United States, age, and schooling?

This paper reports findings on the (1) earnings, (2) use of public assistance programs, (3) labor force participation, (4) language ability, and (5) marital status and family structure of foreign-born immigrants and refugees, aged 25 to 64.

The information was obtained from the most recent (1976) national probability sample of the U.S. population, the Survey of Income and Education (SIE). The results described below -- and summarized in Tables I to IV -- are based on analyses of all the foreign-born males and females aged 25 to 64 in the sample (n = 4,651 and 5,995, respectively), and on probability sub-samples of comparable native-born males and females (n = 9,320 and 10,043). Some of the foreign-born in the sample are refugees, those from Russia or Poland and Cuba. The data do not contain any information on the foreign-born respondents' legal status; presumably some may be here illegally. All estimates are based on analyses of unweighted data. Preliminary work suggests little difference between weighted and unweighted results.

I. WHAT IS THE TYPICAL ADJUSTMENT PERIOD OF IMMIGRANTS IN TERMS OF ECONOMIC INDEPENDENCE AND INTEGRATION?

A. Earnings

Each year of residence in the United States adds about 46 dollars to the annual earnings of foreign-born males and about 29 dollars to the annual earnings of foreign-born females. On average, it takes about 30 years for the mean annual earnings of foreign-born males to reach the mean annual earnings of native-born males; among females the comparable period is a little over 17 years, as the difference in average earnings at entry between native and foreign-born women appears to be smaller than that for men. For non-refugee immigrants, this period is about 28 years for males and 15 years for females.

Mean annual earnings at entry vary by country of origin for immigrants and refugees. For example, Asian immigrants and European and Cubar refugees with the same age and schooling have lower initial earnings than European, Canadian, and Mexican immigrants. The highest mean earnings at entry of foreign-born males -- $12,307.54 for European immigrants -- exceed slightly those of native-born males of similar age, schooling levels and work experience -- $12,265.29. Among females, the highest initial earnings -- $3,779.31 for European refugees -- exceed by almost $500 those of comparable native-born women.

B. Home Ownership

While almost two-thirds of the native-born men and women own their homes, only 52 percent of the foreign-born males and 54 percent of the foreign-born females do so. However, with each additional year of residence, the probability of owning a home increases by about one percent. Hence, on average the foreign-born overtake the native-born in home ownership after 27-28 years of residence.

C. Language

The percent of immigrants and refugees with difficulty in speaking English decreases by about one percentage point for each additional year of residence. Thus, while it appears that at entry about 39 percent of the foreign-born males and almost 44 percent of the foreign-born females had language problems, after a period of approximately 15-16 years these rates decreased to 25 percent and 29 percent respectively.

II. HOW DO IMMIGRANTS AND REFUGEES COMPARE WITH NATIVE-BORN AMERICANS IN THEIR UTILIZATION OF PUBLIC ASSISTANCE PROGRAMS?

Native-born males are slightly less likely to be receiving some form of governmental assistance than are male immigrants -- approximately one percent of male immigrants and seven tenths of one percent of native-born males were receiving such assistance in 1975. On the other hand, while both foreign-born and native-born females have higher rates of public assistance utilization than their male counterparts, native-born women are more likely to be receiving such aid than foreign-born women -- almost 4 percent of the native-born receive some form of assistance compared to 2.35 percent of the foreign-born females.

While mean welfare assistance rates for individuals do not differ significantly among males from different countries, they do among females, ranging from .35 percent for female European refugees to 5.56 percent for Mexican immigrant women. Moreover, three groups deviate from the American pattern of greater use of public assistance by women than by men: Male European and Cuban refugees and, to a much lesser extent, male Asian immigrants are more likely to receive welfare payments than are women from the same country of origin.

After an initial adjustment period of less than 15 years, average annual public assistance payments through state and local welfare offices to the families of immigrant males are slightly less than to those of native-born males ($65 versus $73); and substantially less to the families of immigrant females than to those of native-born females ($113 versus $159).

Within both male and female samples, public assistance payments were highest to Cuban refugee families, about $229 and $336 per year, respectively.

III. DO IMMIGRANTS FROM DIFFERENT COUNTRIES EXHIBIT SIGNIFICANTLY DIFFERENT RATES OF ECONOMIC SUCCESS?

Three main indicators of economic integration are labor force participation, unemployment, and earnings.

A. Labor Force Participation

There is little difference in labor force participation between the foreign-born and native-born. The proportion of native-born males in the labor force is 90 percent, while that of foreign-born males is 89.9 percent; among females, the proportions are 54.7 percent for native-born and 53.86 percent for the foreign-born.

However, labor force participation rates differ across groups of immigrants and refugees. Among males, they are highest for Cuban refugees and for immigrants from English-speaking countries, followed by European and Mexican immigrants, and lowest for Asian immigrants and for European refugees.

Mean labor force participation rates vary more by country of origin among females than among males, a span of 23 percentage points versus 7 percentage points across the male groups. The highest mean female labor force participation rate is that of Cuban refugee women (68.57 percent); the lowest rate is that of Mexican immigrant women (45.47 percent).

B. Unemployment

The proportion unemployed is somewhat higher among the foreign-born than among the native-born (5.1 percent versus 3.5 percent among males and 4.5 percent versus 3.84 percent among females).

Among groups of foreign-born males, the data show that unemployment is highest for Cuban refugees (9.13 percent), followed by Asian immigrants (6.54 percent), and immigrants from English-speaking countries (6.1 percent). Unemployment is lowest among European refugees (5 percent), Mexican (4.71 percent) and European immigrants (3.39 percent).

Among groups of foreign-born females, unemployment ranges from 3.45 percent for European and Asian immigrants to 8.74 percent for Cuban refugees.

C. Earnings

Native-born males earn slightly more than foreign-born males, about $700 more annually. However, mean annual earnings of employed native-born and foreign-born men differ by only $539. After 28 years of residence, the average earnings of non-refugee immigrants begin to exceed those of the native-born.

Among females the earnings differential by nativity is both slight and ambiguous. The mean annual earnings of all native-born women exceed those of all foreign-born women by only $56; the mean annual earnings of employed foreign-born women are greater than those of employed native-born women by $82.

Among males, the highest mean annual earnings is found among European immigrants, and the lowest among Cuban refugees and Asian immigrants.

Among females, however, European refugees have the highest mean earnings. While Mexican women, on the average, earn the least per year of all foreign-born women, those that are employed earn more than any other group of employed women born abroad except for female European refugees, and earn more than employed native-born women. The differential ranking is due to the relatively low employment and labor force participation rates of Mexican women.

ARE THERE SIGNIFICANT DIFFERENCES IN ENGLISH-LANGUAGE SKILLS EXHIBITED BY IMMIGRANT GROUPS FROM DIFFERENT COUNTRIES?

Forty-two percent of both foreign-born males and foreign-born females orted that English was not their usual language, with 25 percent of all male igrants and refugees and 29 percent of the female foreign-born having some uble in speaking English--despite an average length of residence in the ted States of 15 years.

Two foreign-born groups--those from Mexico and those from (presumably French-aking Canada)--appear to be significantly less able to speak English than er immigrants: 37 percent of Mexican males and 40 percent of the male immi-nts from "English-speaking" (England and Canada) countries spoke English h considerable difficulty. Female immigrants from Mexico and Canada also the highest proportion of persons with problems speaking English, 47 per-t.

Within all groups except non-English-speaking European and Asian immigrants, en were somewhat more likely than men to be speaking another language on a

regular basis. Among immigrants and refugees from non-English speaking countries, those from Europe were most likely to speak English in daily life; Mexican immigrants and Cuban refugees were least likely to employ English regularly.

Forty-seven percent of the men and 40 percent of the women reported reading an English-language newspaper. Variation across the identified groups was pronounced: only 13 percent of the women and 19 percent of the men from England and Canada read a newspaper in English, while 70 percent of the Asian men did so.

V. HOW DOES THE FAMILY STRUCTURE OF FOREIGN-BORN AND NATIVE-BORN RESIDENTS DIFFER?

A. Marriage and Marital Stability

The proportion married is identical for comparable foreign-born and native-born U.S. residents. Asian, European, and Canadian immigrants, however, are more likely to be married than other groups, including natives.

The proportion married varies by about seven percentage points across groups of immigrants and refugees. While European refugee females are the most likely to be married among the female groups, European refugee males are the least likely to be married.

While the likelihood of divorce increases with the duration of residence of the foreign-born in the United States, family stability appears somewhat greater for this group than for native-born Americans. The probability of divorce for the foreign-born in the United States was almost 20 percent less than that of the native-born in 1976. The proportions divorced were remarkably similar among groups of foreign-born females, while varying more among males. Asian immigrant males were less likely to be divorced than all other male groups.

B. Family Size

Foreign-born and native-born residents do not differ in their family size or in the average number of children under 18 years of age.

There are significant differences in family size among foreign-born groups, however. For example, the family size of Asian and Mexican immigrant males was larger by one person than that of males from English-speaking countries. There were also significant differences among these groups in the average number of children under 18 years of age, with Mexican immigrants having the largest number, at a little over 2, and European refugee women the smallest number, at almost 1.2.

TABLE 1

COMPARISONS OF NATIVE-BORN RESIDENTS WITH FOREIGN-BORN IMMIGRANTS AND REFUGEES: MALES AGED 25-64 IN 1976[1]

	Native Born	All Foreign Born	Non-Refugee Immigrants
Economic			
1. Percent in labor force	90.00	89.90	90.09
2. Percent unemployed	3.49	5.08	4.85
3. Annual earnings, all men	$12,265.29	$11,568.15	$11,669.13
4. Annual earnings of employed men	$14,177.89	$13,638.47	$13,689.73
5. Percent of individuals receiving public assistance	0.71	1.07	1.03
6. Average annual family public assistance payments	$72.72	$72.01	$65.53
7. Percent owning home	65.80	52.10	52.37
Family			
1. Percent married	81.30	82.90	83.23
2. Percent divorced	6.56	5.38	5.09
3. Family size	4.47	4.53	4.54
4. Number of children under 18	1.49	1.46	1.47
Language and Location			
.. Percent whose usual language is not English	-	42.10	41.51
2. Percent with difficulty in speaking English	-	25.20	25.44
3. Percent reading English-language newspaper	-	47.00	45.89
4. Percent residing in an SMSA[2]	38.50	61.50	60.36
Sample Size	9,320	4,651	4,302

Average age = 46 years, average schooling = 12 years for both groups.
Average residence in the United States of the foreign-born = 16 years.
Estimates based on ordinary least-squares linear regression model.

Standard Metropolitan Statistical Area.

TABLE II

COMPARISONS OF NATIVE-BORN RESIDENTS WITH FOREIGN-BORN IMMIGRANTS AND REFUGEES: FEMALES AGED 25-64 IN 1976[1]

	Native Born	All Foreign Born	Non-Refugee Immigrants
A. Economic			
1. Percent in labor force	54.70	53.86	53.21
2. Percent unemployed	3.84	4.50	4.27
3. Annual earnings, all women	$3,279.60	$3,223.37	$3,169.40
4. Annual earnings of employed women	$6,448.29	$6,530.33	$6,477.61
5. Percent of individuals receiving public assistance	3.97	2.35	2.41
6. Average annual family public assistance payments	$159.01	$120.49	$112.97
7. Percent owning home	65.62	54.05	54.44
B. Family			
1. Percent married	77.35	79.77	80.01
2. Percent divorced	10.27	8.56	8.44
3. Family size	4.47	4.58	4.60
4. Number of children under 18	1.51	1.50	1.51
C. Language and Location			
1. Percent whose usual language is not English	-	42.42	42.90
2. Percent with difficulty in speaking English	-	28.99	28.87
3. Percent reading English-language newspaper	-	40.33	39.41
4. Percent residing in an SMSA[2]	38.48	58.30	56.66
Sample Size	10,043	5,995	5,607

[1]Average age = 42 years, average schooling = 11.2 years for foreign-born women, 12.1 years for native-born women.
Average residence in the United States of the foreign-born = 15.2 years.
Estimates based on ordinary least-squares linear regression model.

[2]Standard Metropolitan Statistical Area.

	Native Born	European Refugees	Cuban Refugees	European Immigrants	Mexican Immigrants	Asian Immigrants	Immigr fro Engli Speak Count
Economic							
1. Percent in labor force	90.00	85.09	91.80	91.78	91.28	84.46	91
2. Percent unemployed	3.49	5.00	9.13	3.39	4.71	6.54	6
3. Annual earnings	$12,265.29	$11,123.24	$10,360.46	$12,555.71	$11,492.29	$10,138.25	$11,931
4. Annual earnings of employed men	$14,177.89	$13,880.43	$12,520.19	$14,204.90	$13,275.14	$13,011.10	$13,909
5. Percent of individuals receiving public assistance	0.71	0.62	2.03	0.66	1.86	1.59	
6. Average annual family public assistance payments	$72.72	$43.87	$228.65	$45.80	$86.66	$103.49	$26
7. Percent owning home	65.80	54.03	54.34	60.11	49.14	40.91	59
Family							
1. Percent married	81.30	79.15	82.93	84.89	83.37	85.24	84
2. Percent divorced	6.56	8.09	8.42	4.67	5.21	2.34	5
3. Family size	4.47	4.22	4.70	4.46	5.02	5.20	4
4. Number of children under 18	1.49	1.23	1.54	1.42	2.10	1.62	
Language and Location							
1. Percent whose usual language is not English	-	30.95	62.65	31.36	57.65	51.65	5
2. Percent with difficulty in speaking English	-	12.72	30.23	10.96	36.96	10.63	4
3. Percent reading English-language newspaper	-	55.30	61.77	47.25	51.34	70.17	1
4. Percent residing in an SMSA[3]	30.50	69.07	70.90	61.02	60.74	71.65	3
Sample Size	9,320	177	173	1,363	464	567	

Average age = 46 years, average schooling = 12 years for both groups
Average res[illegible]ce in the United States of the foreign-born [illegible]'s years.
Estimates [illegible] on ordinary least-squares linear regression [illegible].

	Native Born	European Refugees	Cuban Refugees	European Immigrants	Mexican Immigrants	Asian Immigrants	Immigran from English Speakin Countri
A. Economic							
1. Percent in labor force	54.70	58.25	68.57	52.67	45.47	58.11	50.6
2. Percent unemployed	3.84	6.11	8.74	3.45	7.40	3.45	4.8
3. Annual earnings	$3,279.60	$3,964.49	$3,960.03	$3,073.21	$2,772.41	$3,522.08	$2,863.2
4. Annual earnings of employed women	$6,448.29	$7,603.55	$6,618.80	$6,243.82	$7,282.40	$6,443.62	$6,243.4
5. Percent of individuals receiving public assistance	3.97	0.35	1.30	1.69	5.56	1.49	2.1
6. Average annual family public assistance payments	$159.01	$43.50	$336.42	$79.72	$200.96	$97.78	$93.6
7. Percent owning home	65.62	57.91	48.55	60.96	49.85	47.68	56.1
B. Family							
1. Percent married	77.35	83.49	75.79	83.35	76.02	81.06	82.4
2. Percent divorced	10.27	4.14	13.95	7.13	10.49	7.09	7.3
3. Family size	4.47	4.19	4.57	4.53	4.27	4.89	4.4
4. Number of children under 18	1.51	1.17	1.47	1.48	2.20	1.47	1.4
C. Language and Location							
1. Percent whose usual language is not English	-	31.67	69.21	30.17	65.79	40.29	54.6
2. Percent with difficulty in speaking English	-	16.77	38.90	19.33	47.00	21.58	47.1
3. Percent reading English-language newspaper	-	51.64	54.79	45.24	48.10	54.30	13.0
4. Percent residing in an SMSA[3]	38.48	70.91	86.35	55.59	59.06	64.62	41.4
Sample Size	10,043	185	203	1,928	449	868	1,166

[1] Average age = 42 years for both groups; average schooling = 11.2 years for foreign-born women, 12.1 for native-born women. Average residence in the United States of the foreign-born = 15.2 years. Estimates based on ordinary least-squares linear regression model.

[2] Includes an unknown number of French-speaking Canadians.

[3] Standard Metropolitan Statistical Area.

Select Commission on Immigration and Refugee Policy

Working Paper

Immigration Criteria for Non-immediate Relatives of U. S. Citizens in Category Three--Seed-Independent Immigrants

May 28, 1980

The Present Law

The current law prescribes occupation or "exceptional ability in the sciences or arts" as expressed in the third preference and sixth preference as criteria for immigrants unrelated to U. S. residence. Persons admitted in the "non-preference" category are also screened solely on the bases of their prospective occupations unless they establish that they will not work or will invest at least $40,000 in a U.S. business. Only six percent of all immigrants are admitted on the bases of non-family criteria at the present time.

The present system has been criticized for the following reasons:

a. family relationships reflect a permissive-compassionate view of immigration almost to the exclusion of other American immigration goals;

b. only six percent of our immigrants are screened on the bases of prospective occupation and these persons can change occupations quickly;

c. the procedures for occupational screening (labor certification) are: 1) expensive to administer; 2) encourage illegal immigration or visa abuse because of the requirement in most cases that employers file partitions for individual workers which sometime occurs after the foreign worker has been hired; and 3) are arbitrary because of the difficulty of determining the availability of "willing" workers for specific jobs, as required by statute.

Alternative Systems for Selecting Independent Immigrants to the United States.

This paper should be read in conjunction with one already

issued entitled, "Restructuring the Preference System: Goals, Categories, and Immigrant Characteristics," a briefing paper which provides background for a discussion of the third category of seed-independent immigrants.

A major assumption in considering possible ways of allocating visas to independent immigrants is that the selection criteria by which immigrants qualify for admission to the United States should contribute to achieving goals in the national interests of the United States--national economic development and productivity, cultural enrichment and diversity, national security--and should not be inconsistent with other American ideals of aiding or protecting the poor and disadvantage and promoting freedom and opportunity.

Present Third Preference Immigrants

None of the systems proposed below for selecting independent immigrants would be incompatible with continuing a policy in which the immigration of persons (and their immediate relatives) with exceptional abilities would be facilitated. Included among this group would be top level scientist, artist, scholars and multi-national corporation executives who skills are in demand within an internationally competitive market and whose admission would augment the productivity of the U. S. economy and/or enrich U. S. cultural life significantly.

All systems discussed below would include an allocation of visas to this group (corresponding to the current third preference category) based on legitimate job offers from U. S. institutions or businesses or on some other form of sponsorship.

Investors

In addition, it is contemplated that a smaller percentage of visas in the independent category would be allocated for investors (unless a point system was used for the largest group of seed-independent immigrants. Then, presumably points could be assigned to investors).

A brief analysis of options for choosing the largest group of seed-independent immigrants follows:

Option 1: The Open System

In this system, persons are admitted each year, subject to exclusion criteria and within numerical limits, solely on the basis of the time at which they registered as visa applicants. No attention would be paid to the characteristics of the immigrant.

Rationale

This system assumes that it is difficult, if not impossible, to determine who can best contribute to the interests of the United States. Moreover, such attributes as motivation, energy, willingness to take risks, and certain abilities which are important for fostering economic development cannot be assessed or known in advance. The system would, through the self-selection process, promote the entry of motivated individuals and also would be consistent with the U. S. ideals of opportunity, non-discrimination, and freedom.

Problems

This system, under which almost anyone could qualify, subject to exclusions, would lead to large backlogs, given differential levels of economic development across the world, even with annual registration requirements. The costs of applications would be low and the potential returns large compared to alternative investments in the least developed countries where "underemployment" rates are high.

The system would not necessarily select the most motivated; instead, it would admit first those who could

most afford to wait in line--the underemployed or unemployed, or the wealthy, who could hire persons to wait in line. The open system thus might be helpful to the poorest and the wealthiest groups in other countries, but it would not necessarily serve the interests of the United States.

Without country ceilings, the mix of applicants might be heavily weighted to certain countries--where information about the new law would be diffused first, where access to consular officers would be greatest, or where costs of applying would be lowest. With country ceilings and the large demand for visas, the probability of being admitted to the United States without delays of perhaps as much as ten or more years would be small for persons from certain countries.

Option II. The Open or Non-preference System Combined with Occupational Exclusion

In this system, all non-refugee, non-family reunification applicants, other than those in the "world class worker" group, would qualify for admission except persons in specified occupations to repeat: they would not have to have a validated job offer but they could not be holders of certain specified occupations. The "exclusion" occupations would be those for which it would be determined that native workers would be severely hurt economically by an influx of foreign workers.

Rationale

This system would be relatively easy to administer, corresponding basically to the pre-1965 certification procedure in which any alien could enter the United States unless the Secretary of Labor "closed the door."

This system is relatively open so that illegal migrants would be effectively channeled into a legal channel as is true of the totally open system. However, the qualified applicant pool would be smaller than the first-come, first-served open system and smaller backlogs would be created.

This system builds in some safeguard against adverse economic effects on native workers, while not severely impeding the satisfaction of domestic labor demands.

Problems

Determining the list of occupations to be protected may be difficult and, given the dynamics of the American economy, would require flexibility for effective implementation.

Determining the "true" occupation of applicants is sometimes difficult, particularly for low-skilled workers. Ensuring that workers, once admitted, do not enter such exclusion occupations is impossible.

This system ignores all attributes of applicants other than occupation--and that in a negative way--and thus does not meet possible other U. S. goals.

Unless the number of occupations which would exclude immigrants were high or pertained to a large number of applicants, it is likely that large backlogs of qualified applicants would be associated with this system.

Option III: Occupational Exclusion Combined with a Job Offer System

In this system, persons not in the "world class worker" category would qualify (along with their immediate family) for a visa on the basis for having a legitimate job offer from a U. S. employer. Such offers could be subject to protect some American workers by excluding some occupational categories. Thus, labor demand, as reflected by an employers' offer, would be the sole basis for entry into the United States.

Rationale

In this system, the U. S. labor market mainly would determine the allocation of visas in the seed-independent category, perhaps the most efficient way of determining who

are "needed" workers in the U. S. economy. Presumably, employers would be interested in the potential employees productive attributes, including such characteristics as skills, age, English language ability, motivation, and energy.

This system would pick up efficiently some of the flows of illegal workers who have already been working in the United States. Such legal workers would have fewer negative impacts on U. S. workers because of the reduction in the potential for exportation associated with illegal status. Any adverse impacts on certain native workers would be ameliorated through the occupational exclusion procedures.

The system would be easy to administer. Employers would have the responsibility for finding their potential employees and petitioning for their admission much as in the administration of the present sixth preference. Unlike the present situation, the admission of wanted workers would not be frustrated by a cumbersome labor certificate procedure. Domestic labor markets would be protected by the occupations-exclusion list and by flexing the total number of immigrants admitted according to the unemployment rate.

Problems

The necessity of a job offer would exclude a small number of "self-employed" entrepreneurs--persons expecting to open a small shoe repair shop, for example--although the law would preclude such persons from starting up businesses after working as employees.

The number of job offers to foreign workers is likely to exceed the number of available visas, leading to backlogs for a while although backlogs would be reduced to some extent since most job offers cannot be held open for very long.

This system would ignore other attributes of immigrants except insofar as they were picked up through the operation of the market. Attributes such as cultural enrichment and diversity might be neglected since they would not be planned for. Family ties might be neglected unless, as discussed in

Option IV, preference were given to those who not only have a valid job offer but also have non-immediate family kinship with citizens and resident aliens such as brothers and sisters.

Finally, it will be impossible to keep some of those immigrants in the jobs which they came to fill after working at them some time in the United States. Although, the market principle which lead them to other employment would presumably be in the interest of most Americans.

Option IV: A Job Offer System without a List of Occupations to be Excluded

Rationale

In this system, the market would work unfettered without intervention by the government in micro-labor markets. It would serve the American economy best if employers were free to seek employees regardless of occupation as long as employers lived up to all fair labor and standards legislation and new workers had explained to them those rights and entitlements under American law. The American labor market would be protected by linking and adjusting the number of persons permitted to come in as seed-independent immigrants to unemployment rates as projected by the Council of Economic Advisors. The occupational exclusion list would be unnecessary and possibly harmful because of arbitrary interference with employers seeking economic development through the hiring of seed-independent immigrants.

Problems

Other problems would be the same as for Option III above with the additional possibility that certain segments of American labor would not be sufficiently protected without the occupational exclusion list.

Option V: The Job Offer System (with or without Occupational Exclusion) with Preference for Relatives

Rationale

The United States could continue to further the reunification of families without interfering with the fundamental principle underlying the seed-independent category, the selection of persons who further the national interests of the United States. By allowing brothers and sisters of U. S. citizens who have a valid job offer to have preference over other job offer applicants who are not relatives, two major goals can be served at once.

Problems

The major problem is the one which had lead to the consideration of the elimination of the fifth preference from the family reunification category, the explosive growth potential of brothers and sisters, which lead in the doubling of the backlog between Jan. 1, 1979 and Jan. 1, 1980 from 233,000 to more than 500,000. Because of that geometric growth, it might be possible for brothers and sisters to take all of the visas allocated in the seed-independent category within a short period of time. This would mean that our immigration system would once again be dependent on having a family reunification base in the United States, thereby shutting out seed-independent immigrants from newly independent countries. It would also lead to economic pressures for immigration through the exempt category and the remaining family preferences in category one. It would also restrict the operations of a market in which employer and employee seek each other for the best job match regardless of family relationship.

Option VI: The Point System

In this system, as in the Canadian and Australian immigration laws, specified attributes of potential immigrants are assigned points (by statute or by regulation) reflecting the multiple priorities and goals of the United States. The total score, the sum of the point-weighted attributes of the applicant, establishes whether the applicant is "qualified" to be an immigrant and/or his/her priority for obtaining a visa. The minimum qualifying score can be adjusted up or down to eliminate the problem of large "qualified" applicant backlogs.

Among the criteria might be those which reflect the need for types of workers (with or without job offers), for cultural diversity, and for national unity as well as criteria which accelerate integration or provide recognition of family ties. These criteria could be based on the indelible characteristics of the applicant, on characteristics which the individual could adjust or amend in his/her home country or on prospective or anticipated behavior in the United States. (See the working paper, "Immigration Criteria for Non-Immediate Relatives of U. S. Residents.")

Rationale

For immigrants not admitted (1) for the purpose of reuniting the immediate or nuclear family of a legal U. S. resident or (2) as "world class workers," the point system recognizes that there are multiple goals of immigration law and that individuals have many attributes, some or all of which contribute to meeting those goals (some may detract). Use of amendable criteria (language) creates incentives for applicants to meet immigration goals and thus provides opportunities for motivated applicants to come to the United States. The point system allocates "scarce" visas without the necessity of backlogs in a manner which is easily understood and objective.

The system would reduce the potential abuse of discretion in the visa issuance process, since points would be granted on more standardized criteria; consular and INS decisions would thus be more consistent and potentially reviewable.

Problems

The major problem with the point system lies in determining the set of attributes to be assigned points and the weights attached to them; the system is thus more difficult to set up than to administer. The degree to which this is a problem depends in part on the extent of which there is disagreement among decision makers. Disagreement

on designing the point system might be socially divisive since it touches on issues of ethnic sensibility as well as other important controversial value judgment matters. In addition, since the point system would have to be reviewed periodically controversy over the attributes to be weighted would not necessary quiet down after a decision was made. Certainly, the point system would have to be periodically reviewed and controversy would ensue each time.

Another problem with the point system is that there is tremendous variability from one country to another in the validity of evidence regarding age, martial or family relationship, years of schooling and even skills from country to country. Apart from the question of equity in the examination of evidence presented by an applicant, there is also the problem of fraud in applications presented.

To Whom Does It Apply?

Two options exist for applying the point system to third-category immigrant applications:

Option IVA: Principal Applicant

Application of the point criteria only for the principal immigrant, i.e., the person in a family unit (if applicable) who meets the standards for immigrant status.

Rationale

This option continues the present principle of family reunification within the proposed third category. Except in rare cases where a family member is excludable and a waiver is not available, the qualifications of family members would not be considered in determining eligibility for immigrant status for the entire nuclear family.

Problems

A major portion of all third group immigrants would still not be screened through the point system, thus

frustrating the goal of selecting the characteristics of immigrants to meet other goals. The impacts of spouses and children of qualifying immigrants could thus frustrate the attainment of goals otherwise met through the screening of all principal applicants. Spouses who apply separately could be delayed in entry, as under the current law.

Option IVB: Family Averaging

Application of the point criteria to all prospective immigrants, including family members when relevant. Under such a system, the spouse (if immigrating) would be evaluated along with the principal applicant; the evaluation would be based on the same criteria. The average of the total score of both spouses and any other adult family members would be used to determine their priority for immigration. Children could be excluded from the system, or additional points could be given or taken away for any children, depending on the criteria and point values set.

Rationale

Such a system would recognize, at the outset, the family as a unit (if already formed). Adverse impacts due to immigration would be minimal; problems of future reunification would be obviated.

Problems

The system could create incentives for family separation.

Sample Implementation: Principal Applicant

To illustrate the versatility of the point system and how it would work, two sample point systems are described, and four fictitious principal visa applicants are presented.

Two Sample Point Systems:

The illustrative point systems award varying levels of points reflecting different priorities for the same four characteristics--age, country of origin, skill in English

language, and siblings in the United States. System 2 also awards points for having a job offer; system 1 does not. Other criteria could, of course, be added. The two sample points systems are as follows:

Criteria	System 1	System 2
Age--points for each year below 70	10	10
Country--points for relative under-representation among recent immigrants to the U. S. (points given for each % point below 20% of total immigrant flows)	10	2
English test score--points for each test score	10	5
Relatives--points for having U. S. citizen brothers or sisters	5	25
Job offer	0	100

Age: In both sample systems, sex, occupation, and education are ignored, while youth is judged advantageous for integration into U. S. society and for achieving demographic and economic goals. Ten points are given for each year of age below age seventy.

Country: In both systems, the goal of cultural diversity is reflected in the awarding of points for immigrants from countries which have not been represented in large numbers in the past. The amount of points, however, varies across the two systems, ten awarded in one and two in the other. This criterion substitutes for country ceilings.

English test score: Knowledge of English is regarded as an important criterion for the selection of immigrants in both illustrative point systems. However, the magnitude of the advantage differs. In the first system, each point of

the applicant's English test score "buys" 10 points toward immigration, while in the second system, each point is worth half as much.

Relatives: The systems also confer points for having non-immediate relatives in the United States. The first option awards 5 points and the second 25.

Job offer: System 2 awards 100 points to applicants with a job offer from a U. S. employer.

Fictitious Visa Applicants:

1. A man, 35 years of age, who finished college, scored 40 in the English test, comes from a country whose nationals obtained 20 percent of all immigrant visas in the last five years, has a job offer from a U. S. employer, and has no relatives in the United States.

2. A man, 70 years of age, who finished the eighth grade, scored 95 in the English test, comes from a country whose nationals obtained 3 percent of all immigrant visas in the last five years, is retired, and has no relatives in the United States.

3. A woman, 50 years of age, who finished high school, scored 70 in the English test, comes from a country whose nationals obtained 10 percent of all immigrant visas in the last five years, works in an occupation with an unemployment rate of 3 percent in the United States, and has a U. S. citizen brother.

4. A man, 21 years of age, who finished college, scored 80 in the English test, comes from a country whose nationals obtained 8 percent of all immigrant visas in the last five years, plans to work in an occupation with an unemployment rate of 5 percent in the United States, and has a U. S. citizen sister.

Applying the Point Systems:

Application of these alternative point systems produces different results:

	System 1		System 2	
	Points	Rank	Points	Rank
Person 1	750	4	650	2
Person 2	1,120	2	509	4
Person 3	1,005	3	595	3
Person 4	1,465	1	964	1

In both systems, Person 4 has the highest score. His youth and knowledge of English make him a highly desirable immigrant, and he was greatly helped by the circumstance of not having too many fellow nationals among recent immigrants.

Person 3 ranks third under both System 1 and 2 despite differences under the two weighting schemes in the values placed on her knowledge of English, on her country of origin, and on her having siblings in the United States.

Person 2 ranks second under System 1 and 4th under System 2, reflecting differences in the magnitude of the points associated with country of origin and knowledge of English, as well as the fact that he has neither relatives nor a job offer to offset his lower scores under System 2.

Person 1 ranks second and fourth in Systems 2 and 1, respectively, reflecting different weights for knowledge of English, for visas going to fellow nationals, and for the holding of a job offer. Without the job offer, Person 1, because he comes from a country well-represented in past immigration flows, would fall to rank 3. Under System 1, because of the weight given to country of origin, even 100 points for the job offer would not raise his rank above 4.

These examples illustrate how characteristics combined to produce each applicant's point score and position in the rank orderings. Other point allocation or sets of criteria could, of course, be used.

MR/GJ/LHF/kg
05/29/80

EXECUTIVE SUMMARY

CONSULTATION
ON

THE RELATIONSHIP OF IMMIGRATION TO ECONOMIC DEVELOPMENT AND PRODUCTIVITY

July 15, 1980

The consultation focused on the nature and extent of the relationship of immigration to economic development and productivity. It further sought to develop specific recommendations on admissions criteria for Category III of the immigration model under consideration by the Commission.

Impact of Immigration on U.S. Economy

At the outset, the following assumptions were made:

- that illegal immigration would be controlled;
- that applicants for immigration would meet a test of labor market protection;
- that applicants would not be in dependent age groups; and
- that applicants were otherwise qualified.

Given these assumptions, the participants considered what the economic impact would be over the next 20 years if 250,000 immigrants (above present levels) were admitted each year.

The discussion that followed revealed a certain amount of disagreement on the nature and extent of the resultant economic impact. Some argued that the 6.9% increase in the labor force attributable to immigration between 1975 and 1976 (the latest year with available data) was too small a factor to be a relevant indicator. Others felt that it was significant. One economist noted that the 250,000 figure would make up one-half of the decline in the growth of the potential labor force that would occur naturally.

Nevertheless, while there was no consensus that expanding immigration at that level would constitute a large contribution to U.S. economic prospects, the general view seemed to be that it would have a modest impact. There was agreement that immigration is only one of many ways of producing economic growth, and not the most significant one.

The following comments represent the views of the panelists:

"The number seems so small. This may not be a bad time to consider liberalizing the immigration law." (Daniel Sacks)

"Immigration is 98% irrelevant to economic development and productivity. It is wrong and dangerous to hinge economic policy on something external like immigration." (Markley Roberts)

"The immigration numbers are perhaps small . . . but this is a segment of economic policy over which we can exercise some control." (Leonard Hausman)

Policy Considerations in Admissions Criteria for Independents

One economist expressed concern about the future size of the dependent (elderly/disabled) population. In 25 years, he said, 40% of the federal budget will be spent on the elderly. In order to sustain these federal programs, policies must be devised to spur productivity. Although the immigration numbers are small, an infusion of very skilled workers could significantly increase national output.

Another participant suggested that by 1984-85 there would be entry-level labor shortages. He said, however, that these jobs could be performed by robots in order to keep the United States competitive. He suggested that the United States may move increasingly to high-technology jobs and that the focus of the third category should be on the service sector or on skilled workers. Other persons suggested that, despite the 8% unemployment figure, there would continue to be geographical and occupational labor shortages and they foresaw a mix of skilled and unskilled labor shortages.

Goals of the Independent Category

While it is clear that immigrants admitted under family reunification also contribute to economic productivity, they are not specifically selected for that. There exists the possibility of choosing immigrants by criteria which would maximize their economic benefit while minimizing their negative labor market impact. Economic benefit, however, is only one of the goals previously set forth for the independent category of immigrants as proposed in several models being considered by the Commission. The other goals of an independent category were stated as follows:

1. To make a small but important contribution to American economic life by stimulating investment, creating jobs, and contributing to our social security system;

2. To add to our social and cultural life by strengthening family structure and multilingual and cultural resources, and by enhancing the values of hard work, thrift, and future planning;

3. To make an important potential contribution to the population that the United States needs to maintain optimum defense capability;

4. To domonstrate the responsibility of the United States in a world of poverty and aspiration, and to strengthen the image of the United States as an open and democratic society;

5. To enhance the opportunity for persons to immigrate to the United States who come from new countries with little or no base here for family reunification (67 such countries have been created since 1945) and from old countries, such as Ireland, whose base has been eroded;

6. To strengthen relationships with other countries by providing a legal channel of migration for persons who otherwise would be prevented from immigrating (and who would resort to illegal immigration). This would ensure a continued flow of remittances to these countries and promote the stimulation of contacts and the exchange of ideas and technology between them and the United States; and

7. To make it possible for the United States to have a modest increase in immigration, while controlling its number and quality:

   a. the number of independents can be reduced when the President and Congress decide to admit more than 50,000 refugees without preventing the reunification of families;

   b. the number of independents can be adjusted downward or upward in the light of changed economic conditions or new fertility patterns every five years, without interfering with family reunification;

   c. the criteria for selection of independents can be established to increase positive benefits to the United States, as described above.

The question of criteria speaks to the issue of economic development and productivity, which was addressed by this consultation. Four primary methods of choosing independent immigrants were discussed: the job-offer system; a point system, an open system, and an auction system.

The Job-offer System for Immigrants in the Independent Category

A job-offer system, as a basis for determining admissibility of new immigrants within Category III, was discussed in some detail. Such a system would entail the publication of either excluded or included occupations by the Secretary of Labor, a job offer by a domestic firm, and the application to INS for a visa by the prospective employee. There was some support for this system, but it was by no means unanimous.

The pitfalls of this system as enunciated by participants were:

1. Most of the requests for visas would come from those already here, frequently students, who are known by or are already working for employers. This is known because as many as 50% of the present immigrant petitions based on third and sixth preferences come from persons already residing in the United States. Thus, the goal of bringing in unskilled, entry-level workers through the independent category would, to that extent, be defeated;

2. Since the job-offer system probably would be combined with a list of excluded occupations and since that list would probably exclude entry-level occupations, the particular goal of bringing in unskilled, entry-level workers with a green card would be frustrated;

3. The operation of prevailing kinship and other international networks would admit those with existing strong ties, reinforcing patterns of migration rather than opening up opportunities for new immigrants in countries whose people do not have the basis for family reunification;

4. The job-offer system probably would encourage some fraud through the creation of dummy corporations;

5. It might give undue advantage to large corporations who already had international recruiting programs in existance; and

6. It might put too much initiative in the hands of employers who wish to avoid hiring American labor.

Against these objections, it was argued that the principal advantage of the job-offer system was that it would maximize the benefits of the market system. It would provide incentives for both employers and potential employees to find each other for their mutual advantage and the economic betterment of society as a whole.

The Point System for Immigrants in the Independent Category

Although some participants maintained that there was a need to "select" new immigrants and expressed support for this concept, "there was no agreement on the weighting of characteristics for awarding points for admission." It was argued that there was no possible way to weigh those characteristics which traditionally have been thought to be the most desirable, such as initiative, resourcefulness, and adaptability. On the other hand, it was pointed out that the point system could be used to enhance productivity. Points could be given for skills, a certain amount of English-language ability, and other characteristics toward that end.

A decision was made to hold a separate consultation on the possibilities and potential of the point system in choosing independent immigrants.

The Open System For Immigrants in the Independent Category

The open system (first-come, first-served) received brief attention. Several participants favored this system because of its inherent self-selection process. The obvious shortcomings were the impossibility of meeting the demand and the certainty of the build up of backlogs unless they were cleared periodically following a lottery.

The idea of a lottery whether connected with a point system, a job-offer system, or an open system was not discussed in detail. That discussion was left for the continuing working group.

The Auction System For Immigrants in the Independent Category

A new option suggesting that domestic firms bid on immigrant visas for workers was considered. Under this system, the federal government would sell an announced number of visas each year. Proponents argued that this was a way of ensuring that persons with needed skills would be recruited. The system would deal with excess demand and the federal government would receive the "rents." Critics reacted strongly to this proposal, citing the possibility of a black market created by firms illegally selling visas. The delegation of this authority to domestic firms, opponents asserted, could lead to abuses similar to the alleged sale of student 1-20 forms by universities. The delegation function was also seen as a possible means by which employers would set the criteria for immigrant admissions to the United States.

None of the conferees agreed on a "best system"; some suggested that the combination of the first three (job offer, point, and open) would produce the greatest diversity in the population. One participant recommended that available visas in the third category be allocated over a five-year period to each of these three systems as an experiment. An assessment based on economic development and productivity could be made at the end of that period to determine the most beneficial and efficient allocation system.

Since this was not a consultation on the criteria of choosing immigrants, but on the relationship of immigration to productivity, it was not expected to achieve agreement on the criteria issue.

A separate consultation was scheduled on the point system, and an interagency working group was set up to explore the criteria for selecting independent immigrants, with particular attention to be paid to minimizing negative labor-market impacts.

On productivity, the following can be said:

(1) Legal immigration has tended to increase productivity;

(2) An increase of 250,000 would be marginal, although--depending on its quality--it could be significant; and

(3) Immigration is not among the most important ways of increasing productivity, and immigration policy, therefore, should not be determined by productivity goals alone.

PARTICIPANTS

July 15, 1980
Relationship of Immigration to Economic Development, Employment, and Productivity in the United States

Mr. Aaron Bodin, Director, Labor Certification Program, Department of Labor

Ms. Elaine Daniels, Select Commission on Immigration and Refugee Policy

Ms. Mary Eccles, Joint Economic Committee, United States Congress

Ms. Audrey Freedman, The Conference Board, New York

Mr. Leonard Hausman, Brandeis University

Ms. Marion Houstoun, Office of Foreign Economic Research, Department of Labor

Ms. Guillermina Jasso, Select Commission on Immigration and Refugee Policy

Ms. Kyle Johnson, Department of Labor

Mr. Richard Johnson, Department of Commerce

Ms. Justin Klein, Presidential Exchange Executive GE/SEC

Ms. Ann Orr, United States Bureau of the Census

Mr. James Orr, Department of Labor

Mr. Paul Ostergard, GE-NAM/Employment Training Committee

Dr. Markley Roberts, Economist, AFL-CIO

Mr. Mark Rosenzweig, Select Commission on Immigration and Refugee Policy

Mr. Dan Sachs, Commission on Employment Policy

Ms. Isabel Sawhill, Urban Institute

Mr. Michael Teitelbaum, Ford Foundation

V. G. Whittington, Vice President, Shell Oil Company, Business Roundtable Labor Management Committee

Mr. Harold Wool, The Conference Board, Washington, D.C.

Working Draft 6/4/80

IMMIGRATION MODEL A
Overall Ceiling: 750,000 (Including all categories*)

CATEGORY I
FAMILY REUNIFICATION

350,000

A

Numerically Unlimited (Est. at 150,000/yr.)

Spouses, unmarried children, parents of U.S. citizens

B**

Numerically Limited (200,000/yr.)

1. Spouses, unmarried children, parents of permanent residents (now second preference plus parents)

2. Married sons and daughters of U.S. citizens (now fourth preference)

CATEGORY II
REFUGEES

A

50,000/yr.

--Based on Normal Flow

B

?

--Based on Emergency Provisions

--As provided for in the Refugee Act of 1980

--Emergency flow:

1. Could be outside overall ceiling in any given year.

2. Could reduce visas available in Categories IB and/or III, distributed over a number of years.

CATEGORY III
INDEPENDENTS

(Annual average of 350,000 fluctuates from 250,000 to 450,000 yr.)

"Seed" immigrants**#
chosen either by:

--open system;
--validated job offer;
--some combination of desirable attributes through a point system

*The important ceiling would be for five years or 3,750,000 immigrant visas. In any one year the number could be higher or lower than 750,000 depending on fluctuations in unemployment, emergency refugee flows, and adjustments made by the Immigration Board or other Congressionally-designated agency. The fugure of 750,000 is for gross immigration. We assume that will also be net since permanent settlement from reduced illegal migration would be cancelled by emigration. Reminder: An annual net immigration of 750,000 would result in population stability by the year 2030 at slightly less than 300 million Americans if U.S. fertility remains at present rate.

**Numbers in these Categories might fluctuate depending on what happens in Categories IA and IIB. Deductions may also be made in Categories IB and III during the first five years depending on decisions regarding backlogs and the legalization program.

#Category III could be divided into three separate tracks: one small visa allocation for investors; a larger one for exceptional scientists, artists, and scholars; and an allocation of approximately 325,000 visas annually for all other "seed" immigrants.

Herman:

Attached is a copy of an article submitted by a guy named Wentraub to the Select Commission. He recommends that a temporary worker program be established that would bring 500,000 workers into the U.S. each year, and that the program be phased out in five years time (sure!)

This program/proposal is receeving serious consideration by the staff of the Select Commission and right now is the "favored" approach at least of the staff of the Commission Sounds grim, huh?

I'll be in touch in a week or two to discuss strategy.

Best wishes to all,

peter.

This is what they're leaning towards.

Peter

A Proposal to Phase Out U.S. Use of Foreign Temporary Workers

By Sidney Weintraub

Dean Rusk Professor
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Prepared for presentation at the session on "Seasonal Workers: Need and Supply," of The Select Commission on Immigration and Refugee Policy, Washington, D.C., July 21, 1980.

A Proposal to Phase Out U.S. Use of Foreign Temporary Workers

By Sidney Weintraub

Introduction

What follows will concentrate on future U.S. policy towards foreigners who come "temporarily" to work in the United States, particularly those who enter without documents or overstay valid non-immigrant visas.

It is banal to state that the subject is controversial. Part of the controversy is factual. We do not know the number of immigrants who enter or stay illegally in the United States each year. What we do know is that the total is significant and growing. More than one million deportable aliens were located in the United States in fiscal year 1977. The number of deportable aliens located increased at an average annual rate of 17.5 percent over the previous decade.[1] We do not know how many immigrants in the United States illegally are seasonal, otherwise temporary, or permanent. Apart from these "factual" issues, there are conflicting opinions about the impact of foreign workers on the U.S. labor market. There are differences of view about the tradeoffs between U.S. domestic and foreign policy of maintaining or seeking to alter the current situation. It is a field in which positions taken confound the stereotypes of what is humane and what is harsh: Is it humane (harsh) to be exclusionary or to welcome non-legal workers? There are no white hats or black hats.

I intend in this brief commentary to give opinions on these issues and to make clear where I am coming from in giving these opinions.

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[1] Annual Report, Immigration and Naturalization Service (Washington, D.C.: U.S. Government Printing Office, 1979), p. 92.

Policy Recommendations

My main recommendation has two prongs.

1. It should be made more difficult for foreign workers to enter or work illegally in the United States.

2. However, the shift from the current policy of half-hearted to serious efforts to control the flow of illegal migrants should be accompanied by some cushioning of the impact on sending countries, particularly Mexico.

The second prong could be accomplished by instituting a guest worker program of limited duration, say five years, with a declining number of guest worker visas each year, reaching zero at the end of the period. The principle that I wish to stress is that of a limited program, to be phased down and out over a time certain. Decisions on the elements of this program -- how many guest worker visas each year, from what countries, the speed of the phaseout -- could be made after internal debate in the United States and then be subject to inter-governmental negotiation.

My preference would be to limit such a program to Mexico, but this is not crucial. I also would phase out over the same time frame much of the current H-2 visa program as it affects the continental United States; this would allow a transition period for Caribbean islands such as Jamaica and Barbados which now send many H-2 workers. There are other important considerations which I will finesse here because however they are decided, they can fit into the central concept. These include such issues as whether workers are recruited for specific employers or have freedom of choice of employers while in the United States (my preference is for the latter), the procedures for recruiting guest workers, what minimum wages and working conditions are set in the intergovernmental agreements, what rights of inspection are permitted to

foreign governmental authorities, and the length of individual worker permits (six months, nine months, one year?).

The corollary implications of this double-faceted recommendation are significant and should be made explicit. The most important of these is that a system of limited and degressive temporary worker permits, one which contains safeguards for the workers admitted, is futile unless persons without permits either are prevented from entering the United States or find it difficult to work if they do enter. The failure to deter entry and job acquisition by illegal aliens was a constant problem during the 22 years, 1942-1964, of the bracero program with Mexico. The most effective way to deter illegal migration is to have a system of severe penalties on employers who knowingly hire illegal aliens. Mexico urged during the bracero program that the United States institute such a system of employer penalties, but the United States refused.[2] We have refused ever since. Coupled with this persistent refusal, the executive branch generally has not requested and the Congress has not appropriated adequate funds for the Immigration and Naturalization Service (INS) to enforce the immigration laws as written. If preference is revealed through actions, or non-actions, the only conclusion one can draw is that the powers that be in the United States have not really wanted to try seriously to curtail the inflow of illegal immigrants (except during periods of economic slowdown in the United States when official action was taken to reverse the flow). What I am recommending requires a serious effort at curtailment; absent this, the recommendation should be abandoned.

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[2]This effort by Mexico is summarized in Temporary Worker Programs: Background and Issues, a report for the use of the Select Commission on Immigration, 96th cong., 2nd sess. (Washington, D.C., U.S. Government Printing Office, February 1980), pp. 32-58.

A serious effort requires some means to demonstrate that employers acted knowingly when hiring workers who are illegally in the United States. A reasonably foolproof social security card for all workers, or some type of universal work identification which must be shown and verified at each new employment, would be needed. An argument that has been made, that this would convert employers into law enforcers, is specious since employers now are agents of the government in collecting and withholding taxes and making payments for social security. A more serious objection is that raised by civil libertarians, that such a work permit or social security card would be the opening wedge in a governmental system of surveillance of individual actions and movements. However, the wedge has long since been opened for most Americans in many other ways. I do not wish to denigrate this argument, since the issue does concern me, but the argument can not be absolute. There are tradeoffs: Do we wish to keep the wedge from expanding in the name of civil liberties at the cost of wholesale violation of U.S. laws and to the detriment of the most disadvantaged segments of our society, the blacks, Chicanos, other minorities, and the unemployed? I will return to this theme. Chicano organizations, such as the Mexican American Legal Defense and Educational Fund, assert that employers will request to see worker identification only from Hispanic-looking job seekers.[3] They may be right, particularly in the Southwest, but the logic of this position is the same as the general civil liberties argument, that generally unrestricted immigration of workers is acceptable regardless of the effect on disadvantaged persons here legally.

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[3] Mexican American Legal Defense and Educational Fund, "Statement of Position Regarding the Administration's Undocumented Alien Legislative Proposal," November 11, 1977, p. 5.

In addition to some form of worker identification, a serious effort to restrict entry into the United States without documents would require a more amply financed INS and border patrol. It would call for a more comprehensive and automated system of monitoring repeat offenders and to keep better track of departures of those who enter the United States with valid visas and then overstay their allotted period. None of these supplementary measures would be as important as an employer punishment program. Even if it were possible, which I question, we would not want an impenetrable wall around the United States.

A second implication of what I am recommending, although less self-evident, is that there would need to be some form of amnesty for those persons already illegally in the United States. It would not be equitable to provide work permits for aliens not in the United States while making it impossible for persons already here to change jobs. I do not wish to get into the details of how an amnesty program might be devised, since this is not my purpose here, but one aspect might be what others have suggested, to allow for transition to permanent residence depending on length of stay.[4] Those not here long enough to qualify for permanent residence could be given preference in the issuance of temporary worker permits within the decreasing total.

Finally, if the escape valve of illegal migration is to be closed gradually, an additional cushioning effect could be provided by an increase in the number of immigrant visas allotted for nearby countries, such as Mexico, Central America, and the islands of the Caribbean. Again, I do not wish to

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[4]Variants of this idea have been suggested by W.R. Bohning, Charles Keely, and Michael Piore.

give precise numbers except to argue that the increase from the present immigrant visa ceilings for these countries should be significant.

These, then, are my policy proposals: A more vigorous effort to curtail illegal migration to the United States, to be enforced mainly by an employer sanctions program, accompanied by a transition period during which a legal guest worker program of limited and decreasing size, eventually decreasing to zero, is instituted in order to moderate the impact of our action on sending nations, primarily Mexico. This would require some form of universal worker identification in order to make the program effective. In the name of equity, the degressive guest worker program should be accompanied by an amnesty program for those aliens already here illegally, and an increase in the number of immigrant visas for nearby countries.

I turn next to the reasoning behind these recommendations.

Bases for Recommendations

There are three bases for taking a position of not altering the current immigration system, of leaving well enough (or bad enough) alone:

1. The illegal workers take jobs legal residents spurn. Those who realize that this statement is incomplete do have the graciousness to add a crucial phrase, "at the going price." This is an argument that the collectivity of the United States enjoys output larger than it would without the illegal workers; and, further, that not many people legally in the United States are hurt, else the illegal workers would not find jobs.

2. In addition to benefitting the United States, the current pattern serves our foreign policy interests in that it provides an outlet for surplus manpower (personpower, but mostly male) in neighboring countries. An unstable Mexico would be a costly price to pay for keeping out Mexican workers, who are

mostly sojourners in any event, since instability could lead to a refugee outflow that would dwarf the problems caused by the refugees leaving Cuba and Haiti.

3. In addition to these positive arguments, no better option exists than the present system. The fact that the current practice fosters illegality is a technicality. In all other respects, it serves well the interests of the sending and receiving states. It would be impractical to legally open our borders, since U.S. labor and the U.S. Congress would not accept this, or to seek to completely close our borders, since apart from the impracticality, this would result in lower aggregate U.S. output. This is a pretty good case of ad hominem.

Let me respond to each of these arguments in turn.

The facts leave no choice but to accept the first argument, in its amended form, that illegal aliens are prepared to work at wages and under conditions that domestic labor will not accept. The evidence is that they are doing so. There is no doubt, either, that those of us not in that segment of the labor market that competes with the illegals benefit from the frequently sub-standard (judged from the U.S. viewpoint) wages paid and working conditions provided to the illegal workers. These lower wages probably make our fruits and vegetables a bit cheaper than they would if higher wages were paid, help to moderate prices at restaurants, provide domestics at low cost, permit construction costs to be lower than what union rates would otherwise demand, and in many other ways provide the majority with a form of subsidy. I do not wish to imply that all illegal workers earn less for their work and provide this labor under worse conditions than do legal workers. However, there is ample evidence that this generally is the case.[5]

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[5] See David North and Allen LeBel, Manpower and Immigration Policies in the United States, Special Report No. 20 of the National Commission for Manpower Policy (Washington, D.C., February 1978), pp. 158-173.

The relevant question to ask, it seems to me, is what would happen if the illegal workers were not available. Undoubtedly, many functions would be mechanized, as apparently is the case with tomato harvesting in Florida, and jobs would be lost. In that case, the argument that the alien workers are needed falls by the wayside. In other cases, wages and working conditions would have to be improved to attract national workers and this might raise costs and thus some prices for most of us. It is hard to believe that there is no price sufficient to attract nationals to what are now undesirable jobs. Beyond this, many functions would have to be upgraded -- productivity would have to be increased by the addition of capital -- and these jobs would no longer be suitable for unskilled labor. Finally, some productive functions would have to be exported. Japan is embarked on such a process. As it becomes an increasingly labor-short nation, it seeks to solve its problems not by immigration but by using labor where it exists and by investing to increase productivity.

It is inconceivable that a process of adaptation would not take place if U.S. employers had no option other than to use national labor. Either the labor would have to be found, presumably at a higher price, or trained if the functions were upgraded, or eliminated by increasing productivity, or the business founder or be exported. I would expect all these adaptations to occur. It is doubtful that there would be a one-for-one substitution of national for foreign labor, but there might be a one-half-for-one shift, or some other partial substitution. In a country with minority youth unemployment at around 40 to 50 percent in most urban areas, it would be an attractive incentive to force employers to seek out domestic sources of labor. In rural areas, the struggle for unionization undoubtedly would look different if the growers could not rely on cheap and docile foreign labor.

The argument I am making would be refuted by those who refer to the lump-of-labor fallacy. These analysts argue that it is simplistic to assert that there is a fixed number of jobs and that what illegal workers take deprives a national worker of a job. Their argument, instead, is that immigrant labor reduces bottlenecks by performing tasks that nationals otherwise would leave undone, and in the process create more jobs than they encumber. I would accept this argument in a country facing an absolute labor shortage, for example in the Persian Gulf. I find it hard to accept in a country facing substantial unemployment, particularly among minority groups, which is the case for the United States.[6]

Indeed, I am persuaded that some of the unemployment difficulties faced by minorities in general and minority youth in particular can be blamed on general U.S. permissiveness for the entry of illegal workers and the unwillingness to deter employers from hiring them.

Other countries that have encouraged the importation of foreign guest workers have done so at a time of labor shortage, e.g., in Europe during the past two decades. The bracero program with Mexico was instituted during the manpower shortage years of World War II. There is no absolute labor shortage currently in the United States, nor, really, has there been for a decade. Yet the arguments for permitting relatively easy entry for illegal workers are made as though there were such a shortage.

It is possible that because of demographic trends, there will be absolute labor shortages in the United States during the latter 1980s and subsequent

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[6]The argument on the differences between labor-surplus and labor-deficient nations is developed by David S. North, "Worker Migration: A State-of-the-Art Review," prepared for the Bureau of International Labor Affairs, U.S. Department of Labor, January 11, 1979, pp. 21-31.

years, particularly for people to fill the undesirable jobs that must be done, that is, those jobs to which many illegal workers now gravitate. We may, in the sense of absolute need, approximate the labor situation in Europe in the 1960s and 1970s. This has led some to contend that we should not now seek to terminate employment of illegal labor since later we will need these workers. It is possible that we will. However, since the children of illegal workers, and their children after them, wish to upgrade their economic activities, and indeed do so, the implication of a policy of importing workers for undesirable jobs is that the importation process is never ending. This may turn out to be the case, but the scope of the need for importing labor certainly would be attenuated if the United States started now to adapt to an economy without illegal or temporary workers. In other words, I would turn the argument cited above on its head. If labor shortages in the secondary market are absolute in the future, this argues not for importing foreign labor now, but rather to start the process of adaptation to eliminate as many of these jobs as we can as soon as possible.

The foreign policy case made for maintenance of the present system is that Mexico and other nearby countries need this escape valve. The argument is never put so crassly as to state that the United States owes Mexico a place to send its excess labor, but it comes close. Drawing an analogy with Mexican oil production can be instructive. Mexican authorities have stated repeatedly that oil and gas production must be geared fundamentally to Mexico's needs and sold at a price that is in Mexico's self-interest. This is an unexceptionable position for a sovereign state. So it is with the U.S. labor market. Putting first things first means that the United States should concentrate on the domestic impact of illegal migration and only secondarily on the impact on Mexico.

However, the United States would have to pay a high price if Mexico became unstable and one potential cause of unrest would be an exacerbation of Mexico's unemployment and underemployment problem. It is for this reason that I suggest a transitional guest worker program, in order to give Mexico time to wean itself from reliance on the United States for dealing with employment problems. A similar case can be made regarding employment pressures in other countries in Central America and the Caribbean, but in those cases the absolute numbers of temporary migrants are smaller and there are other outlets that absorb excess manpower, as present migratory patterns demonstrate.

I do not know whether a five-year transitional guest worker program will provide enough time for Mexico to adapt. The period may have to be longer, but the more protracted it is, the more likely it is to become permanent.

Why not a permanent guest worker program? This brings me to the third argument cited above, that the present policy is the best of all feasible options. One of the grave defects of the present system is that it condones lawbreaking, indeed encourages it by the underfunding of the INS and the refusal to take effective action against U.S. employers of illegal workers. The illegality is placed only on the worker trying to improve his or her lot. This makes a mockery of our boast of equal justice for all since we have defined legality to favor the strong and illegality to prosecute the weak. In the process, we have encouraged intermediaries who deal in human workers; we deplore this, but do nothing effective to end it.[7] Is the intermediary more

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[7] As I write this, the national television networks and the press are reporting a case of a type that, unfortunately, is not a rare occurrence. Searchers found 14 survivors and 13 bodies in the Arizona desert of nationals from El Salvador who had entered the United States illegally from Mexico. Austin American-Statesman, July 7, 1980, p. 1.

culpable of wrongdoing in this system than the ultimate employer who relies on the supply of illegal workers?

A program of guest workers would regularize and legalize the system of temporary workers. The same number of foreign workers might come as before, depending on the size of guest worker programs, but they would not be clandestine and their wages and working conditions could be monitored by U.S. and foreign authorities. A system of guest workers has some advantages compared with the present system. It has the disadvantage that it probably would not be acceptable to organized labor in the United States, at least if the program were large and did not have a precise termination date.

My main reason for not favoring a permanent guest worker program is that a significant proportion of temporary guest workers tends to become permanent residents. This has been the European experience. In most countries in Europe, this has led to a dual society and the pattern would almost certainly repeat itself in the United States.[8] Either an underclass of permanent "temporary" residents would develop or there would have to be periodic amnesties. We might gain something over current practice in that the cynical illegality of the current system could be terminated, but for all the rest there would be little change. If the guest workers were tied to specific employers, as is the case for H-2 visas, we would add the indignity of indentured workers.

I have another reason for opposing both the present illegal system and an indefinite guest worker program and that has to do with the social costs. I can not quantify these. Those who defend the current system, or a modified version of it, point out that foreign illegal workers pay more in taxes

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[8] Philip Martin, Guestworker Programs, Lessons from Europe, prepared for the Joint Economic Committee, U.S. Congress (Washington, D.C., June 1979).

(both social security and income taxes withheld) than they receive back in benefits such as unemployment compensation, hospitalization and health care, and education for their children.[9] The excess of worker payments over benefits received might decline under a guest worker program since the workers would then be less fearful of applying for benefits, but I am prepared to accept that even for legal temporary guest workers, the taxes paid are likely to exceed financial benefits obtained from the state. However, this calculation loses all meaning if the temporary worker becomes permanent and has a family.

Moreover, this financial contribution/benefit calculation is a superficial reckoning of the social costs and benefits to the United States of the current practice. We have established a dual society, of legal and illegal residents, the latter often permanent, and inevitably clandestine. Those who argue for a system of guest workers are prepared to deal only with some aspects of the illegal system. A guest worker system is designed to have workers in the field and the kitchen, but not children in the schoolroom. The social costs of temporary workers, legally invited or clandestinely encouraged, must be examined on the basis of what this does to the structure of our society as a whole and, in the labor market, how it affects the least privileged members of our society. This is the necessary calculus, rather than the short-term financial statement that is frequently put forward.

Concluding Comment

My purpose has been to look together at the domestic and the foreign policy implications of current practice for handling foreigners working illegally in

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[9] For example, see Manuel Villalpando, Impact of Illegal Aliens on the County of San Diego (San Diego, County Human Resources Agency, 1977).

the United States. I have given priority to the domestic impact of this practice, but this is not sufficient. We must also take into account the consequences of our actions on other countries. It was this dual concern that led me to propose a policy change that I believe to be desirable in the domestic interest, namely, a serious effort to prevent employment of persons illegally in the United States, but to bring this about only gradually in order to give Mexico and other nearby countries from which illegal workers come time to adjust to this policy change.

I do not know if Mexico or other countries would be prepared to negotiate a time-delimited and declining guest worker program with us, but the choice should be left to them. If not, the United States can design the policy change any way it wishes. Other countries are likely to negotiate only if they are convinced that the outcome from non-negotiation would be worse.

I do not put this proposal forward as a panacea. It certainly will not be that. It will bring some hardships, to U.S. employers who now depend on illegal workers, to the workers themselves, and to countries which send the workers and which would be forced to embark on a difficult adjustment process. The benefits I would anticipate, however, would be to strengthen the fabric of our country and to favor the most disadvantaged members of our society.

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WORKING PAPERS IN U.S.-MEXICAN STUDIES, No. 7

LEGALIZING THE FLOW OF TEMPORARY MIGRANT WORKERS FROM MEXICO: A PROPOSAL

Wayne A. Cornelius

July, 1980

Prepared for the Select Commission on Immigration and Refugee Policy, Consultation on Seasonal Worker Flows, July 21, 1980, Washington, D.C. This proposal derives from five years of research on Mexican migration to the U.S., and one year of research on Caribbean migration to the United States, sponsored at various stages by the National Institute of Child Health and Human Development (NICHD), the Smithsonian Institution, the Ford Foundation, the Rockefeller Foundation, and the Social Science Research Council. The judgements expressed in this paper are solely the responsibility of the author and not that of any of the above-mentioned institutions.

"The U.S. is experiencing the world's largest temporary worker program, larger even than the guest worker programs of Switzerland, France, Holland and Germany. Only ours is unregulated...[resulting] in the Immigration Service having to arrest over a million persons annually...whose crime is that they want to work in this country."

- Leonel J. Castillo, former Commissioner, U.S. Immigration and Naturalization Service*

INTRODUCTION

This paper sets forth the rationale for a system of temporary worker migration visas, as one component of a new U.S. policy concerning undocumented immigration, primarily from Mexico. It describes how such a system might work, the benefits and costs of the system, and the main objections which might be raised to it.

The proposed system is not modeled on any previous "temporary worker," "guest worker," or alien contract-labor ("bracero") program, either in the United States or other countries. It is designed explicitly to avoid the negative consequences of some of these alien worker programs, and constitutes an entirely new approach to the problem of legalizing and regulating international flows of temporary migrant labor. The desireability and feasibility of the proposed system therefore should not be assessed according to "standards" set by previous alien worker programs.

The proposed system does not preclude the adoption of other kinds of measures for reform of U.S. immigration law and practices (e.g., "amnesty" for long-term undocumented immigrants living in the U.S. on a permanent basis). Optimally, the proposed system should be implemented in combination

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*Quoted in David Meissner, ed., Mexico-United States Relations: Report of a Wingspread Symposium (Racine, Wisconsin: Johnson Foundation, 1979), p. 10.

with other immigration reforms, including a broad "amnesty" for permanent settlers, expansion of quotas for permanent legal immigration from Mexico and other key sending countries (or abolition of per-country quotas and substitution of a worldwide quota), and revision of the preference system for permanent legal immigration. The proposed system is not designed to substitute for such measures, but to complement them. It is aimed at one particular segment of the Mexican migrant population now working in the United States whose condition would be unaffected by the aforementioned kinds of immigration reform, i.e., undocumented workers still based primarily in Mexico, who do not want to, or cannot, relocate themselves and their dependents permanently in the United States, and who seek only occasional, short-term access to employment in the U.S. to supplement their family incomes. All available evidence from studies that have attempted to deal comprehensively with the Mexican immigrant population in the U.S. (not just with a particular segment of it, such as garment workers, agricultural laborer, clients of immigration counseling agencies, apprehended illegals, etc.) indicates that these Mexico-based, short-term undocumented migrants constitute the majority of Mexicans who are employed in the United States in any given year.* Any reform of U.S. immigration laws and practices

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*See the studies reviewed in Wayne A. Cornelius, Mexican and Caribbean Migration to the United States: The State of Current Knowledge and Recommendations for Future Research, Working Papers in U.S.-Mexican Studies, No. 2 (La Jolla, Calif.: Program in U.S.-Mexican Studies, University of California, San Diego, June, 1979); W.A. Cornelius, The Future of Mexican Immigrants in California: A New Perspective for Public Policy, Working Papers in U.S.-Mexican Studies, No. 6 (La Jolla, Calif.: Program in U.S.-Mexican Studies, UCSD, February, 1980); Richard Mines, "'Las Animas, California': A Case Study of International Village Network Migration" (unpublished monograph, Dept. of Agricultural and Resource Economics, University of California, Berkeley, April, 1980); and Reynaldo Baca and Dexter Bryan, "Citizenship Aspirations and Residency Rights Preferences: The Mexican Undocumented Worker in the Binational Community" (copyrighted research report, SEPA-Option, Inc., 600 N. Alameda, Compton, Calif., July, 1980).

which fails to provide an adequate number of legal-entry opportunities for this large group of Mexico-based migrant workers is doomed to failure, at least in terms of reducing significantly the number of undocumented Mexicans working in the United States.

The main premise of my approach to the problem of undocumented immigration from Mexico is that "the problem" is not the migrant worker himself (taking jobs, depressing wages, using social services, etc.), but his illegal status, and the consequences that may flow from that status (vulnerability to exploitation, fear of participating in union organizing activities, fear of seeking needed medical care, etc.). The policy prescription, given this definition of "the problem," is not to eliminate the migrant himself, or to attempt to exclude him from the outset by "barring the door," but to get rid of his illegal status.

The main objective of U.S. policy concerning undocumented immigration should thus be to reduce the size of the illegal component within the total migratory flow: To transform as many as (politically) possible of today's -- and tomorrow's -- undocumented aliens into legal immigrants, whether they are here as permanent settlers or just temporary workers. For the latter group, this objective is accomplished most expeditiously by reducing the necessity for illegal entry through provision of temporary work visas.

At present, the whole system of U.S. immigration laws and policies is geared to permanent legal immigration. (The only exception is the "H-2" visa for temporary workers, which in recent years has been used to admit only about 1,000 Mexicans per year, on the average, and which in any case is an undesirable vehicle for temporary labor migration because it makes the migrant dependent on a single U.S. employer.) An immigration policy

reform which fails to increase, very substantially, the number of opportunities for Mexico-based workers to migrate legally to the United States for short periods of employment -- not permanent residence -- will perpetuate this bias and guarantee a heavier flow of undocumented Mexican migrants into the United States in future years. As explained below, even if the U.S. were to double, triple, or quadruple its ceiling on permanent legal immigration, most Mexico-based workers who migrate to the U.S. for economic reasons could not take advantage of this change in U.S. policy, because they cannot afford the delays and financial burden involved in obtaining admission to the U.S. as a permanent resident alien, and/or because they fail to qualify for such status by virtue of having close relatives in the U.S. or specialized occupational skills.

ELEMENTS OF THE PROPOSED TEMPORARY VISA SYSTEM

1. The proposed system would involve issuing, through U.S. consular offices in Mexico, a predetermined number of temporary worker visas permitting up to six months (not necessarily consecutive) of employment in the U.S. per year, for a total of five years.

2. To maintain a valid visa, the worker would be required to leave the U.S. for at least six months per year. The date of each entry and return to Mexico would be stamped on the visa by U.S. immigration authorities at the border, and the entry/exit data for each visa holder would be recorded in computerized files for monitoring compliance.

3. Persons acquiring a temporary worker visa would be told at the time of visa issuance that if they ever violate the time restrictions on annual employment in the U.S., their visa will be cancelled, and they will never be able to obtain another visa of this type. Those who do

overstay their visas would be placed on a list of visa abusers, to be compiled at the end of each calendar year through computerized matching of entry and exit data. This list would be maintained at all U.S. consular offices in Mexico, and would be consulted prior to issuance of any new visa during the second and subsequent years after initiation of the system.

4. Visas would be issued by U.S. Consulates on a first-come, first-served basis, up to the predetermined monthly quota. No pre-arranged contract between a specific worker and a specific U.S. employer would be required in order to obtain a visa.

5. No geographical constraint would be imposed on the movements of the visa holder within the U.S.; nor would there by any restrictions on the type of business in which he can seek employment, or the type of job for which he could apply. The visa holder would be free to switch employers at will, without having to return to Mexico and re-enter the United States. In other words, the Mexican worker holding such a visa would be a free agent in the U.S. labor market, subject only to the time limitation on his visa. U.S. employers would have to compete for this legalized, temporary labor, on a free-market basis, paying competitive wages and offering competitive working conditions, fringe benefits, etc.

6. The temporary worker visa holder could re-enter the U.S. each year, and remain for up to six months per year, for up to five consecutive years (assuming that the annual, six-month limit on length of stay in the U.S. were honored by the visa holder for each of those years). At the end of the five-year period, the visa holder could apply for a renewal of the visa for an additional five-year period.

7. At any time, the holder of a temporary worker visa could apply for permanent resident alien status in the U.S., subject to the existing quotas and preference system. If he applied for such status at the end of his initial five-year period as a temporary worker, his "sweat equity" — the time spent working in the U.S., abiding by the terms of his temporary visa — would place the worker and his dependents in a special (newly-created) preference category for permanent legal immigration, to accelerate the adjustment-of-status process. However, the mere fact of having held a temporary worker visa would not guarantee permanent resident alien status for the worker and his dependents. Thus, those who apply for permanent resident alien status without a prior history of temporary employment in the U.S. would not be disadvantaged (relative to holders of temporary worker visas) in the competition for permanent legal immigrant visas.

8. While working in the U.S. as a temporary visa holder, the migrant would be permitted to have his dependents with him. (If the last four decades of Mexican migration to the U.S. are any guide, this option would be exercised by only a small minority of the temporary visa holders, either because they are single and have no dependents, or because they wish to minimize their living costs in the U.S. in order to accumulate savings more rapidly.) While in the U.S., the migrant's school-age children, if any, would have access to tuition-free public education. The migrant and his dependents would have access to emergency and non-emergency health care at public facilities, the cost of which would be covered by the migrant himself, his employer, his labor union, or some combination thereof. Visa-holders would be encouraged to join workplace-based group health insurance plans.

9. While in the U.S., the visa holder and his dependents would not be eligible to receive welfare assistance (AFDC, SSI payments), food stamps, or unemployment compensation. The available evidence indicates that the average temporary (Mexico-based) migrant worker makes negligible use of such social welfare services. Legal exclusion from such benefits is therefore not really necessary, and would not adversely affect the vast majority of the proposed visa holders; however, this feature would increase the political acceptability of the proposed system, especially to those members of the general public who (incorrectly) associate the presence of immigrants of all types with heavy social welfare service utilization and resultant burdens on U.S.-citizen taxpayers.

10. The visa holder would be entitled to join a labor union if one is present in his place of employment, and would be strongly encouraged to do so. If no union is present, the visa holder would be able to participate as a full voting member in union organization and representation elections at his workplace. The visa holder would be eligible for the full range of benefits offered by the labor union, including union health insurance.

11. The visa holder would be explicitly prohibited from going to work for an employer currently involved in a strike action. If found to be employed under such circumstances, the visa holder would lose his visa and be subject to deportation. Employers would also be prohibited, by law, from hiring the holders of temporary work visas immediately prior to, during, and immediately after a union representation election or strike action. Temporary visa-holders could therefore not be used legally as "strikebreakers" by threatened employers, nor to obstruct the unionization of the work force in presently non-union firms.

12. The number of visas issued by U.S. Consulates in Mexico should be adjusted, on an annual basis, to reflect fluctuations in the U.S. demand for foreign labor. The U.S. Department of Labor should institute a new system for monitoring employer needs for such labor, through a quarterly, national sampling of employers who typically hire alien workers (particularly small businesses in the agricultural, restaurant, hotel/motel, health care, construction, retail commerce, and light-industrial sectors). The number of visas issued per month should reflect the well-established, cyclical nature of Mexican migration to the United States (the majority of Mexico-based migrants choose to depart for the U.S. in the February-to-April period each year, and return to their home communities in the September-to-December period).* An appropriate month-by-month distribution of visas issued during the first year of the system would be as follows:

Month:	Maximum no. of visas to be issued:
January	50,000
February	200,000
March	200,000
April	100,000
May	50,000
June	50,000
July	50,000
August	25,000
September	25,000
October	0
November	0
December	0
TOTAL:	750,000

*This cycle coincides with the non-productive, "dry season" in small-scale, non-irrigated Mexican agriculture -- a sector in which large numbers of temporary Mexican migrants to the U.S. are still employed while they are in Mexico. However, urban-based, non-agriculturally employed Mexican migrants also tend to follow this schedule, or at least would not be inconvenienced or adversely affected by it.

13. The total ceiling on temporary worker visas to be issued in any given year must be set high enough to provide a viable legal-entry option for a significant proportion of those Mexicans who now migrate illegally to the United States. Otherwise, would-be migrants will assume (correctly) that their chances of obtaining a visa would be too slim to justify the additional time and effort involved in seeking one. They will continue to migrate illegally. It is therefore proposed that the ceiling for the first year of the system be set at a minimum of 750,000. Nothing under 500,000 visas is likely to have an appreciable impact on the flow of undocumented migrants from Mexico, and a fair test of the system could best be achieved at the 750,000 level or above.

14. At least initially, the proposed system of temporary worker visas should be limited to Mexican nationals. The desirability of this restriction stems from the following considerations:

    (a) The predominance of Mexicans in the flow of undocumented aliens entering the United States.

    (b) The fact that Mexican workers are more accustomed to periods of short-term employment in the United States (usually less than one year for a given sojourn), than are migrants from other sending countries.* Mexicans are therefore more likely than migrants of other nationalities to abide by the six-month limitation on annual stay in the United States.

    (c) Our common land border with Mexico, with several well-established points of entry for temporary migrant workers, which facilitates visa validation upon entry and exit and monitoring of compliance with the system.

    (d) Our historic, "special relationship" with Mexico, including the role of the U.S. government and private sector in initiating and

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*The comparative data on this point are reviewed in Wayne A. Cornelius, Mexican and Caribbean Migration to the United States: The State of Current Knowledge and Recommendations for Future Research, Working Papers in U.S.-Mexican Studies, No. 2 (La Jolla, Calif.: Program in U.S.-Mexican Studies, University of California, San Diego, June, 1979).

institutionalizing the flow of temporary migrant labor from Mexico to the U.S., during most of the period since 1880.

(e) The U.S. national economic and security interest in maintaining close and cordial relations with Mexico in a period when Mexico's importance to the U.S. as an export market and supplier of energy and labor is rapidly increasing.

The system may be extended to other key source countries for undocumented migrants to the U.S., depending on U.S. labor needs, developments in the source countries, and the initial results of the system as it has operated with Mexican migrants over a trial period of 3-5 years.

15. To meet the anticipated high demand for temporary worker visas, the number of U.S. consular offices in Mexico and their staffs would have to be increased. New consular offices should be established in principal source regions for migration to the U.S., particularly in the states of Jalisco, Guanajuato, Michoacán, Zacatecas, Aguascalientes, Chihuahua, Durango, and San Luis Potosí. (Siting of these new offices could be guided, in part, by the results of the nationwide survey study of migration to the U.S. conducted in December, 1978-January,1979 by CENIET, a component of the Mexican Ministry of Labor.) None of the proposed visas should be issued along the U.S.-Mexico border, to avoid a pile-up of visa seekers in close proximity to the U.S., who might be tempted to emigrate illegally or to remain for long periods in Mexican border cities if they are unable to obtain visas quickly.

16. Implementation of the proposed system would require new legislation by the U.S. Congress (specifically, an amendment to the Immigration and Nationality Act creating a new category of visas for temporary workers from Mexico and setting conditions upon the employment of

such visa holders while in the U.S., e.g., prohibiting their use as strike-breakers). It would not require a formal treaty or agreement between the governments of Mexico and the United States. There should, of course, be full consultation between the two governments prior to instituting the proposed system, but the Mexican government would not be involved in its implementation, and would bear no responsibility for the operation of the system. The local-level implementing agencies within Mexico would be U.S. Consulates; validation of temporary workers' visas upon entry and exit from the U.S. would be done by an expanded staff of U.S. Immigration and Naturalization Service officers stationed along the U.S.-Mexico border.

BASIC PREMISES

The proposed system is intended to satisfy the following normative criteria, with respect to migrants who would hold the visas:

1. To protect the right of the individual to seek a better life.
2. To provide the individual with a legal avenue for doing so.
3. To protect the individual's human rights and reduce his vulnerability to exploitation and abusive treatment.
4. To meet the individual's needs for basic human services, especially health care and education.
5. To maximize the individual's freedom of choice concerning where he will make his permanent home, raise his children, and spend his years in retirement.

The last of these criteria is usually overlooked in discussions of U.S. immigration policy, particularly those centered on the issues of granting "amnesty" to permanent undocumented settlers or raising quotas for new permanent resident aliens. The present proposal holds that Mexican

workers who wish or need to work in the United States, but who need or want to maintain their permanent homes in Mexico, should be able to do so legally, whether or not they can qualify for admission to the U.S. as permanent resident aliens (either by virtue of having very close relatives who already reside in the U.S. as citizens or legal permanent resident aliens, or because they possess some scarce occupational skill). Probably an absolute majority of those Mexicans now migrating illegally on a temporary basis to the U.S., or aspiring to do so, cannot qualify for permanent resident alien status under the existing system of preference categories, regardless of the overall worldwide ceiling for permanent legal immigration or the single-country quota for Mexico.* A U.S. immigration policy geared to permanent legal immigration (via a sweeping amnesty, stronger emphasis on family reunification as a criterion of admission, and larger quotas for permanent resident aliens) will actively discriminate against those who, even under a revised preference system, do not have access to permanent resident alien status. Such reforms would hardly "make a guestworker program unnecessary," as an official of the Select Commission on Immigration and Refugee Policy recently asserted.**

Such a policy also discriminates against the very large group of temporary Mexican migrants who do not want to relocate themselves and their families permanently in the U.S., or who lack the financial means to do so.

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*I have found this to be true among the approximately 600 temporary Mexican migrants to the U.S. whom I have interviewed since 1975, both in sending communities in Mexico and in selected U.S. points of destination. Most of those who could qualify (by whatever means) for permanent legal resident-status have already done so. They continue to migrate to the U.S. for short-term employment, but retain their main economic and family base in Mexico.

**Quoted in Benjamin Shore, "Board Opposes Guest-Worker Plan for Aliens," San Diego Union, April 20, 1980, p. A-6.

Under the present system -- as well as under a reformed system emphasizing larger quotas for permanent legal immigration and amnesty for permanent settler "illegals" -- these people have no legal-entry option. Their preference would be to remain based primarily in Mexico while earning supplemental income in the United States, but preferably as legal workers rather than undocumented aliens.*

My interviewees backed up their stated preference for this kind of arrangement with some very convincing explanations: Many said that they could not afford the cost of relocating their families in the United States. In Mexico, they at least owned their own house -- however humble -- and perhaps some income-producing property like farmland, livestock, or a small business. They viewed these assets as being non-transferrable to the United States. Others, especially ejidatarios (recipients of small plots of land from the Mexican government's agrarian reform program), were afraid that they would lose their property in Mexico if they moved permanently to the United States. Among ejidatarios, such fears are well justified. They do lose their land rights if they are away from their plot for more than two years, and even a shorter absence can sometimes prompt a challenge by some covetous neighbor. Still others view the U.S. as a culturally inhospitable environment, with lots of racism, inadequate opportunities for informal socializing with relatives and friends, a strange and formidably difficult language, a morally loose environment in which to bring up

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*When I asked 230 recently returned undocumented Mexican migrants (interviewed in their home communities in Mexico), "If you could get legal entry papers of some sort, would you want to live permanently in the U.S., or would you prefer to continue living in Mexico and working in the U.S. from time to time?", more than 80% stated a preference for temporary work in the U.S. and continued permanent residence in Mexico. For corroborating data, from a major field study conducted among unapprehended Mexican illegals in Los Angeles, see the report by Baca and Bryan cited on page 3.

children, and so forth. The catalogue of reasons is large and varied, but there is one general conclusion to be drawn: The needs and preferences of a substantial proportion of the migrating Mexican population would not be met by a liberalized U.S. permanent immigration policy, enabling larger numbers of Mexicans to settle in the U.S. as permanent resident aliens.*

If the United States goes the route of larger permanent immigrant quotas, without some sort of arrangement for legalizing entry for short-term employment in the U.S., the result will be (1) persistently heavy and increasing undocumented immigration from Mexico; and (2) the continued (and increased) use of permanent resident alien visas (I-151s) by long-distance shuttle migrants from the Mexican interior — not just by "commuter" migrants based in Mexican border cities. The latter pattern has been extensively documented in recent field studies.** This kind of migration constitutes a small, de facto legal guestworker program for Mexican workers, which cuts into the number of permanent resident alien visas available to those persons who do want and need to settle permanently in the U.S., for family reunification and other reasons. This problem would almost certainly be exacerbated under a U.S. immigration policy that did not provide a sufficient number of legal-entry opportunities for people who do not want to "pull up stakes" and relocate permanently in the United States.

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*Among the Mexican migrants whom I interviewed in 1976 and 1978, the stated preferences (and the explanations for them) on this point did not differ between (1) self-identified short-term undocumented migrants still working in the U.S. at the time they were interviewed; and (2) undocumented migrants interviewed in their home communities in Mexico after their return from the U.S.

**See Cornelius, Mexican and Caribbean Migration to the United States, cited on page 3 of this paper; Mines, "Las Animas, California," cited on page 3; and Josh Reichert and Douglas S. Massey, "History and Trends in U.S.-Bound Migration from a Central Mexican Town," paper presented at the 26th North American Meetings of the Regional Science Association, Los Angeles, Calif., November 9-11, 1979.

It is foolhardy to induce people who want to be temporary workers in the U.S. to use up permanent resident alien slots, just to be able to gain short-term access to supplemental income-earning opportunities in the United States. It would be far better to provide such people with some sort of temporary legal entry option.

The case for legalization of temporary Mexican workers also rests on the following assumptions about other theoretically possible policy options in the immigration area:

1. That an "open border" policy with respect to Mexico is not politically feasible in the foreseeable future, and in any event could have negative consequences for both countries if such a policy were implemented. In the short term, a totally open border would probably stimulate a sharp increase in migration to the United States (not just from Mexico, but from other Caribbean-basin and Central American countries), which might provoke a general anti-immigrant backlash in the United States and set the stage for draconian restrictive measures, mass round-ups and deportation campaigns, etc. A totally open border might even be opposed by Mexico, which is increasingly concerned about the "skill drain" and its implications for future economic development in Mexico.

2. That unlimited "amnesty" for undocumented immigrants living in the U.S. (adjustment of status from "undocumented" to "permanent resident alien," with no restrictions, or only very lenient restrictions, on eligibility, in such matters as length of previous, continuous residence in the U.S.) is not politically feasible in the U.S. at this point in time.

3. That the more limited kind of "amnesty" (e.g., for people who can prove 5-7 years or more of continuous residence in the U.S.) that might pass the U.S. Congress will be too limited to benefit Mexican shuttle migrants who are still based in Mexico -- to say nothing of future generations who may aspire to short-term migration to the U.S.

4. That revision of U.S. immigration laws and policies in such a way as to "tilt" the whole system toward Mexico, in order to bring the supply of permanent immigrant visas for Mexican nationals into closer correspondence with the actual demand, is also politically unfeasible and unlikely to pass the Congress. The constituency for a more Mexico-centered permanent immigration policy does not seem broad enough to support such a sweeping policy shift. Already, there is a public outcry about the U.S. being "held hostage" to Mexican oil -- a feeling that the U.S. is already being "too lenient" in its responses to Mexican immigration, out of concern about future access to Mexican oil and gas supplies. While such sentiments might also provoke resistance to the kind of temporary worker visa for Mexicans being proposed here, this approach is likely

to be less offensive to anti-Mexico elements of the general population and to Congressional supporters of other nationality groups seeking increases in permanent immigration quotas than a wholesale "tilting" of the permanent immigration system in Mexico's favor.

BENEFITS OF THE PROPOSED SYSTEM

The proposed system of temporary worker visas for Mexican nationals would be beneficial to the migrants themselves and their dependents, their U.S. employers, U.S. labor unions, and to non-immigrant U.S. workers who are employed in those sectors of the U.S. economy where Mexican migrants tend to cluster. The system would be detrimental mainly to those who currently profit from the existing system of U.S. immigration laws and policies, which forces the vast majority of those Mexicans who need to earn supplemental income in the U.S. on a short-term basis to do so illegally. These profiteers include "coyotes" (professional smugglers of migrant labor), those employers (a minority, concentrated in certain regions and certain industries) who pay below the legal minimum wage, exploitative landlords, merchants, and all others who take advantage of the vulnerability of undocumented migrants.

More specifically, the proposed system would:

1. By, regulating the entry of Mexican labor into the U.S., serve to bring within the law a large segment of alien participation in the U.S. labor market, thereby increasing public confidence in our legal system and enabling Mexican workers to seek legal redress of grievances against U.S. employers and others who might abuse them.

2. If implemented on a large scale, would markedly reduce the volume of illegal immigration from Mexico, because those who currently emigrate illegally would have strong incentives to seek temporary worker visas.

3. Benefit U.S. (non-immigrant) workers in low-wage industries where Mexican migrants cluster, since the use of legal foreign labor in such industries will have a less depressing effect on wage scales and working conditions than the use of undocumented alien labor.

4. Benefit U.S. labor unions, by making it easier to organize Mexican workers whose vulnerability to employer reprisals will be reduced by their legal (temporary work visa-holder) status, and by making it more difficult for "threatened" employers to use Mexican migrants as strikebreakers.

5. Enable U.S. employers to meet legitimate work force needs, particularly for seasonal or other short-term labor, without going through the highly cumbersome, time-consuming, and unpredictable certification process required to obtain alien workers under the existing "H-2" visa system. (It would also reduce the burden on the U.S. Department of Labor resulting from employer requests for "H-2" workers, and liberate D.O.L. resources for other, more broadly beneficial activities -- e.g., more strenuous enforcement of minimum wage and labor standards laws in industries that make extensive use of foreign labor.)

6. Keep open a highly important "labor safety valve" for Mexico, and help to cushion the impact of other U.S. policies (employer sanctions legislation, stiffer border enforcement, etc.) that might be enacted to reduce illegal immigration, upon the Mexican economy and political system. The maintenance of a U.S. "safety valve" for surplus labor is particularly crucial for those regions of Mexico that have become heavily dependent on income earned in the United States, over the last 100 years. The importance of the "safety valve" to these regions and to Mexico generally will decrease over the next two decades, as the Mexican economy develops, fertility rates continue to decline, and the "baby boom" generation of workers born in the 1960-1975 period is absorbed into the Mexican economy. For the next 15 years, however, access to employment opportunities in the U.S. will be vital to a very large group of low-income Mexicans, particularly those still based in rural communities and small-to-medium-sized cities where rates of job creation are low.

7. Provide short-term income-earning opportunities in the U.S. for <u>future generations</u> of Mexican workers -- the new entrants to our labor force from Mexico, who will continue to arrive, whether or not we legalize the existing <u>stock</u> of undocumented immigrants living in the U.S.

This last benefit of the proposed system is particularly important, since most other policy approaches to undocumented immigration currently under consideration make little or no provision for future arrivals. "Amnesty," however broad or limited the terms of eligibility, will benefit only those undocumented immigrants who have resided on a more-or-less continuous basis in the U.S., <u>at a given point in time</u> -- unless we adopt a sort of "rolling amnesty," declaring a new one every three years or so!

And U.S. policymakers do have to be concerned about the future entrants. We are not dealing with a migration flow that can be manipulated very effectively by the governments of the two countries involved. Unlike the West European countries in 1973, the U.S. cannot simply "shut off the flow" by ceasing government-sponsored labor recruitment efforts in the source countries. After 100 years of substantial labor migration from Mexico to the United States, often spanning three or more generations within the same Mexican families, the process is too highly institutionalized and too deeply embedded in kinship and employer recruitment networks anchored in both countries to be susceptible to that kind of governmental manipulation. So there will be new entrants from Mexico. Tomorrow's Mexican migrants will not just go away. If they do not have a legal-entry option, they will come anyway, as undocumented migrants. This is the most fundamental flaw in the "amnesty" approach to the problem: It deals only with the stock of undocumented immigrants; not the on-going flow. It is simply impossible to freeze an ongoing social process, particularly one so highly institutionalized and which responds to such powerful economic and demographic forces on both sides of the international border.

In my view, some kind of arrangement permitting the legal entry of temporary workers from Mexico offers the only opportunity for creating a large enough number of legal-entry opportunities, which are widely accessible to those needing to earn income in the U.S., over an extended period of time, to constitute a viable alternative to illegal immigration for today's -- and tomorrow's -- indocumentados.

Select Commission on Immigration and Refugee Policy

New Executive Office Building-Room 2020
726 Jackson Place, NW Washington, DC 20506 Phone (202) 395-5615

September 9, 1980

TO: SELECT COMMISSIONERS

FROM: LAWRENCE H. FUCHS Lawrence H. Fuchs

SUBJECT: The Relationship of Immigration to Economic Development and Productivity

On July 15, members of the Select Commission staff met with representatives from government, labor, business, research organizations and universities to consider the nature and extent of the relationship of immigration to economic development and productivity. The consultation's participants also sought to develop specific recommendations on admissions criteria for Category III of the immigration model under consideration by the Commission.

While no agreement was achieved on the issue of criteria, the consultation did conclude the following concerning productivity:

- Legal immigration has tended to increase productivity;
- An increase of 250,000 would be marginal, although --depending on its quality--it could be significant; and
- Immigration is not among the most important ways of increasing productivity; and immigration policy, therefore, should not be determined by productivity goals alone.

A summary of this consultation is enclosed to assist you in your assessment of criteria for the independent category, along with the following papers:

- Immigration Model A
- Immigration Policy, Economic Growth and Employment

- Restructuring the Preference System: Goals, Categories and Immigrant Characteristics

- The Acculturation and Economic Integration of Immigrants and Refugees: An Analysis of 1976 Data

- Immigration Criteria for Non-immediate Relatives of U.S. Citizens in Category III--Seed-Independent Immigrants

To provide greater focus on the issue of criteria, the Select Commission is, today, holding another consultation on the point system and an interagency working group has been set up to study the criteria for selecting independent immigrants. Reports of these efforts will be sent to you as soon as they are available.

Enclosures

cc: Staff Advisory Group

Herman:

Here are some of the materials that we spoke about on the phone. You may want to start looking at them or have others look at them and summarize them for you.

I am beginning to look at these materials and will prepare an analysis in the next week or two. I'll get the analysis to you and we can then discuss strategy.

Best Wishes to family,

Peter A. Schey

Select Commission on Immigration and Refugee Policy

New Executive Office Building-Room 2020
726 Jackson Place, NW Washington, DC 20506 Phone (202) 395-5615

September 25, 1980

Dear Father Ted:

Enclosed is the exchange between you and Marshall. I tried faithfully to represent what I think are your views and I hope I hit the mark. It seems to me this is one good way to get them moving. They are so slow on the straw ballots.

I had more tests today and I am fine. Nevertheless, I am working methodically, quietly, avoiding speeches and meetings--just getting the report out.

All the best.

Sincerely,

Larry/pc

Lawrence H. Fuchs

The Reverend Theodore M. Hesburgh
President
Notre Dame University
South Bend, Indiana 46556

Select Commission on Immigration and Refugee Policy

New Executive Office Building-Room 2020
726 Jackson Place, NW Washington, DC 20506 Phone (202) 395-5615

September 25, 1980

MEMORANDUM TO: SELECT COMMISSIONERS

FROM: THEODORE M. HESBURGH

I am enclosing an exchange of letters between Ray Marshall and myself. We agree on a great many things, but seem to disagree on some others, at least at this stage of the game.

All of these issues are now covered by straw ballots and briefing materials in your possesion. Perhaps the exchange between Ray and myself will help move our discussion along as we prepare for the December meeting.

I would welcome hearing from you on this and other important issues.

Enclosure

Select Commission on
Immigration and Refugee Policy

New Executive Office Building-Room 2020
726 Jackson Place, NW Washington, DC 20506 Phone (202) 395-5615

September 25, 1980

The Honorable Hamilton Fish
Member of Congress
2227 Rayburn House Office Building
Washington, D.C. 20515

Dear Ham:

The question of the goals, structures and numbers for family reunification and independents is one that I have asked you to take a particular look at. I don't think there is a more important issue apart from how we deal with undocumented/illegal migration.

I know some people think 750,000 is a substantial number. But when you consider emigration (even if illegal migration continues at a rate of 50 to 100,000), we will not be adding as much as one half of one percent to the work force each year. Considering the shortfall we are going to have in young workers, that number seems quite low, but if we have the Immigration Council we would at least be able to make that evaluation at the end of five years.

The reasoning behind 250,000 for the family reunification preferences, as I understand it, is that it would give us a number large enough to expedite family reunification quickly. Immediate relatives would not be divided for long periods of time. On the independent side, 265,000 might be enough except for the refugee situation. The staff has held pretty firm to the notion of an overall cap except for the immediate relatives of U.S. citizens and sudden emergencies in the middle of the year in order to assure the American people that we will regain control over our immigration policy.

It is a fascinating problem. Much good luck to you.

Sincerely,

(Rev.) Theodore M. Hesburgh

Select Commission on Immigration and Refugee Policy

New Executive Office Building-Room 2020
726 Jackson Place, NW Washington, DC 20506 Phone (202) 395-5615

September 25, 1980

The Honorable F. Ray Marshall
Secretary
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Ray:

Thank you for your letter which I received September 19th, outlining your ideas on the major questions before the Commission. It is precisely this kind of involvement that we need from Commissioners to sharpen our discussion and understanding of the issues.

Perhaps I can help stimulate that discussion further by giving you my opinion on each of your points.

1. The importance of an effective and humane resolution of the problem of illegal immigration. I agree with everything that you wrote. I thought your analysis was succinct, clear, and correct.

2. On employer sanctions and a secure means of identifying employees who are eligible to work. I think you know I also agree with your approach to this problem. I do not believe that the costs of developing a system to enforce our immigration law are greater than the social and political costs of continued illegal immigration.

3. On a generous program for adjusting the status of the current group of undocumented aliens. Here, I also agree. It is apparent that a large majority of our fellow Commissioners also agree, although some of them would prefer to adjust the status of undocumented aliens who have been residing in the United States for one or two years and who are otherwise eligible.

4. On the complex interrelationship of amnesty, backlog clearance, refugee policy, the derivatives of undocumented aliens who will be legalized, and a new immigration system. Again, I agree that the relationship is extremely important. That is why I have asked the staff for detailed analysis of these

relationships under two or three scenarios. The study is out now in the form of straw ballots and background information.

I think you are mistaken in saying the staff has proposed a doubling of the future flows of legal immigration by adding 350,000 predominantly unskilled immigrant workers to the current annual flow of roughly 350,000 relatives.

As I understand it, the staff is proposing:

A. A reduction in the overall gross number of immigrants to the United States, legal and illegal from one million in 1978 (and more than that in 1979 and 1980) to 750,000. (This, of course, does not count emigration, which traditionally has run about 30 percent.)

B. An overall cap on all of the normal channels of legal immigration to prevent the numbers from getting out of hand again.

The staff number of 750,000 covers all legal entrants, including refugees. Even if we do not count the 150,000 Cuban and Haitian "special entrants" who did not come in under the Refugee Act of 1980, we will have about 650,000 new legal entrants to the United States in 1980. We had 560,000 in 1979 and if one adds (at least) 300,000 illegal aliens who became continuing residents, the 750,000 proposed number represents a strong cutback in overall numbers.

The key point in the staff proposal is that the 750,000 number was intended as a firm cap. The number of visas allocated for the independent category was to be reduced by the number of refugees sanctioned by the President with the consultation of Congress beyond 50,000 at the beginning of each fiscal year; thus, in 1980, that number would have been reduced by 181,000.

Frankly, I am worried that this number may be too low in the light of both domestic and foreign policy considerations. Immediate labor market impacts are one consideration in keeping numbers down, perhaps; but there are many compelling arguments for pushing them up. This seems to me to be a compromise on the modest side, perhaps so modest as to make the guestworker idea more attractive. Many of us are hoping we can provide enough on the legal side without resorting to an expanded

temporary worker program of any kind. While Mexico and other sending nations must solve their own problems, we do not want a new immigration policy to seriously destabilize their situations. Nor should we make cutbacks in overall immigration, which might be reckless in its impact on our own economic growth potential. There won't be much to be liberal about at home unless we continue to grow economically.

5. On the question of the characteristics of those to be chosen as independent immigrants and the mechanism for protecting U.S. labor to minimize short-term negative impacts. I notice that you assume that it will be unskilled workers who come to the United States as independent immigrants. The issue has not been debated, let alone decided by the Commission, although several Commissioners have expressed points of view about it. As I understand the two polar perspectives, Senator Simpson has urged a simple point system which will facilitate the selection of persons who would be more likely to adapt effectively in the United States. That indicates to me that he is thinking about persons of some skill and education. Others on the Commission have spoken about the need to give access to brothers and sisters in the independent category through a point system. Still others like Secretary Harris, have talked about providing access for "people with get up and git" (who may be unskilled) to come to the United States.

The staff proposal did not specify a preference with respect to characteristics, except to indicate that a certain proportion of the visas allocated to independents should be set aside for persons of exceptional ability and a very small portion for investors and retirees.

If I understand it correctly, here is how the new system would have worked in 1980:

a. Approximately 140,000 persons (spouses, parents and minor children of U.S. citizens) would have entered exempt from numerical limits just as is happening;

b. Approximately 250,000 persons (probably less since 250,000 is a high limit given previous numbers for second and fourth preference) would have come in under the new first and second family preferences subject to numerical limits (the old second and fourth) as opposed to approximately 190,000 who will be coming in this year under numerically limited family preferences two, four and five;

c. 231,000 refugees would have entered under the Refugee Act of 1980 in parole status just as they are doing;

d. Approximately 35,000 immigrants of exceptional ability (with a very small allocation for investors and retirees) would be admitted instead of the approximately 30,000 who will have come in under the existing third and sixth preferences.

e. This would leave 84,000 immigrants to be chosen in the independent category, who need not necessarily be unskilled, and who would show the world, particularly in those countries where people cannot access through family reunification or as refugees, that the United States is still a land of opportunity for some. (Next year the number would be 100,000 since the President is asking for 214,000 refugees instead of 231,000.)

The principal argument for having a substantial portion of the independents unskilled is that a permanent resident channel for such workers would constitute a better policy for the United States than the alternative guestworker programs, which have been proposed as a means of rechanneling illegal immigration which we hope to end.

In any case, I have not heard any proposals from the staff to eliminate a mechanism for protecting U.S. labor in choosing independents. In fact, the staff has been meeting with several people from the Department of Labor in a working group since July 16th to develop alternative mechanisms. At that time, the DOL representatives promised to send their written analyses of such mechanisms including a job offer system combined with a negative exclusion list, but as yet we have not heard from them on paper on this or any other idea for improving the present system.

From the testimony and analyses that I have seen so far, it seems clear that the present system not only does not provide much protection, but it is costly, inefficient, and leads to a great deal of acrimony in adversary proceedings. I have not yet heard a credible defense of the present system.

6. On proposals to institute a large-scale guestworker program. I tend personally to agree with your analysis although I have not made up my mind on it. It seems to me that it depends to some extent on what we recommend concerning the independent category.

But it also depends on whether or not we could control a guestworker program and phase it out. I don't see any point in institutionalizing it as a good thing if our levels of immigration are high enough to contribute to our economic and cultural development and if the amnesty or legalization program provides enough of a cushion on both sides of the border to the disruption of migratory patterns.

While recognizing the strong arguments which have been put forth on behalf of a guestworker program, I have not been convinced that they outweigh the disadvantages which you state so well. I think your point that "guestworkers can ultimately be distinguished from immigrant workers only by the degree to which host nations exert real control, as well as legal restrictions on the movement of such workers" is what troubles me the most. I would much prefer to admit such workers as immigrants with full legal rights, too. We can achieve that in the independent category although I realize the number may be so small and the characteristics such that it would not do much for the demand for seasonal and other relatively unskilled labor.

On the guestworker issue, I sense that there are a few Commissioners strongly for, a few just as strongly against, and several of us in the middle, leaning one way or another. I would think that how it comes out will depend somewhat on the fate of the independent category.

Once again, thanks for sharpening the discussion by circulating your letter.

Sincerely,

Father Ted

(Rev.) Theodore M. Hesburgh

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

SEP 9 1980

The Reverend Theodore M. Hesburgh
Select Commission on Immigration
and Refugee Policy
New Executive Office Building
Room 2020
726 Jackson Place, N.W.
Washington, D.C. 20506

Dear Father Ted:

Since the Select Commission on Immigration and Refugee Policy is now moving into the final stages of its comprehensive review of U.S. immigration policy and practices, I feel it would be useful for me to share with you and the other Commissioners my views on the major issues we jointly face.

1. First of all, I believe that the most important goal of this commision must be to suggest an effective and humane resolution of the problem of illegal immigration.

Illegal immigration is the result of sharp international disparities in wages and employment opportunities, which unfortunately will endure for many years to come. These disparities generate powerful push/pull linkages between the desires of aspiring Third World workers for higher wages and the desires of U.S. employers for cheap and readily available labor.

Data on this subject are notoriously poor, but before 1970, there were probably fewer than 1 million undocumented workers in the United States. Illegal immigration was then almost exclusively a U.S.-Mexico border problem and a phenomenon of Southwest agriculture. Today, however, a conservatively estimated 3 to 6 million undocumented aliens are working in low-skilled manufacturing, construction, and service jobs in major metropolitan areas throughout the nation, as well as in agricultural work. Only about half are thought to be Mexican nationals.

The economic benefits of this large pool of Third World workers to U.S. employers who hire them, to consumers who use their goods and services, and to a society that does not provide for them or for their families are unquestionable. The benefits of illegal immigration to the undocumented workers themselves and to their dependents are equally clear--except, however, when judged by this nation's standard of living.

But these benefits must be weighed against their human, economic, social, and political costs. Those costs include: widespread exploitation of the millions of foreign nationals illegally here; increased job competition and depressed wages and working conditions for low-skill and low-wage U.S. workers; increasing income inequality between advantaged and disadvantaged persons in the U.S.; mounting political and ethnic tensions in many parts of this country; strained bilateral relations with sending nations, especially Mexico; and increasing pressure on the integrity of our immigration and labor laws.

Unless we restrain the raw market forces that generate illegal immigration, it will not only continue, it will continue to increase.

In essence, then, the problem of illegal immigration is an enforcement problem. The only alternative to enforcement is eliminating restrictions on employment-related immigration. But this is obviously not a desirable or feasible option. Removal of restrictions on the entry of alien workers into the U.S. during the 1980s could result in the entry of millions workers from the Caribbean, Latin American, and Asian sending nations alone. Migration pressures would cease only when the flow of workers produced a job opportunities equilibrium between the U.S. and sending nations. Though this would raise earnings and income levels in those Third World nations, it would also have a strong depressing effect on earnings and income levels in the U.S.

The dramatic increase in illegal immigration during the last decade has not been accompanied by a corresponding increase in resources available to the Immigration & Naturalization Service, the agency charged with the responsibility of enforcing U.S. immigration laws. In my opinion, however, though an increase in that agency's resources is necessary, it is not a sufficient strategy for curbing illegal immigration.

Labor migrations are generated by push/pull forces between workers and employers; they are not unilaterally induced phenomena. Control over illegal immigration therefore requires disincentives on participants on both sides of this economic equation. Effective protection of U.S. workers from adverse competition from alien labor--and protection of U.S. employers from adverse competition from those who hire illegal workers--therefore requires eliminating the 1952 loophole in current immigration law, which exempts U.S. employers from criminal penalties for harboring undocumented workers.

The exemption of employers who hire undocumented workers from sanctions not only sets us apart from most other developed nations and makes our control of illegal immigration ineffective, it also serves as a strong irritant in our relationship with sending nations. Though there are necessarily two parties to this economic transaction, only undocumented foreign nationals are legally culpable. In addition, this inequitable distribution of legal responsibility increases the undocumented workers' dependency upon their U.S. employers and makes them more vulnerable to exploitation. This, in turn, enables their nations of origin to question even more insistently the sincerity of our prohibition against the use of cheap alien labor.

2. Absent employer sanctions, U.S. efforts to curtail future flows of undocumented workers will both be, and appear to be, half-hearted. This will not only heighten already considerable international and domestic frictions, it will also further encourage illegal immigration.

In my view, neither employers nor workers would be adequately protected unless employer sanctions were accompanied by a work permit system. Determining who is legally entitled to work in this nation should be a government responsibility. Employers should be spared the burden of that decision-making role and workers should be protected from any potential abuse of that power, such as discrimination against "foreign-looking" job applicants. A work permit system should therefore apply to all workers in the U.S. and be accompanied by strong safeguards against its use for any nonemployment purpose.

Since all workers in the U.S. must already possess social security numbers, and the Social Security Administration is now required by law to establish the age, citizenship, or alien status, and true identity of applicants for social security numbers, the development of a more secure social security card appears to be the most effective and efficient method for implementing a work permit system. If, however, analysis shows that use of the social security card for this purpose is not feasible, other systems could be developed and phased in over time. My Department has done considerable work on alternative work permit systems. Though the start-up costs of such a system would be considerable, they clearly are not at all comparable to the costs of continued illegal immigration.

3. Effective curbs on future illegal immigation should be accompanied by a generous program for adjusting the status of the current population of undocumented aliens to permanent resident alien status.

Substantial numbers of the aliens illegally present in this country have been contributing members of their communities for some time. Many have established families and other ties here. Massive deportation of these generally hard-working individuals would not only be inhumane, it would also be impracticable. The domestic and foreign policy ramifications of massive round-ups of otherwise law-abiding foreign nationals render such actions unthinkable. In addition, the economic dislocations that large-scale repatriation would generate in both this country and in sending nations also argue against the wisdom of that strategy. I therefore recommend an adjustment of status for undocumented aliens who have been residents in the U.S. for three or more years.

4. A new immigration policy should not be formulated or enacted independently of a comprehensive consideration of our need to absorb the economic, social, and political effects of: (i) recent and continuing large-scale emergency refugee flows; (ii) clearing up the current 1 million backlog of immigrants; (iii) regularizing the status of undocumented alien residents; (iv) providing for the admission of perhaps even larger numbers of their homeland spouses and children; and (v) the possibility of large-scale emergency refugee flows in the future.

Most of these aliens will seek or will continue to hold low-skilled jobs in the U.S. The majority are also likely to be located in the relatively few states and cities that host large immigrant and refugee populations. Their impact on job opportunities and wages and working conditions in low-skilled occupations in those areas of the country will therefore be significant. So, too, of course, will their need for low-income housing, for education, training, health care, and other social services. We must be careful not to place too severe a burden on local and state governments, and we must be particularly sensitive about the possibility that the needs of these new immigrant and refugee groups will conflict--or will appear to conflict--with those of disadvantaged U.S. minority groups, who are especially hard-pressed by inflation and unemployment.

Given that context, the Select Commission staff's proposal to almost double future flows of legal immigration by adding 350,000 predominately unskilled immigrant workers to the current annual flow of ~~roughly~~ 350,000 relatives appears to me as both unwise and politically unacceptable.

It is also important to note that an increase in immigration flows to 750,000 annually by adding 350,000 "Category III independent immigrants" would probably mean that, by 1985, close to a third of our annual labor force growth would come from immigrants admitted under this model. Even apart from the

unknown but substantial effects of regularizing the status of millions of illegals and admitting their homeland dependents, I am concerned by the adverse impact of this large an annual addition of mostly unskilled immigrants. In particular, the so-called "demographic twist," i.e., the aging of the post-war "baby boom" (which is projected to reduce the current U.S. labor force annual growth of 2.5 million to 1.5 million by 1985), will place an upward pressure on youth wages and help reduce wage and income disparities. Further, since this projected decline in the 1980s youth cohort will contain proportionately more minority youth, this especially disadvantaged group would be most likely to gain from low admission levels of unskilled immigrant workers.

5. In addition to my opposition to the staff's proposal to substantially increase annual flows of employment-related immigration, I am opposed to the proposal to eliminate or weaken the labor certification provision and I am disturbed by the related assumption that a substantial increase in the immigration of unskilled workers will increase U.S. productivity.

As I suggested at the June 18 Select Commission meeting, the staff proposal to replace the current labor certification provision with a provision linking the annual level of employment-related immigration to the unemployment rate projected by the Council of Economic Advisors would not adequately protect the U.S. labor market.

Projecting unemployment rates is an art, not a science. Unemployment projections are therefore not sufficiently reliable indicators of future economic conditions. In addition, aggregate unemployment rates mask large variations in underlying rates for particular groups of workers. For example, unemployment rates for youths 16 to 19 years old are typically three to four times that of adult males, while rates for women who head families are over twice those for married men. Unemployment rates also vary widely by occupation and geographical area. In general, unemployment rates of low-skilled U.S. workers are typically much higher than aggregate unemployment rates. Thus, the admission of large numbers of unskilled immigrant workers could adversely affect the wages and working conditions and employment opportunities of already disadvantaged U.S. workers, even in times of low overall employment.

Conclusions derived from economic analyses about the role and contribution of immigration are based on assumptions of perfectly competitive behavior, which are not met in the real world. Economic analyses also ignore the social and political

environment--for example, the racial, ethnic, or alien status of economically indistinguishable workers--in which economic decisions and behavior occur. Statements or projections of a "need" for alien workers must therefore be treated with extreme caution, particularly, of course, in times of high unemployment. Abundant supplies of alien workers with Third World wage and employment expectations can not only lead employers to prefer such workers, it can also lead them to develop substandard labor-intensive production processes that depend upon the continued availability of such labor. The use of piece rates in sweatshops, for example, shifts the costs of production inefficiencies to workers in the form of low wages, layoffs, or part-time employment.

The staff's assumptions concerning the impact of increased immigration of unskilled workers on U.S. productivity also concern me. Though earnings are used to measure worker productivity and there is evidence that the earnings of foreign-born workers eventually surpass those of natives of similar skill and background, we cannot infer from these findings (as the Commission staff apparently has), that additional unskilled immigrants would increase U.S. productivity. Immigrants would increase U.S. productivity only if they are more productive than the average U.S. worker. Highly productive workers, however are not just those with high levels of "vigor, energy, and ambition," but those with high levels of skills, education, and experience. Substantial annual flows of unskilled immigrant workers are unlikely to increase U.S. productivity; in fact, since unskilled workers are less productive than the average U.S. worker, additional unskilled labor is more likely to lower U.S. labor force productivity. Though increased numbers of unskilled immigrant workers may increase economic growth (total output), that is not the same as increasing productivity (output per worker).

6. Proposals to curb future flows of undocumented workers are often accompanied by proposals to institute a large-scale guestworker program. I believe, however, that the creation of a guestworker program at this time is both premature and unwise.

Regularization of the status of the estimated 3 to 6 million illegals currently in this country; the entry of their unknown but certainly large numbers of homeland dependents; the potential multiplier effect of this additional immigration; and the continuing--and progressively larger--flows of immigrants who are relatives of U.S. citizens will provide us with very large numbers of unskilled workers in the years ahead. So, too, will any additional emergency flows of refugees.

Our assessment of proposals to institute a temporary worker program must take these factors into account. Unduly swelling the ranks of the unskilled in this country will not only adversely affect U.S. disadvantaged workers, it may in fact, discourage employers from making the capital investments and process innovations needed to upgrade jobs and improve productivity. Additional labor is a double-edged sword: it can depress wages and spur investment or it can depress wages and reduce investment incentives enough to retard investment, causing labor productivity to stagnate. Slower growth in labor productivity in turn translates into higher prices for internationally traded goods, exacerbating balance-of-payment deficits.

In addition, Europe's recent experience with large-scale guestworker programs strongly suggest that the problems generated by large temporary worker programs uncomfortably ressemble the problems that we confront today with large-scale illegal immigration. In both cases, highly developed industrial democracies with booming economies began using increasing numbers of unskilled Third World workers with limited rights as a supplemental pool of labor in jobs at the bottom of their labor markets. Over time, however, host-nation adjustments to the availability of these documented and undocumented workers led to an unanticipated reliance upon such labor. National recognition of increased utilization of foreign workers occurred, however, as economies lagged and unemployment rose in both labor-receiving and labor-sending nations. Xenophobic impulses and ethnic tensions have increased in all host nations. Questions about the human rights and the possible involuntary repatriation of documented workers in Europe and undocumented workers in the U.S. have strained bilateral relations with the especially hard-pressed Third World sending nations, and the rights of documented and undocumented foreign workers have become a key issue in the United Nations and other international organizations.

Europe responded by abruptly ending its temporary worker recruitment efforts in 1975 and by making efforts to integrate its 5 million remaining guestworkers and the 7 million dependents who had eventually joined them. Wholesale repatriation of their documented temporary workers was judged to be at least as inhumane and as economically and politically destabilizing as would a massive deportation of our undocumented aliens.

The importation of large numbers of foreign workers with limited rights thus not only raises serious social and political questions about the appropriateness of the utilization of such labor by industrial democracies, it also

reveals related important administrative problems inherent in foreign worker programs. Guestworker programs are initiated in the expectation that flows of low-wage foreign workers can be regulated by host nations in a way that will maximize the economic benefits of an additional pool of labor and minimize its costs. Those costs, however, are controlled by the host nation only to the extent that it effectively monitors the effects and regulates the movements of these alien workers into the nation, within that nation--and out of the nation. As the European guestworker experience indicates, however, a guestworker program remains a temporary worker program only if the rights of foreign workers are curbed. Guestworkers can ultimately be distinguished from immigrant workers only by the degree to which host nations exert real control, as well as legal restrictions, on the movements of such workers. I have grave doubts that we, as a nation of immigrants, are--or should be--willing to pay the price of ensuring that aspiring but impoverished workers from nearby nations contribute much but take little from our economy by admitting them under the auspices of a program whose effectiveness depends upon limiting their labor-market and residence rights, in fact as well as in principle. If at some time in the future we achieve full employment and establish a clear and pressing need for an additional supply of unskilled labor, I would therefore prefer to admit such workers as immigrants with full legal rights.

I look forward to working with you in the months ahead. If you wish to discuss this letter or any other matter, please feel free to call me.

Sincerely,

Ray

Secretary of Labor

cc: Select Commissioners

BRIEFING PAPER

BALTIMORE REGIONAL HEARING
October 29, 1979

IMMIGRATION POLICY, ECONOMIC GROWTH AND EMPLOYMENT

I. WHAT ARE THE BASIC ISSUES?

1. How does immigration affect economic growth?

Economic growth is basically determined by changes in a) the size of the labor force; b) the skill and experience levels and composition of the labor force; c) the stock of capital (investment) and d) innovation. These factors are themselves influenced by others, such as tax policy, regulation, etc. Immigration affects economic growth because it influences all four basic factors.

a) Labor Force Growth - Under current immigration law approximately 400,000 immigrants have been admitted legally to permanent residence status in each of the last 5 years. Of these approximately 60 percent are in the labor force. This migration accounted for only 6.9 percent of the increase in the total labor force between 1975 and 1976, however. If the current levels of U.S. birth rates prevail, it is expected that in the future such levels of migration will represent an increasingly significant part of labor force growth.

b) Skill and Age Composition - Table I compares the age and skill composition of immigrants admitted in 1977 to that of the total U.S. population and labor force in 1976. These data indicate that:

- Newly admitted legal immigrants are younger on average than the total U.S. population.

  Younger workers tend to be less productive (as measured by earnings) because they have less work experience than older workers. On the other hand, younger workers may be more easily trained for new production techniques.

- Legal immigrants admitted under current laws tend to be somewhat more skilled than the U.S. total labor force, as measured at the time immigrants enter the U.S.

TABLE I

COMPARISONS OF NEW LEGAL IMMIGRANTS IN 1977
WITH
U. S. POPULATION AND LABOR FORCE, 1976

Characteristic	Immigrants	Total U. S. Population
1. Median age of population	24.5	29.0
2. Percent of population aged 18-24 (potential young workers)	16.6	13.1
3. Percent of labor force[a] 'professional, technical, kindred' (lawyers, doctors, engineers, etc.)	24	15
4. Percent of labor force 'managers'	9	11
5. Percent of labor force 'craftsmen'	11	13
6. Percent 'skilled' (sum of 4, 5 and 6)	44	39

Sources: Immigration and Naturalization Service, 1977 Annual Report
Current Population Survey, July 1976

[a]Occupations of immigrants at time of acquiring permanent resident alien status.

There is some evidence that migrants tend to be more productive, have higher earnings, than native workers of similar age and schooling level, after an initial adjustment period.

c) Investment and Innovation

- Immigration can affect investment in the United States because:

1) an increase in the number of workers may raise the rate of return to (fixed) capital, thus increasing incentives to invest in the long-run;

2) immigrants may save more than native individuals. However, some immigrants tend to remit a portion of their earnings to their families in their country of origin, although the magnitude of these savings flows is not known;

- Immigration can affect innovation if, as evidence suggests, migrants tend to be more willing to take entrepreneurial risk.

2. Who gains and who loses from immigration?

No studies yet exist which quantify the impact of migrants on various groups in the economy. Economic logic and simulation models, however, point to certain important relationships.

a) consumers - Those consumers of products produced in industries or sectors which employ new immigrant workers gain because the increased labor supplied to those sectors tends to lower prices. Consumers of goods and services in areas where immigrants tend to reside may face, at least in the short run, higher prices; for example, for housing.

b) employers - An increase in the stream of immigrants effects employers in three ways:

1) If immigration adds individuals to the total work force, employers benefit as the increased number of workers lowers labor costs in the short run, even if immigrants and native workers receive the same compensation. If there is competition, ultimately new firms are created, output is increased and product prices tend to fall relative to the overall price level, eliminating these extra profits;

2) Lower labor costs and higher profits may also result from the reduced mobility of new immigrants due to incomplete information about employment alternatives. As immigrants obtain information about the labor market, this source of potential profits is reduced.

3) If immigrants themselves compete with native employers, by initiating new businesses, the latter group experiences lower profits to the extent such new enterprises are profitable.

c) workers - The extent of competition among native workers and immigrants depends on the degree to which they have similar job skills--compete for the same kinds of jobs. Since immigrants tend to be young, it is likely that native young workers will be more adversely affected than older workers. Skilled workers' wages will tend to rise as a consequence of an increase in the relative number of unskilled workers; wages of the skilled will fall if immigrant workers tend to be more skilled than native workers.

d) taxpayers - Like the native population, immigrants pay taxes and use social services--unemployment insurance, health, welfare, training--provided by tax funds. Whether their tax contributions outweigh the value of governmental services consumed determines the net cost or benefit to taxpayers.

3. How does immigration affect unemployment?

. Because of the relatively small size of the annual immigrant population admitted to the United States, it is difficult to ascertain the extent to which immigration contributes to aggregate unemployment, by adding directly to the pool of new workers seeking jobs or by displacing native workers who then must seek employment elsewhere. The maximum proportion of the total growth in the U.S. labor force accounted for by immigrants between 1975 and 1976, for example, is only 6.9 percent. With respect to young workers, if every legal immigrant aged 18-24 displaced a native worker of that age, the most that unemployment among 18-24 years olds would have risen is by 3 tenths of a percentage point (13.5 to 13.8). The impact on native-born minority youth, who have significantly higher rates of unemployment, may be somewhat greater, however, if these groups are disproportionately affected by competition from new immigrants. The proportion of new migrant workers in the total labor force is .0022.

. The geographical impact of new immigrants on labor markets is uneven and localized. In 1977, 21.4 percent of new immigrants

resided initially in California, 19.3 percent in New York, 12.3 percent in Florida. While the rates of new legal immigrants each year to the total population in these states is less than one-half of one percent, immigration represents a significant proportion of of state population growth, accounting for 26 percent of the population growth in California between 1976 and 1977, for example. Within states there in uneven geographical distribution, with particular concentrations in border localities and cities.

- It has been argued both that:

a) Migrants take jobs from native workers because they are less receptive to union appeals, have lower expectations, or are more reliable.

b) Migrants tend to take jobs which native workers do not want (at the wages offered) and thus contribute little to unemployment.

- In general, the extent to which an increase in job competition between workers of similar characteristics results in lower wages or increased unemployment or both for such workers has not been well established.

II. HOW DOES THE CURRENT IMMIGRATION LAW AFFECT THE NUMBER AND CHARACTERISTICS OF IMMIGRANTS?

a) How many immigrants are admitted legally each year?

Numerically restricted immigration is limited to 290,000 a year. Additionally, there are several categories of immigrants which are exempt from numerical restrictions. Most exempt entrants are the immediate relatives of U. S. citizens. Congress has also passed special legislation to allow specific groups such as the Cuban and Indochinese refugees to obtain immigrant status outside the numerical limits.

The number of immigrants admitted in each fiscal year 1973 - 1977 is:

1973 ... 400,063
1974 ... 394,861
1975 ... 386,194
1976 ... 398,61[illegible]
1977 ... 462,3[illegible]

b) How does the Law effect the kinds of workers admitted?

- The current law accords preferential treatment to family members of the U.S. citizens. Only two

of the seven preference categories (three and six) have criteria related to job skills or labor "needs." The Department of Labor determines who qualifies for these occupational preference categories through a process of labor certification, discussed in the accompanying paper. Less than 5 percent of all immigrants admitted each year are screened on the basis of skills or labor force criteria, however.

III. BASIC POLICY OPTIONS RELATING TO ECONOMIC CONSIDERATIONS (FOR GIVEN NUMERICAL CEILING.)

1. Entry criteria oriented exclusively towards employment needs or goals of the United States.

Rationale

To the extent that entry to the United States can be controlled, it is possible to use immigration as a means of meeting short or long-term labor force goals which cannot be easily met by the native labor force. Thus the characteristics of the U.S. labor force can in part be "customized" and planned by policy makers.

Such labor force criteria would also include provisions to protect certain groups of native workers from large inflows of competing workers from abroad.

Problems

The major problem of a labor force-oriented immigration policy is in the choice of goals and in their implementation. How are shortages defined or determined? What factors, other than the market, determines what skill or age mixes of workers are optimal or how fast the labor force should grow? What is the optimal trade-off between maximizing economic growth and protecting native workers?

Related questions are to what extent an immigration policy with labor force criteria can be flexible in response to changing circumstances and who decides on changes in goals or criteria. A strict labor force-oriented policy may also have unforseen or unintended social or cultural consequences.

2. Entry by non-economic criteria, such as family reunification

Rationale

Maximum economic growth may not be the only desirable goal or even an important aim of the United States. A number

of other considerations - ethical, foreign policy, political, social- may be deemed important. For example, current immigration law reflects a major concern for family reunification.

Problems

An immigration policy which ignores economic consequences might be very costly, leading to an overabundance of certain workers or labor shortages in the short run.

3. Mixed Entry Criteria - the Point System

Rationale

Present immigration law is a mixed entry criteria system through its preference scheme based on family reunification, occupation, and refugee status. In this system a prospective immigrant needs to qualify under one of the three criteria, otherwise he or she cannot immigrate. An alternative system, much like that enacted in Canada, would utilize several (mixed) entry criteria for each prospective immigrant. Points would be assigned to characteristics such as relationship to persons in the United States, skills, occupation, education, place of destination, age, or any number of others. In such a system economic criteria would play a part, but not necessarily a definitive role, in the selection of all immigrants. The weight given to occupation as a factor in the overall scheme could vary with U.S. economic conditions as could the weights given particular occupations in particular locations.

Problems

The major difficulty with this system is in the choice of goals and in administration. The system thus adds the problems of labor-force oriented policy, noted above, to the problem of choosing the non-economic criteria.

4. No Entry-preference criteria; first-come, first-served.

Rationale

While labor markets do not operate perfectly and information flows across international boundaries are not perfect, most data indicate that migrants respond to economic opportunities across long distances. The signals produced by U.S. labor markets regarding shortages, bottlenecks, or gluts may thus work more efficiently in meeting the needs of the United States than any other mechanism, as the characteristics of the potential immigrants may automatically change in response to changes in demand and supply in the United States domestic labor market.

The role for government in this policy is to encourage the dissemination of information on the domestic labor market to people in potential sending countries. Administrative costs are thus minimized.

Problems

Migrants respond to changes in opportunities in their origin area as well as to opportunities in the United States. For example, if a large excess supply of doctors occurs in a foreign country, there will likely be an increased flow of doctors to the U.S. even if there is no shortage of doctors in the U.S. economy. While the economy as a whole may benefit from these trained personnel, there may be reason for concern about those native-born doctors and other medical personnel who have undergone expensive training and whose earnings may consequently drop.

Information flows may be so imperfect as to make the responsiveness of migration to U.S. labor markets negligible.

A PHASED OUT GUEST WORKER

PROPOSAL

by

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AND REFUGEE POLICY, WASHINGTON, D.C., ON OCTOBER 9, 1980

Of the issues confronting the Select Commission, one of the most intractable is a policy recommendation regarding undocumented workers in the U.S. labor force. The alternatives range from maintaining the existing system, establishing a large-scale permanent guest worker program, or an attempt to shut off the flow immediately and thoroughly. In our view, none of these offers a realistic or advisable course of action.

The current system does provide needed labor, usually at modest cost, and thereby provides a general subsidy in the form of cheaper goods and services. It also provides sending countries with a safety valve for economic and political discontent and enables them to acquire a substantial number of dollars through remittances. The major cost is that the current system of half-hearted enforcement of our immigration laws, of some exploitation of vulnerable and tractable foreign workers, of possible damage to those U.S. citizens who compete with illegal entrants, and the establishment of a dual society violates fundamental U.S. principles of justice and equity. The benefit of the system for the majority may come at the expense of the most disadvantaged minority (the unemployed and the lowest income groups) in our society. Our own view is that preference should be given to improving the lot of the most disadvantaged U.S. citizens, including the reduction of the potential or actual negative impact of illegal migrants on those most likely to be hurt. One final consideration argues for altering current practices in the near future. As the populations of major sending countries, particularly Mexico, increase substantially, the pressures may reach such a level that bilateral agreements may not be possible.

One policy option is to legalize the illegal through a large-scale guest worker program, comparable to the European contract labor programs of the last two decades (to the extent that a U.S. program, in a different context, can be comparable). There are some appealing aspects to such a proposal. Fundamentally, it recognizes the reality of large numbers of illegal migrants and regularizes their status. With built-in safeguards, like enforcement of minimum wage and legally mandated working conditions, it would provide a labor supply mechanism more consistent with U.S. values and principles than the current system. Such a program has the advantage of being adaptable to U.S. needs. Or we could expand the current H-2 program, although this avenue carries with it the serious problem of indentured labor. Right! However, whatever form of permanent guest worker program is adopted, there will be high social and economic costs. The European experience suggests that many temporary guest workers become permanent workers with second-class status. In addition, the European labor market has become ethnically segmented with some jobs permanently considered "foreign." This raises serious problems of social conflict, second generation adaptation, and the potential for international disputes regarding treatment of foreign workers. Such a program sets up two classes: one for jobs with upward opportunity and a second for the undesirable jobs. In our view, these costs outweigh the benefits of a permanent nonimmigrant labor program. Moreover, we are convinced that a large-scale guest worker program faces insurmountable domestic political opposition. -as will this proposal-

likely result of this proposal

Another option is to attempt to take unilateral action to immediately close off the flow of illegal migrants and to return those now

in the U.S. This has certain emotional attractiveness, but it is neither possible nor desirable.

Ultimately, the goal of any policy dealing with the presence of large numbers of illegal migrants in the U.S. labor force must take into account several overriding considerations. The first is that it must distort U.S. values and principles to have people living in this society who have second-class status and who, by the very nature of their illegal status, are vulnerable to abuse and exploitation. Second, any effort to alter the current system must take into account the consequences for the sending countries. This means that bilateral actions are preferable to unilateral policies. And, third, any significant change in the current system requires sufficient time for all parties concerned--the migrants, the employers, the sending countries--to make the many adjustments that will be required.

Other "overriding considerations"
(1) policy must make sense
(2) workable
(3) politically acceptable

POLICY RECOMMENDATIONS

What follows is a proposal to reduce the negative impact of large numbers of undocumented workers now present in the U.S. This could be accomplished by negotiating with major sending countries, especially Mexico, a guest worker program of limited duration with a declining number of guest worker visas each year, ideally reaching zero at the end of the period. The critical element of this proposal is that it is a limited program, to be phased down and out over a clearly defined period of time, that regularizes and legalizes what is now clandestine and illegal.

What will stop illegal migration five years later? How do we know peo. will sign-up?

What would such a program look like? The rest of this paper will

→ rather, program will create new, irreversible addictions in labor markets which ~~now~~ aren't affected at this time, without "regularizing" employmt practices in those areas which will persist in exclusively hiring undoc peo.

lay out the modalities of a phased-out guest worker program and also suggest some of the implications of implementing this policy change.

A. BILATERAL NEGOTIATIONS

One of the central premises of this proposal is that in order to minimize the negative foreign policy consequences of any change from the current situation, cooperation between the United States and the major sending countries, particularly Mexico, is desirable. Therefore, we believe that the United States should indicate its willingness to negotiate a series of bilateral intergovernmental agreements for the establishment of the phased out guest worker program. Since Mexico is the largest single sending country, the United States should begin the program with Mexico. The terms of the agreement negotiated with Mexico could then become a model for a series of intergovernmental agreements with sending countries in the Caribbean and Central America. The relative numbers of visas would be tailored to estimates of the migration patterns already existing. This means that Mexico would receive the largest number with the smaller countries receiving correspondingly smaller quotas of visas. It is important to remember that while the number of undocumented workers coming from the Caribbean and Central America may be smaller than the number of Mexicans, the impact of these sending societies may be just as significant.

B. THE NUMBERS

Because large numbers of undocumented workers are already resident

500,000 ?

in the U.S., the beginning number of guest worker visas should be substantial--in the hundreds of thousands rather than the tens of thousands of the H-2 program. The final number could be determined by an assessment, carried out by the Department of Labor, of "current U.S. needs for temporary foreign labor" with minimal damage to the domestic labor force. In addition, the needs of the sending countries should be taken into consideration during the bilateral negotiations. In the final analysis, the number chosen must be a political decision.

imposts.

The phased out guest worker program assumes that the U.S. government will issue a general amnesty for those who have established roots in this society. It would not be equitable to provide work permits for foreigners not in the United States while making it impossible for persons already here to regularize their status. In our proposal, those who do not qualify for such an amnesty but can demonstrate that they have been working in the U.S. would have the highest preference for a temporary work permit. Clearly, the cut-off date will play a major role in determining the beginning number of the guest worker program. A generous amnesty will concomitantly reduce the size of the initial number of visas; a restrictive amnesty will necessarily force adoption of a larger number.

A second critical factor in determining the beginning number is the method used to determine the areas where guest workers can work. We propose that the Department of Labor, as part of its general assessment of labor need, certify certain sectors of the economy (like agricultural sectors now using large numbers of undocumented workers, certain service sectors like hotels and restaurants, and construction,) where it would be legal to employ guest workers. Again, the more

sectors that are certified, the larger the beginning number will have to be.

The certification of sectors rather than specific jobs as is now done under the H-2 program has several advantages. The first is that it reduces the cumbersome and often slow certification process. Moreover, it would be impractical to certify hundreds of thousands of individual jobs. The most obvious disadvantage is it may be difficult to define precisely what "sector" means.

present purpose of cert. process is to prevent adverse effect on dom. workers; to insure that US workers are hired first; how will these protections be maintained under proposal?

C. METHOD OF DECLINE

We propose that the guest worker program last no more than five years. Any shorter period would not allow sufficient time for the parties concerned to make the necessary adjustments to the future absence of undocumented workers. A sudden stoppage of our current system could cause severe disruptions in both the U.S. economy and in Mexico and the Caribbean, and it would surely produce further tension in the relations between the two countries. A longer period would make the transition easier but less certain, and it would also allow the affected parties to postpone making the difficult decisions required by an end to the current system.

what's incentive to adjust?

The size of the program should be reduced by a fixed amount each year until ideally it reaches zero at the end of five years. For example, should the beginning number be established at 500,000 guest worker visas for the first year (a figure used only for illustrative purposes), then the decline would take place at a rate of 100,000 per year.

Year 1	500,000
Year 2	400,000
Year 3	300,000
Year 4	200,000
Year 5	100,000
Year 6	0

Because in all probability some H-2 type program will continue, the zero figure in the sixth year is a goal that may have to have some flexibility. Nevertheless, we believe that the number of foreign temporary workers should be minimal, and that even the current H-2 program should be phased down or out along with the new guest worker program.

D. PATTERN OF WORK

To make the phased out program work, five crucial areas of actual working conditions must be included. These are: (1) where within the certified sectors will the guest worker be entitled to work: for a single employer or whereever employment can be found; (2) how long will the guest worker be permitted to remain legally in the U.S.; (3) how will the holder of a temporary work permit be paid; (4) how will the guest worker be recruited; and (5) how will the guest workers be protected?

1. For Whom Will Guest Workers Work?

There are basically two options: (a) bind the guest worker to a single employer for a specific period of time, or (b) allow the guest worker the freedom to seek work in any of the sectors certified

by the Department of Labor. Each of these has advantages and disadvantages.

The single employer option would allow the U.S. to control more effectively the presence of foreign workers in the labor market. Its principal drawback is that, like the bracero program of 1942-1964, it raises the issue of indentured workers bound to a single employer without the alternative to seek better working conditions. This has been the experience of the earlier bracero program and the current H-2 program.

The freedom to seek work in the certified sectors option removes the objection of indentured workers and the lack of freedom associated with the single employer option. On the other hand, there are several problems with the "free market option." The first is that allowing guest workers such freedom raises the possibility that because there would be reduced controls many might overstay their visas. In addition, there will surely be more difficulties in guaranteeing that workers remain in the certified sectors. And, third, allowing temporary foreign workers such mobility to compete in the labor market could raise serious political opposition to the entire phased out guest worker program.

There are some compelling reasons for the worker to have the freedom to seek work in any of the certified sectors, particularly in light of the many abuses that occurred under the bracero program. Many of the objections against the freedom of mobility option could be removed if the U.S. implemented an effective employer santions program (which would be necessary in any event to control illegal immigration) and strengthen enforcement of our immigration laws. Moreover,

it seems reasonable to require employers to report the hiring of guest workers and to notify the agency in charge of departures of workers holding temporary work permits. Through a reporting system the movement of temporary workers could be monitored. And, finally, the freedom of the guest worker to move puts pressures on employers to comply with minimum wage and working condition laws, which is one of the principal purposes of our proposal. Indeed, both the current undocumented system and the bracero program essentially removed incentives for employers to upgrade jobs so that they would be attractive to the domestic work force.

2. How Long a Temporary Work Permit?

The central concept guiding this proposal is that there should not be a permanent work force made up of nonimmigrant laborers. For that reason, we believe that nonimmigrant labor should be concentrated in temporary jobs, those lasting less than one year. Although the temporary work permit could last anywhere from three months to one year, our preference is for nine months. This is sufficient time to meet the demands for agricultural workers (three months would not be enough time) while at the same time satisfying the temporary qualities of the overall program. The choice of the duration of the temporary work permit should be based on the demonstrated needs of the employers even though it is clearly recognized that the final length of time will be an arbitrary decision that will not satisfy all interested parties.

A related issue concerns the eligibility of previous guest workers to receive another temporary work permit in a succeeding year. Our preference here is to allow those who have experience and have

established networks within the U.S. to be eligible for as long as possible under the phased out system. There is no reason to exclude past guest workers from participating again and indeed, there may be many reasons for desiring repeaters. One is to limit the number of new persons entering into the migratory flow who might, at the end of the program, make demands for permanent entry or increase the level of demands within the sending countries. On the other hand, the sending countries may have strong desires to allow new migrants exposure to our economy, and these goals should be considered during the negotiations.

3. How Will Guest Workers Be Recruited?

The issue of how temporary workers will be recruited breaks down into two subsidiary concerns: where and by whom? Basically, there are two places where the recruiting contracts could be negotiated: in the sending country or in the U.S. Should recruiting take place within the border of the U.S., it would be an invitation for many to cross the border illegally in the search for a job that would then give them a temporary work permit. Such a recruiting system has the advantage that it would require little in the way of a recruitment mechanism. Also it would not involve foreign governments directly in the recruiting process. Nevertheless, even though a recruiting procedure on foreign soil has many more complications, it seems preferable to us for several reasons. First, it would not encourage illegal crossings of the border, and a major thrust of this proposal is to reduce the U.S. demand that induces illegal crossings. Second, recruitment abroad would allow more effective control over the numbers of temporary workers who come into the country. Third, the already

established H-2 recruiting mechanism might provide an administrative vehicle for guest worker recruiting on a larger scale. And, fourth, contracting abroad assures the cooperation of the sending countries.

Another critical aspect of this problem is who does the recruiting. Basically, there are two options: the U.S. government can recruit and then allocate to those applying for guest workers; or the private sector can do its own recruiting. Traditionally, Mexico has insisted on U.S. government participation to ensure proper treatment of its citizens. Since our preference is for the simplest possible execution of the program, it seems preferable for the private sector to be responsible for the recruiting of temporary workers. This would remove the U.S. government as an intermediary in the recruitment process, but we anticipate government oversight.

A central issue of the terms of recruitment is whether families will be allowed to join the guest worker. It can be argued that for humanitarian reasons families should be allowed to enter with the temporary worker. We believe, however, that families should be excluded, principally because the jobs will be of short-term duration. Also, the presence of families will substantially increase the social costs of the program and reduce the incentives for return.

4. How Will Guest Workers Be Paid?

Under our program, all workers whether temporary or permanent would be paid the legally established minimum or prevailing wage and would have all the payroll taxes withheld. In addition, guest workers would be eligible for whatever benefits regular employees receive. There would, however, be special provision made so that the payroll deductions--social security, unemployment, workman's compensation,

retirement--paid by the guest worker would be returned to him upon his return to his native country. Generally these are deductions undocumented workers can never hope to recover and are frequently withheld by the employer but not paid to the government. This aspect of the proposal has several merits. First, the prospect of a nest egg (often the principal motive for migrating in the first place) should serve as an incentive for return. Returning withheld taxes also meets one of the central criticisms of the current system that undocumented workers pay more into the system than they take out. And the return of payroll taxes after the guest worker returns home will cushion the transitional impact of the return.

Also, aid to migration.

5. How Will Guest Workers Be Protected?

Under the current system, undocumented workers are vulnerable to abuses of various kinds: low wages, poor working conditions, excessive hours, and other forms of exploitation. Under the bracero program there were many cases of abuses. Above all, a phased out guest worker program must have built-in safeguards for the temporary workers. We propose that the program have a grievance procedure, perhaps administered by the Department of Labor or the Department of Justice. However the procedure is constructed, there is little doubt that foreign consuls must be included in some way. In the bilateral negotiations that will preceed the establishment of the phased out guest worker program, one of the central elements will have to include the role of foreign consuls in the complaint procedures.

Also essential to the successful operation of a guest worker program is the right of temporary workers to join unions and share in the benefits of the union. Indeed, much evidence exists already to suggest

that undocumented workers frequently join labor unions. This right should be a fundamental part of the U.S. negotiating position.

These, then, are the basic modalities of a phased out guest worker program. Established through bilateral intergovernmental agreements, it would decline within five years to zero, thereby allowing all those concerned to make adjustments to the absence of undocumented foreign labor. It would have built-in safeguards for the rights of the guest workers, and would require employers to meet legally mandated minimum wage and working conditions.

E. SOME IMPLICATIONS OF A PHASED OUT GUEST WORKER PROGRAM

The introduction of a phased out guest worker program carries with it several corollary implications that should be made explicit.

1. Employer Sanctions and Enforcement

One of the most important of these implications is that a system of limited and degressive temporary worker permits, one that contains safeguards for the workers admitted, is futile unless persons without permits either are prevented from entering the United States or find it difficult to work if they do enter. The failure to deter entry and job acquisition by illegal aliens was a constant problem during the 22 years of the bracero program with Mexico. Mexico urged during the bracero program that the United States institute a system of employer penalties, but the United States refused. We have refused ever since. And yet, the most effective way to deter illegal migration is to have a system of severe penalties on employers who knowingly hire undocumented workers. Without employer sanctions, there would be no incentive for employers to participate in a guest worker

program, phased out or otherwise. Indeed, without employer santions the recommendation for a phased out guest worker program should be abandoned.

Two other elements are necessary to make the program work. The first is a serious commitment to the enforcement of the immigration laws as written. Fundamentally, this would require adequate funding of the Immigration and Naturalization Service. A second, and much more troublesome, requirement is the creation of a reasonably fool-proof identification card for all workers. Without going into all the ramifications of requiring such a card, it is clear that an identification card (or even an improved social security card) raises serious concerns about opening a wedge in a governmental system of surveillance of individual actions and movements. It is a concern that can not be easily dismissed. Nor can the argument that employers, particularly those in the Southwest, will request to see worker identification only from Hispanic-looking job seekers, or, even worse, refuse to hire any Hispanic for fear of government sanctions. These are legitimate concerns that must be weighed against the logic that generally unrestricted immigration of workers is acceptable regardless of the effect on disadvantaged persons here legally. However, without some method of identification, there is no way to curtail illegal immigration.

2. Impact on the United States Economy

The loss of a major source of labor will inevitably cause some significant changes in the U.S. economy, not all of them favorable. It would be impossible to list all the possible consequences of a successful phased out guest worker program, but several are worth

mentioning here. Undoubtedly, many jobs would be mechanized, as apparently is the case with tomato harvesting in Florida, and ultimately jobs would be lost. Since these are jobs primarily held by nonimmigrant laborers, the impact of this loss would be minimal to U.S. labor. In other cases, wages and working conditions would have to be improved to attract national workers, and this might raise the costs and thus the price for most of us. We find it hard to imagine that there is no price sufficient to attract nationals to what are now undesirable jobs at the terms and conditions offered. Clearly, then, a reduction in the employment of cheap foreign labor will have the impact of raising the price of some goods and services

A second possible economic impact is that many functions would have to be upgraded--productivity would have to be increased by the addition of capital--and these jobs would no longer be suitable for unskilled labor. This might require an expanded job training program targeted on the affected industries.

Or it is conceivable that some productive functions would have to be exported. This would be the reverse of the pattern of bringing labor to capital; instead, we would be bringing capital to labor. This is one of the ways to promote economic development and employment creation in the developing sending countries.

Thus the major economic adaptations will in all likelihood involve raising the price for domestic labor, training for upgraded jobs, eliminating some jobs to raise productivity, and the export of some industries. All of these adaptations are likely to occur. It is doubtful that there would be a one-for-one substitution of domestic for foreign labor, but there might be a one-half-for-one shift. At a

time of high minority youth unemployment in most urban areas, it would be an attractive incentive to force employers to seek out domestic sources of labor. In rural areas, the struggle for unionization undoubtedly would take a different turn if growers could not rely on cheap and docile foreign labor.

3. Impact on the Sending Countries

One of the most serious implications of a phased out guest worker program is that the sending countries would lose the "safety valve" feature of the present system of relatively unrestricted migration. For this reason we have recommended a bilateral and transitional guest worker program, in order to give the sending countries, and especially Mexico, time to wean themselves from reliance on the United States for dealing with employment problems. Another possible cushion for the impact of the loss of the escape valve would be an increase in the number of legal migrants from both Canada and Mexico. Currently, each shares in a 50,000 annual quota, but a case can be made that the number should increase substantially to give Mexico time to reorient its investment strategies away from capital intensive forms of development and more toward investments in job producing industries.

F. CONCLUSION

The purpose of the preceding proposal has been to recommend a policy change that we believe to be in the national interest, namely, a serious effort to prevent employment of persons illegally in the United States, but to bring this about only gradually in order to give the principal sending countries time to adjust to this policy change. We are

convinced that people come to the United States illegally not only because they are being pushed by burgeoning populations and lack of job opportunities, but also because there exists in the United States a demand for cheap and tractable labor. The fundamental goal of our proposal is to reduce that demand.

We do not know if Mexico or other sending countries would be prepared to negotiate a time-delimited and declining guest worker program with the United States, but the choice should be left to them. If not, the United States, as it has done in the past, can design the policy change the way it wishes. Other countries are likely to negotiate only if they are convinced that the outcome from non-negotiation would be worse.

The program offered here is no panacea. Indeed, it will cause hardships--the migrants will lose jobs, employers will have to make painful adjustments, and sending countries will face even more serious employment problems that will force them to embark on a difficult adjustment process.

But we also believe that the benefits will outweigh the costs by fundamentally strengthening the social fabric of our society and significantly aiding the most seriously disadvantaged of our citizens.

Herman:

Attached FYI.

I'll be back in Calif on Feb. 1 & we should then meet to develop some plans —

I'll be in touch.

Best to You & Nadine & the Children —

PETER S.

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outside the office.

Minutes of the Meeting of the Subcommittee on Administrative and Legal Issues of the Select Commission on Immigration and Refugee Policy

The Subcommittee met on December 16, 1980. In attendance were Commissioners Attorney General Benjamin Civiletti, who acted as Chairman, Judge Cruz Reynoso, Congresswoman Holtzman, and Senator Alan K. Simpson, in addition to staff from the Select Commission and from individual Commission members. The Subcommittee agreed to review the decision memos on (i) administration (ii) legal issues, (iii) Congresswoman Holtzman's memorandum on exclusions and then (iv) particular legal issues not covered in the decision memos.

I. Administration

Administrative Issues: Decision Memo No. 1: Federal Structure. The subcommittee discussed the two options presented in administrative issues decision memo no. 1 which were as follows:

1. Maintain the present system--visa issuance and the attendant policy and regulatory mechanisms in the Department of State and domestic operations and the attendant policy and regulatory mechanisms in INS, Department of Justice.
2. Create an independent agency responsible for all major immigration and nationality functions, both overseas and domestically.

For the reasons set forth in the decision memo, the subcommittee unanimously recommended the adoption by the Commission of option one.

Administrative Issues: Decision Memo No. 2: Organization of INS. The Committee considered the various options presented in the Administrative Issues Decision Memorandum nor which were as follows:

1. Maintain major domestic immigration and nationality-related operations within INS, and continue to separate them under different program managers who are responsible to the Commissioner.
2. Split service and enforcement operations into separate, new operating agencies within the Department of Justice.
3. Create a border management agency responsible for all federal inspections and patroling functions within Justice or INS, separate from other INS "interior" functions.

The Attorney General suggested the desirability of continuing one agency but separating the enforcement, service, and adjudication functions. Since the adjudication issue was considered in Legal Issues: Decision Memo No. 4 the Subcommittee agreed to consider that decision memo at this point.

Legal Issues Decision Memorandum No. 4 presented the following options:

1. Maintain the status quo, immigration judges should remain under the jurisdiction of INS, and the Board of Immigration Appeals under the authority of the Attorney General.
2. Amend existing law to establish a U.S. Immigration Board to give immigration judges and the Board of Immigration Appeals statutory independence from INS and the Attorney General. Upgrade the positions of immigration judges and Board of Immigration Appeals members and provide additional support staff to reduce the existing backlogs of transcripts.
3. Amend existing law to create an Immigration Court under Article I of the U.S. Constitution. Provide necessary support to the Court to reduce existing backlogs.

The Commission unanimously recommended Option 3, the establishment of a new Article I Court. The Commission suggested, to the extent possible, the utilization of qualified, existing immigration judges and Board of Immigration Appeals Judges. Further, as a transition measure, it recommended placing the existing administrative judges under the Administrative Procedure Act.

Ms. Holtzman raised the question of the procedures to be used by the Article I Court and suggested that a study be done while the Article I Court issue was still pending before the Congress to develop rules of procedure for the Article I Court.

Since the Subcommittee had recommended that the adjudication function be removed from the INS and placed outside of the Justice Department altogether, the Attorney General reiterated his view that INS continue as one agency with two separate functions in the agency: enforcement and service. This position was adopted unanimously by the Subcommittee.

There was considerable discussion of the level at which the agency would operate. It was agreed that the new agency would be headed by a Director who would have direct access to the Attorney General. Ms. Holtzman suggested that the Director be at a higher level than the Assistant Attorney General for Budget. She also agreed with the a title for the head of the Agency other than Commissioner. The Commission then unanimously agreed to the following variation of option 1.

> Maintain major domestic immigration and nationality related operations within INS. Separate the enforcement and service functions clearly under different program managers. The INS should be headed by a Director at a level similar to that of the other major agencies within the Department of Justice such as the Federal Bureau of Investigation with direct access to the Attorney General.

Administrative Issues: Decision Memo No. 3: Professionalization of INS. The Subcommittee reviewed Administrative Issues Decision Memorandum No. 3 and unanimously recommended the adoption of the six options recommended there as follows:

1. Establish a code of ethics and behavior for all employees.
2. Upgrade employee training to include meaningful courses at the entry and journeyman levels on ethnic studies and the history and benefits of immigration.
3. Promotion of acquisition of foreign language skills in addition to Spanish (in which all officers are already extensively trained).
4. Sensitize employees to the perspectives and needs of the persons with whom they come in contact.
5. Reward meritorious service and sensitivity in conduct of work.
6. Continue vigorous investigation of and action against all serious allegations of misfeasance, malfeasance and corruption by agency employees.

In addition, at Congresswoman Holtzman's initiative the Subcommittee reviewed and unanimously recommended Option No. 7:

> All employees should receive violence training.

The Subcommittee also unanimously recommended at Judge Cruz Reynoso's initiative Option 8:

> Strengthen and make more formal the existing mechanism for the review of administrative complaints thus permitting the agency to become aware of and be responsive to cases where the public had not been treated appropriately.

The Subcommittee also adopted at Ms. Holtzman's initiative Option No. 9:

> The agency should make special efforts to recruit minority applicants with the capabilities to meet the needs of the agency.

Senator Simpson was not present during the discussion of this administrative issue memorandum.

Administrative Issues: Decision Memorandum No. 4: Term of Office of INS Comissioner. The Commission Subcommittee reviewed the two options in Administrative Issues Decision Memorandum No. 4:

1. Make the Commissioner of the Immigration and Naturalization Service a position appointed by the President with the advice and consent of the Senate for a fixed term of seven years.
2. Continue the present system where the Commissioner is appointed by the President with the advice and consent of the Senate to serve at the pleasure of the President.

The Subcommittee unanimously adopted Option No. 2 in order to assure the close relationship between the head of the Immigration and Naturalization Service and the President.

Subcommittee

The Committee discussed Administrative Issues: Decision Memo No. 5: Use of State and Local Law Enforcement Officials. They reviewed the options listed there as follows:

1. Authorize and train state and local law enforcement officers to enforce U.S. immigration laws.
2. Prohibit state and local law enforcement officers from playing any role in immigration law enforcement.
3. Prohibit state and local law enforcement officers from aprehending persons on immigration charges but continue to encourage them to notify INS if they suspect a person, arrested on a charge unrelated to immigration violations, to be an illegal alien.

The Subcommittee by a majority vote recommended Option 3. Senator Simpson favored Option 1.

The Subcommittee discussed Administrative Issues: Decision Memorandum No. 6: Administrative Naturalization. It reviewed the options presented in that memorandum as follows:

1. Maintain the present system where the INS is responsible for all processing up to the final grant of citizenship which is conferred by a judge in a formal court setting.
2. Make naturalization an administrative process totally within the INS, with naturalization conferred by the naturalization examiner at the conclusion of the final interview without a ceremony.
3. Make naturalization an administrative process totally within the INS, but preserve the significance and meaning of the process by retaining meaningful group ceremonies as the forum for the actual conferring of citizenship.

It unanimously recommended Option 3. The Committee also took note of and agreed with the suggestion made by Judge Cruz Reynoso that State Courts also be utilized for formal ceremonies in connection with the acquisition of citizenship in appropriate cases.

II. Legal Issues

Legal Issues: Decision Memorandum No. 1. The Committee discussed the Staff Recommendations presented in Legal Issues Decision Memorandum No. 1. It unanimously agreed to the recommendations suggested under Part I -- Voluntary Interrogration which reaffirms the existing practice. They are as follows:

1. The authority of INS officers to conduct voluntary interrogations without a reasonable belief that the persons questioned are unlawfully present in the country should be maintained as found in present law and agency practice; and
2. Further, the present authority of INS agents to question any person reasonably believed to be an alien about his/her right to be in the United States should be continued.

With respect to Part II, the Committee unanimously recommended the adoption of the first recommendation minor with a minor change. (New language underlined; old language in brackets).

° The statutes authorizing INS enforcement activities should clearly provide that INS officers may temporarily detain a person for interrogation or a brief investigation upon a reasonable <u>cause to believe</u> [belief] (based upon articulable facts) that the person is unlawfully present in the United States.

It was unanimously agreed that this recommendation should not apply to activities on the border. The second recommendation under Part 2 was as follows:

- Additionally, the Attorney General should publish regulations (based on current judicial decisions) which specify the facts that an INS officer may rely upon to justify a temporary detention, and the manner in which interrogation should proceed during such a detention.

It was unanimously rejected by the Subcommittee. With respect to Part 3 - Arrest With and Without Warrants the Subcommittee unanimously recommended paragraphs 1 and 2.

- Arrests, effected with or without the authority of a warrant, should be supported by probable cause to believe that the person arrested is an alien unlawfully present in the United States;
- Warrantless arrests should only be made when an INS officer reasonably believes that the person is likely to flee before an arrest warrant can be obtained.

The Subcommittee unanimously recommended Part 3 with a change related to the present delegations so that the third paragraph of that part would now read: (New language underlined; language to be deleted in brackets).

> Arrest warrants [should only be] <u>may</u> be issued by the INS District Directors <u>or Deputy District Directors and the Acting Assistant Director for Investigations</u> acting for the Attorney General.

Paragraph 4 read as follows:

- The Attorney General should publish regulations describing the facts which may be relied upon by INS officers in finding probable cause for arrest and in determining when a warrantless arrest is justified.

This recommendation was unanimously rejected.

Paragraph 5 read as follows:

° Persons arrested without a warrant should be taken, without unnecessary delay, before an immigration judge who will determine whether sufficient evidence exists to support the initiation of deportation proceedings.

The Subcommittee agreed to this recommendation with changes so that outside the border persons arrested could be taken without delay before the same officials who could issue arrest warrants. (See changes in paragraph 3 of this Part.) At the border any responsible official of INS would be sufficient.

The recommendation would now read "Persons arrested outside the border area without a warrant should be taken without unnecessary delay before the INS District Director, Deputy District Director or Assistant Director for Investigations acting for the Attorney General or before an Immigration Judge who will determine if sufficient evidence exists to support the initiation of deportation proceedings. With respect

to arrests at the border, persons arrested without a warrant should be taken without unnecessary delay before an Immigration Judge or a supervisory responsible INS official who will determine whether sufficient evidence exists to support the initiation of deportation proceedings.

With respect to Part 4 - Searches for Persons and Evidence the Attorney General suggested the following language as a substitute for the option originally set forth in the the Legal Issues Decision Memorandum No. 1 "The INA should include provisions authorizing INS Officers to conduct searches

1. With probable cause either under the authority of judicial warrants for property and persons, or in exigent circumstances,
2. Upon the receipt of voluntary consent at places other than residences;
3. When searches are conducted incident to a lawful arrest; and
4. At or near the border.

This language would permit searches in places other than residences. This is a slight expansion of existing practice since at present the Attorney General has eliminated consensual searches of places of employment and residences.

At present, under the District Court of the District of Columbia interpretation of Rule 41 in the case of Blackie's House of Beef, one cannot show probable cause to search persons unless there is complete identification of the persons to be searched at the time of requesting a warrant. This has made enforcement very difficult. It was the intent of this recommendation to permit the issuance of warrants for probable cause without complete identification of the persons to be searched.

Legal Issues Decision: Memorandum No. 2. The Subcommittee discussed the option suggested in Legal Issues: Decision Memorandum No. 2: Right to Counsel--

Stages at which persons should have the right to counsel:

1. Do not amend current law; persons entitled to counsel only in exclusion or deportation hearings (including deferred inspection of an arriving alien).

2. Amend current Act to provide that counsel shall be allowed at any time subsequent to arrest or upon referral for exclusion hearings (including the deferred inspection of arriving alien) by INS, and at any time a benefit requested under the Act is adjudicated.

Stages at which persons should be advised of their right to counsel:

3. Do not amend current law; the INA is silent on this question.

4. Amend current Act to provide that persons be advised of their right to counsel at the time of arrest or upon referral for an exclusion hearing (including the deferred inspection of arriving alien), and prior to any adjudication involving a benefit requested under the Act.

The Subcommittee recommended the following language:

A motion was made by Judge Reynoso that there be a right to counsel and a notification of that right at any time after arrest or temporary detention. Congresswoman Holtzman voted for the motion. Attorney General Civiletti and Senator Simpson voted against. The two members who voted against wished to have the advice of counsel at the time of upon referral for an exclusion hearing and prior to any adjudication involving an adjustment of status requested under the act.

With respect to legal representation at government expense the Subcommittee recommended Option 6 "Amend current law to provide counsel at government expense at deportation hearings or exclusion hearings for legal permanent resident aliens and only when those cannot afford legal counsel and alternate sources of free legal services are not available. (New language underlined) Senator Simpson voted against Option 6 and voted in favor of Option 5 "Do not amend current law."

Option 7 reads "Recommend that Congress not amend the Legal Services Corporation Act or its appropriation which would preclude representation in deportation proceedings."

The Subcommittee recommended that this option be dropped and that the Commission as a whole take no position in the matter.

Senator Simpson voted to have the Committee consider the issue and to recommend that the Commission as a whole take a position on the option.

With respect to time limits on deportation Legal Issues Decision Memo No. 3 the Subcommittee, the options presented were as follows:

1. Retain the present policy under which grounds for deportation are generally applied to all aliens regardless of status and length of residence, with the remote possibility of suspension of deportation in cases where extreme hardship is demonstrated.
2. Bar the institution of deportation proceedings against long-term (perhaps seven to ten years) permanent resident aliens who have committed deportable offenses or crimes, except in cases where heinous crimes have been committeed; bar the institution of deportation proceedings against permanent resident aliens who are under the age of 18 and have committed deportable offenses or or crimes (except in cases where heinois crimes have been committed), regardless of the length of residence in the United States.

The Subcommittee unanimously took the position that the existing law should be modified slightly. At present deportation may be suspended at the discretion of the Attorney General where there is or 10 years residence depending upon severity of misconduct and where the alien can show extreme hardship to the alien or to the spouse, parent, or child who is a U.S. citizen or lawful permanent resident alien. Should the Attorney General approve such a suspension of deportation, the Attorney General must submit this to Congress for confirmation. It was recommended that the words "extreme hardship" be changed to "hardship" and the reference to Congressional confirmation be eliminated.

With respect to deportation, Judge Reynoso suggested that there should be an absolute bar after a period of time (10 to 15 years depending upon the offense) in order to permit the issue to be finally settled. The Subcommittee at this point did not have a quorum and no vote was taken on this issue.

Exclusions

The Subcommittee discussed the exclusion memorandum prepared by Commissioner Holtzman (appended) and voted upon it. A majority of the Subcommittee agreed that the substantial consolidation and conceptualization presented in that draft represented an appropriate approach to the formulation of recommendations on exclusion. Senator Simpson voted against utilizing the memorandum as a consolidation and conceptualization of the Commission's recommendations.

The recommendations in the memorandum agreed to by majority vote were as follows:

Part 1 - Health Grounds excludes persons with medical problems which pose a threat to public health. Examples this kind of health problem would be (i) aliens afflicted with an infectious communicable disease which constitutes a public health danger determined by the Surgeon General of the United States; (ii) aliens afflicted with psychotic disorder or severe mental retardation and (iii) aliens who are narcotic drug addicts or afflicted with

chronic alcohol dependence.

Part 2 - Security Grounds exclude persons for intended acts deemed adverse to the National Safety or Security. These exclusions, for example, exclude aliens who are active in organizations that are engaged in violence or terrorist activities and would prevent aliens from entering the United States with the purpose of engaging in any activity which would be a violation of the criminal laws of the United States or the criminal laws of any state relating to other than victimless crimes.

Part 3 - Criminal Grounds focus on serious violent misconduct and allow for rehabilitation in the case of other crimes. Examples of these would be aliens convicted of a crime (other than a purely political offense) punishable by a sentence of more than one year (or convicted of two or more crimes punishable by a sentence of more than one year in the aggregate) committed within five years of application for admission, or, if the crime involves violence or serious bodily injury within 15 years of application for admission and aliens convicted of premeditated murder.

Aliens convicted of any narcotics violation involving knowing possession of more than 100 grams of marijuana and aliens convicted of trafficking for whom the Consular Officer has reason to believe are traffickers.

In any event aliens should not be permitted to enter until at least five years after release from incarceration for a crime.

Economic Grounds. Example of these are aliens likely to become a public charge, those unable to maintain themselves in the United States for three years after entry without applying for public assistance.

5. Aliens who have engaged in persecution such as Nazis.

2. Immigrants Waivers. The Subcommittee recommended maintenance of the status quo: Waivers on grounds of exclusion (other than those relating to security, murder, and persecution) should be available for close relatives of citizens, lawful permanent residents, and entering immigrants in cases of extreme hardship and to allow family reunification. Discretion to grant such waivers should rest with the Attorney General.

Issue No. 3. Nonimmigrant Waivers. The Subcommittee recommended as follows:

° Retain the present policy under which grounds for deportation are generally applied to all aliens regardless of status and length of residence, with the remote possibility of suspension of deportation in cases where extreme hardship is demonstrated.

° Bar the institution of deportation proceedings against long-term (perhaps seven to ten years) permanent resident aliens who have committed deportable offenses or crimes, except in cases where heinous crimes have been committed; bar the institution of deportation proceedings against permanent resident aliens who are under the age of 18 and have committed deportable offenses or crimes (except in cases where heinous crimes have been committed), regardless of the length of residence in the United States.

Issue No. 4 - Standards - The Subcommittee unanimously recommended that there should be uniform and compatible criteria established by the Departments of State and Justice with regard to interpreting and applying grounds for exclusion.

Search and Seizure: Exclusion of Evidence Illegally Obtained.

At the initiative of Judge Reynoso, the Subcommittee discussed the desireability of the utilization of the exclusionary rules now applicable in criminal proceedings in the immigration field. This would extend the Fourth Amendment and the Federal Court interpretations thereof to immigration cases. The Committee did not recommend such an extension.

The Attorney General distributed a draft memorandum imposing disciplinary action against immigration officials who had acted illegally. He proposed that the Subcommittee recommend the imposition of penalties against offending enforcement officials rather than exclude the evidence. By a unanimous vote the Subcommittee recommended such an approach.

The Reentry Doctrine. The Subcommittee discussed the reentry doctrine evaluating the following options:

1. Make no change in the existing law.

2. Make no change in the existing law but suggest standards to interpret the Supreme Court's exception to the reentry doctrine which states that an "innocent, casual, and brief" trip abroad does not meaningfully interrupt one's residence in the United States and should not be regarded as a separate entry in the case of permanent resident aliens.

3. Eliminate the reentry doctrine entirely.

4. Modify the reentry doctrine so that returning permanent resident aliens (i.e., those who have departed from the United States for temporary purposes and have been absent for less than one year) could reenter the U.S. without being subject to the exclusion laws except the following which would continue to be applied;

a. Criminal grounds for exclusion (criminal convictions while abroad)

b. Political grounds for exclusion

c. Entry into the U.S. without inspection.

In the absence of a quorum, no vote was taken on these options.

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M E M O R A N D U M

TO : All Interested Parties

FROM: Francisco Garza

RE : Immigration Policy Development

DATE: March 23, 1981

As you may already know, the Select Commission on Immigration and Refugee Policy has completed its mandate and submitted its final report to the Congress with recommendations on revising American immigration law and policy. The report brings to a conclusion the Commission's long process of conducting public hearings and research, and concludes its voting on a wide range of issues. On three major issues the Commission voted to:

1) recommend that legislation be passed making it illegal for employers to hire undocumented workers,

2) recommend the maintenance and streamlining of the present H-2 temporary worker program, and

3) recommend a program to legalize undocumented aliens presently in the United States.

With the submission of this report (Executive Summary is attached) all action on immigration shifts to the Congress, which is being deluged with a number of bills dealing with the subject. Attached is a list of the members of the immigration committees in the Congress.

President Reagan has appointed an interagency task force to study the Select Commission's report and draft the Administration's policy for immigration. It is expected to complete its work sometime in May this year. NCLR is attempting to "read" the Administration's proposals for immigration. It does appear that Reagan is in favor of a proposal by southwest governors to create another version of a guestworker program with Mexico (see enclosed material). At any rate, all debate on the issue is expected to reach a hilt soon, as Congress schedules hearings and gets down to the business of legislation.

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NCLR and other national Hispanic organizations such as the Mexican-American Legal Defense and Education Fund (MALDEF) are closely monitoring the development of immigration policy and will be acting as clearinghouses for information and advocacy on the issue. Included in this packet you will find an "immigration advocacy/legislative strategy" prepared by Antonia Hernandez of MALDEF, Washington, D.C. NCLR is prepared through its own network to support the overall effort for an equitable and humane immigration policy. Towards this end, please take time out to complete the attached questionnaire to provide us with an indicator for advocacy on immigration policy. Your assistance in this is greatly appreciated.

Finally, one of the attachments is a paper NCLR has prepared on Black/Brown concerns in immigration as part of our overall policy research function. We would appreciate any feedback on the paper or any other item concerning immigration. Thank you.

Enclosures

Note: Copies of the Select Commission report are available from the Select Commission on Immigration and Refugee Policy, 726 Jackson Place, N.W., Washington, D.C. 20506.

Mexican American Legal Defense and Educational Fund

1411 K Street, NW
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Washington, DC 20005
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MALDEF

March 19, 1981

IMMIGRATION ADVOCACY/LEGISLATIVE STRATEGY

With the completion of the work of the Select Commission on Immigration and Refugee Policy, the focal point of activity concerning immigration reform now shifts to Congress, President Reagan, and his Administration. All attempts to influence future immigration reform must be directed toward these institutions.

Since the release of the Select Commission's report, President Reagan announced the creation of a cabinet-level inter-agency task force headed by Attorney General French Smith. The task force is composed of representatives from DOL, HHS, DOJ, and State. The purpose of the task force is to conduct a review of the recommendations made by the Select Commission. The report of the task force is to be delivered to the President on May 4, 1981.

Another area of activity is the forthcoming meeting between President Reagan and President Lopez-Portillo. It is certain that immigration will be a main topic on their agenda. During a recent Cronkite interview, President Reagan made some public statements concerning immigration hinting that he is in favor of a temporary worker program. It is believed that the Administration will not have an immigration policy formulated until after May 4, 1981. Therefore, if your organization is interested in relaying your views to the Administration on this issue, it is important to do so as soon as possible.

Activity on the Hill has already begun. The new chairmen of the Senate and House immigration subcommittees have already outlined a general agenda and schedule for legislative hearings. Senator Simpson (R-WY), the new chairman of the Senate Judiciary Subcommittee on Immigration and Refugee Policy, has indicated that he will probably schedule hearings in May to review the recommendations of the Select Commission. Thereafter, he will focus on specific issues. According to Senator Simpson, any attempt to solve the "immigration problem" will require three elements: employer sanctions, imposition of an I.D. system, and enforcement. He will give top priority to these three issues. Next on his agenda is the Refugee Act. Senator Simpson is not too pleased with the Act and will seek to change it.. According to Senator Simpson, amnesty will not be considered until enforcement efforts to curtail future illegal immigration are proven successful.

In the House, Rep. Mazzoli (D-KY) is the new chairman of the House Subcommittee on Immigration, Refugees and International Law. The House plans to work very closely with the Senate. Indications are that the first set of general hearings will be a joint endeavor between the House and Senate. Rep. Mazzoli seems to agree with Senator Simpson's philosophy concerning immigration reform.

Given the diversity and scope of the Select Commission's recommendations and the orientation of the new Administration and subcommittee chairmen, it is extremely important for organizations to begin to communicate their respective positions concerning future immigration reform. Each organization has unique talents and resources that can be activated to make its views known. When considering what action your organization should take, I recommend you consider the following:

I. Know the Congressional people responsible for immigration matters. I am attaching a list of the members who serve on the immigration subcommittees and their staff.

II. Develop policy statements which your organization will adopt. Disseminate and publicize these positions.

Types of issues:

a. Amnesty, employer sanctions/imposition of an I.D. system;

b. current immigration policy--number--continue to emphasize family reunion;

c. temporary worker programs--guestworkers and H2's;

d. enforcement issues--discriminatory impact;

e. refugee resettlement.

III. Develop a legislative grass roots kit:

a. Sample letters to elected representatives;

b. sample letter-to-the-editor;

c. sample op-ed piece;

d. "How To" reach local media;

e. "How To" reach and work with local leaders and Congressmen;

f. "How To" advocate effectively on both local and national levels;

g. single fact sheets on issues.

IV. Develop and plan local meetings and conferences to educate your members.

a. Local conferences can also serve as the base from which to develop support among members of your community.

b. Roundtable discussions: People and issues identified at the local level to be brought together periodically to share information and networks on the national level.

V. Develop a legislative newsletter: The purpose of the newsletter is to inform your members and the local community about what is happening in Washington.

Above all, have all your members write letters to their Senator and Representatives, the President, and to all members of the immigration subcommittees. Any time an organization member is in Washington, he/she should visit his/her Representatives. Humane and realistic immigration reform will only become a reality if every one commits his/her efforts toward this end. Good luck!

drr

ATTACHMENT

SENATE SUBCOMMITTEE ON IMMIGRATION

Alan Simpson (R-Wy), Chairman

Rep.
Strom Thurmond (SC)
Charles Grassley (Iowa)

Dem.
Edward Kennedy (MA)
Dennis DeConcini (AZ)

HOUSE SUBCOMMITTEE ON IMMIGRATION

Romano L. Mazzoli (D-KY), Chairman

Dem.
Sam Hall (TX)
Patricia Schroeder (CO)
Barney Frank (MA)

Rep.
Hamilton Fish (NY)
Dan Lungren (CA)
Bill McCollum (FL)

Members of Congress can be written at :

Senator _____
U.S. Senate
Washington D.C. 20510

Representative _____
U.S. House of Representatives
Washington D.C. 20515

See page 393

Should the United States Open Its Doors To the Foreigners Waiting to Come In?

Sen. Alan K. Simpson, R-Wyo., who is emerging as the most powerful immigration policy maker, is sympathetic to the growing tide of restrictionist sentiment.

BY NEAL R. PEIRCE
AND ROGER FILLION

"I'm fully aware," said Sen. Alan K. Simpson, R-Wyo., "that this ol' cowboy is headed into an arena. I'm going to be called a Neanderthal, uncaring, an unloving slob, a racist and just some old cob."

Such a response may greet anyone who plans—as Simpson does as chairman of the Senate Judiciary Subcommittee on Immigration and Refugee Policy—to rewrite the nation's immigration law.

President Carter learned about the perils of immigration policy in 1977, when his plan to legalize the status of current illegal aliens and curb future illegal immigration was stymied by both pro-immigration and restrictionist interests. By 1979, he was only too happy to accept creation by Congress of a commission to study the subject until after the 1980 election.

The Select Commission on Immigration and Refugee Policy released its final report on Feb. 27, and Simpson, a commission member, is emerging as the most powerful federal official in immigration policy making. He is certain to be more sympathetic to restrictionist arguments than his predecessors in immigration policy making on Capitol Hill —Sen. Edward M. Kennedy, D-Mass., who was chairman of the Judiciary Committee, and former Rep. Elizabeth Holtzman, D-N.Y., who was chairman of the Judiciary Subcommittee on Immigration, Refugees and International Law.

Holtzman has been replaced by Romano L. Mazzoli, D-Ky., who is serving on the immigration subcommittee for the first time and has yet to take positions on key immigration issues. The Reagan Administration has set up a task force headed by Attorney General William French Smith to study immigration policy but has not yet responded to the select commission's report.

Several public opinion polls have shown that the overwhelming majority of Americans favor a more restrictionist immigration policy. Vilma Martinez, president and general counsel of the Mexican American Legal Defense and Educational Fund, blames the economy. "I think when people feel economically threatened, they tend to be much more restrictionist," she said.

In addition, last year's highly publicized influx of 125,000 Cubans, combined with the Liberty City riots in Miami, heightened public awareness of newcomers to the United States. Detroit Mayor Coleman A. Young said he believes that the "explosion" that occurred in Miami was a direct result of the immigration of Cuban refugees and other "non-citizens" to the United States while millions of Americans were unemployed. "Members of the black community without jobs saw Cubans coming into the area and obtaining jobs and even political positions that have not been available to black people in 300 years in this country," he said in an interview.

Pressures from the developing world seem sure to increase in coming years. In a study cited in the fall 1980 issue of *Foreign Affairs* magazine, the International Labor Organization found that the developing nations will have to create 600 million to 700 million new jobs by the year 2000 to keep pace with their expanding labor force. The Inter-American Development Bank said Latin America, the source of many U.S. immigrants, must create four million jobs a year to prevent its high rate of unemployment from rising.

These pressures have elicited a restrictionist response from such diverse groups as labor unions, environmentalists, population control advocates and taxpayer organizations, which contend that illegal aliens are draining government services. In the liberal camp are the Catholic Church, civil libertarians, Hispanic groups, agribusiness owners and other employers.

Simpson said in an interview that he will wait for the public reaction to the select commission report before developing a legislative package. But he adopts a restrictionist tone.

"There is one group of people in the world that is not being heard, and that's the people of the United States of America that are already here," he said in an interview. "I think their cares and fears and concerns should be addressed on this issue, instead of addressing what we do to the Dominican Republic, what we do to the Caribbean, what we do to Mexico or Canada."

LEGAL IMMIGRATION

The select commission recommended changes in legal immigration limits, both to make that system fairer and to reduce pressures that encourage people to try to enter the United States illegally.

The Immigration and Nationality Act Amendments of 1965 and 1976 established a limit of 20,000 immigrants a year per country and seven preferred categories of immigrants based on family reunification and occupational skills.

These rules replaced quotas that were based on each nationality's representation in the United States in the late 19th and early 20th centuries and were considered especially discriminatory against southern and eastern Europeans. Present law allows 270,000 immigrants annually, with the immediate relatives of U.S. citizens—spouses, minor children and parents—exempt from the ceiling. More than 400,000 legal immigrants

were estimated to have entered the country under this plan in 1980.

In fiscal 1977, the most recent year for which the Immigration and Naturalization Service has complete data, these 10 countries supplied the United States with the bulk of its legal immigrants:

Cuba	69,708
Mexico	44,079
Philippines	39,111
Korea	30,917
China and Taiwan	19,764
India	18,613
Canada	12,688
United Kingdom	12,477
Dominican Republic	11,655
Jamaica	11,501

In its final recommendations, the select commission said that to accommodate pressure from abroad, the number of legal immigrants admitted to the country each year should be increased by two-thirds to 450,000 persons for a period of five years and then reduced to 350,000. For purposes of family reunification, immediate relatives—including adult unmarried sons and daughters and grandparents of adult U.S. citizens—would continue to be exempt from the limit, and about three-fourths of the 450,000 slots would continue to be reserved for more distant relatives.

Other applicants would be considered under a new "independent" category for job seekers with skills the United States determines it needs. The commissioners said they hoped this category would reduce the inequities and confusion that have resulted when distant relatives and job seekers have competed for the same immigration slots.

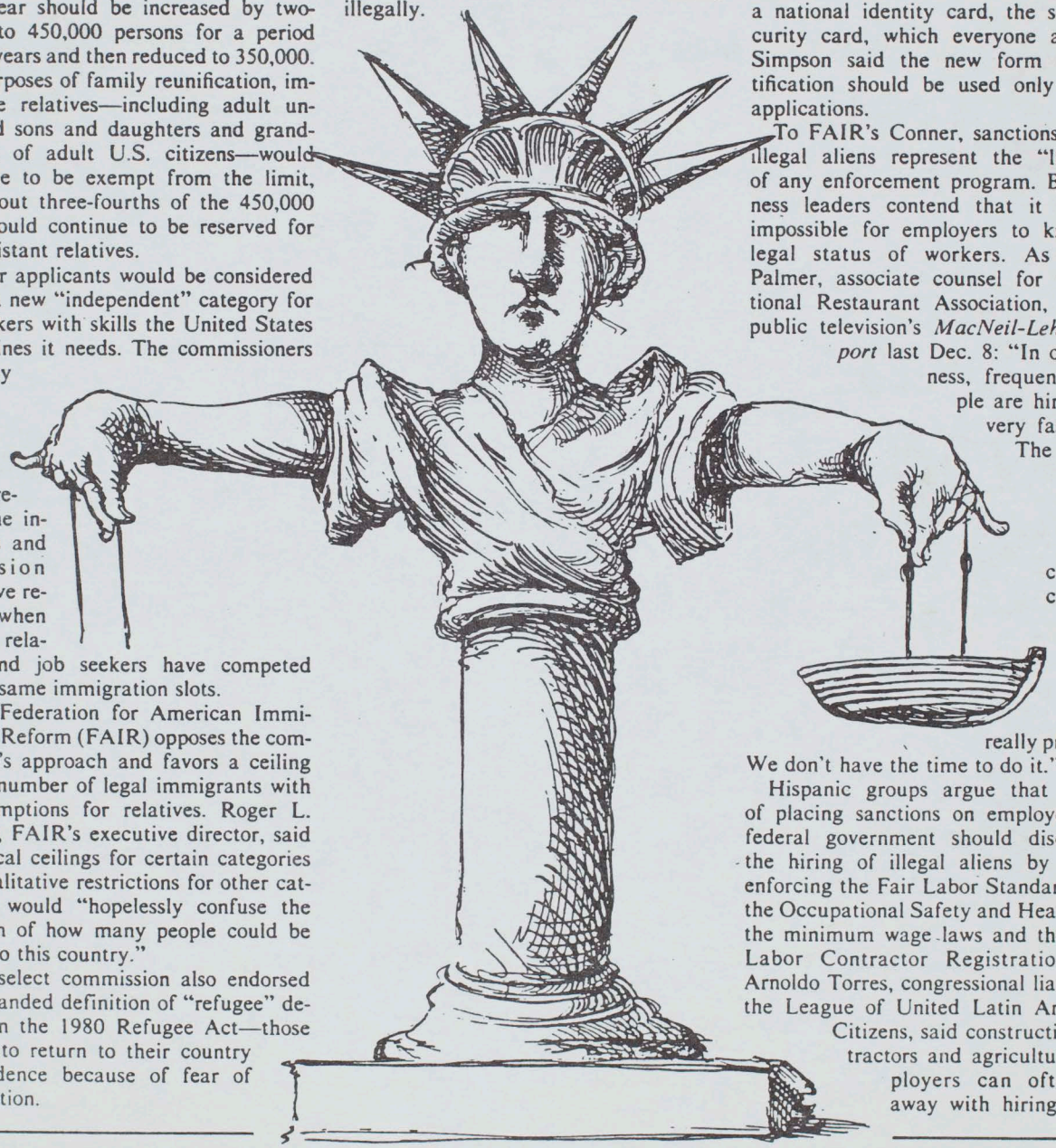
The Federation for American Immigration Reform (FAIR) opposes the commission's approach and favors a ceiling on the number of legal immigrants with no exemptions for relatives. Roger L. Conner, FAIR's executive director, said numerical ceilings for certain categories and qualitative restrictions for other categories would "hopelessly confuse the question of how many people could be added to this country."

The select commission also endorsed the expanded definition of "refugee" detailed in the 1980 Refugee Act—those unable to return to their country of residence because of fear of persecution.

Simpson, though, believes the definition of refugee must be reconsidered. "Persecution is still happening," he said, "but I don't think we like to admit that the majority are coming here for economic reasons. We say that we are taking in these homeless and downtrodden and poor because they're being persecuted all over the world, when actually they're coming here because they want to make money."

ILLEGAL IMMIGRATION

To deal with illegal immigration, the commission recommended a program of tougher border controls, fines and civil and criminal penalties for employers who show a pattern of hiring workers without valid visas, and legalization of some aliens in the country illegally. The Census Bureau estimates that 3.5 million to 6 million persons are in the country illegally.



By a vote of 8-7 with one abstention, the commission also recommended adoption of a "more secure" form of worker identification that would inform employers of the applicant's right to work in the United States. The commission fell short of suggesting what the new form might be, but its staff estimated that the cost of developing a new system, including the hiring of 300 investigators, would run to $120 million a year for an identification system or $280 million for a centralized data bank to verify worker eligibility.

Civil liberties groups have strongly opposed any form of national identification, warning that it could lead to repression. But Simpson, who considers some type of counterfeit-proof identification crucial to controlling immigration, said he believes such fears are unfounded because "we already have a national identity card, the social security card, which everyone accepts." Simpson said the new form of identification should be used only for job applications.

To FAIR's Conner, sanctions against illegal aliens represent the "linchpin" of any enforcement program. But business leaders contend that it is often impossible for employers to know the legal status of workers. As Robert Palmer, associate counsel for the National Restaurant Association, said on public television's *MacNeil-Lehrer Report* last Dec. 8: "In our business, frequently people are hired on a very fast basis. The time devoted to things like reference checks or checks of paper or documents isn't really practical. We don't have the time to do it."

Hispanic groups argue that instead of placing sanctions on employers, the federal government should discourage the hiring of illegal aliens by strictly enforcing the Fair Labor Standards Act, the Occupational Safety and Health Act, the minimum wage laws and the Farm Labor Contractor Registration Act. Arnoldo Torres, congressional liaison for the League of United Latin American Citizens, said construction contractors and agricultural employers can often get away with hiring illegal

aliens under conditions that other workers would not tolerate.

The commission said the Immigration and Naturalization Service's border patrol should be given a bigger budget, more inspectors and power to deport aliens deep into Mexico rather than just across the border where they can easily return. With its current $79 million budget and staff of 2,500 stationed along the 6,000 miles of Mexican and Canadian borders and at centers of high illegal immigration inside the United States, the border patrol apprehends one illegal alien for every two who make it across the border, according to border patrol officials.

"We have to create the *esprit de corps* and the mission—and then give them the enforcement capability with money and manpower," Simpson said.

Once the tougher enforcement mechanisms are in operation, the commission said, illegal aliens should be declared legal if they lived in the United States as of Jan. 1, 1980, and have continuously resided here for a minimum period to be set by Congress. Those who do not fit the qualifications should come under normal deportation proceedings, the commission added.

Both pro-immigration and restrictionist groups believe that a legalization program is the only practical solution for illegal aliens who have been in this country for a long time. But some Hispanics question whether many illegal aliens will come forward if there is a possibility of deportation.

GUEST WORKERS

The commission voted, 13-2, to reject a proposal to establish a "guest worker" program under which workers from other countries would have the legal right to reside in the United States but only rarely could become citizens. Under such arrangements, millions of southern Europeans and north Africans have migrated legally to Austria, Belgium, France, Germany, Luxembourg, the Netherlands, Norway, Sweden and Switzerland.

Hispanic and labor groups have strongly opposed a guest worker program in the United States, charging that it would create second-class citizenship and hurt the labor movement. Joaquin F. Otero, international vice president of the Brotherhood of Railway and Airline Clerks, AFL-CIO, and a member of the select commission, rejected the argument that guest workers and illegal aliens fill jobs that domestic labor does not want. What these arguments "really boil down to," he said, "is that American workers are getting paid too much, more than they're worth, and that if you inflate the supply of workers, you'll lower the price."

European countries have become disillusioned with guest worker programs in recent years as unemployment among their own citizens has risen and deportation of aliens has proven difficult and expensive. But serious consideration of a similar U.S. program is likely anyway, at least as an expansion of the current "H2" program under which about 30,000 foreign workers are admitted on a seasonal or temporary basis for jobs such as sheepherding, apple picking and sugar cane harvesting. The Labor Department must first certify that no domestic workers want the jobs.

The select commission did recommend a "streamlining" of the 60 days given to the Labor Department to respond to an employer's request to hire foreign workers. Growers favored this change, arguing that their crop size and labor needs change quickly, but agricultural employee organizations such as the National Association of Farmworker Organizations urged the Labor Department to extend the labor certification process to six months to protect domestic migrant workers.

The Reagan Administration appears interested in some form of the guest worker program. On Jan. 4, Martin Anderson, assistant to the President for policy development, said on NBC's *Meet the Press* that the Administration was exploring the possibility of permitting Mexicans to come into the United States to work temporarily. He stressed that the Mexicans would pay taxes.

Texas Gov. William P. Clements Jr., who has close ties to the Reagan Administration, has also been floating a proposal under which foreign workers

The 'Border' Line Cases

Illegal immigration is not nearly as mysterious as the shadowy television pictures and occasional newspaper stories about peonage make it appear, according to Immigration and Naturalization Service and State Department officials interviewed in Washington, Mexico City and the border areas of California and Texas.

The greatest number of illegal aliens, the officials said, slip across the underpatrolled U.S.-Mexican border from Brownsville, Texas, to San Diego, or arrive legally on the visitor visas issued to Mexican residents who can demonstrate ties in Mexico that seem to assure their return. This visa program has been extended from border areas to all of Mexico because so many Mexicans travel frequently to the United States to shop and visit relatives, and the demand for one-time visas has overwhelmed U.S. consular offices. The visa program, quite naturally, has the support of merchants in U.S. border cities.

Other Latin American immigrants often start their travel to the United States as tourists in Mexico. People trying to move to the United States are taken to Mexico by tourist agencies that are fronts for smuggling rings and then go by bus from town to town and "drop house" to "drop house" until they arrive in the border towns of Juarez, Mexicali or Tijuana.

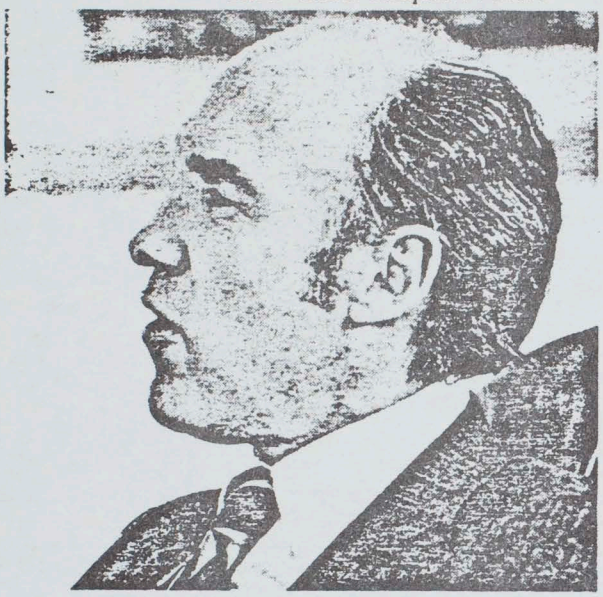
"The ones that go to Tijuana," explained an immigration service official, "are led on foot across the border. Then they are met on the other side and are driven in trailers or camper vans to drop houses in small places like Escondido or to Los Angeles. They may already have jobs there. If they expect to go farther, they are often housed for days, 80 people to a room in chicken houses, waiting for some factory owner or foreman to buy them for $20 or $25 a head. Sometimes they are sold two or three times before they get to Chicago. The broker also tells the alien, 'If you don't pay me so much out of your paycheck, I'll turn you in.'"

The journey can be dangerous, even fatal. In Laredo, Texas, an immigration official said, two aliens locked in the trunk of a van burned to death when the driver had an accident. In another southwestern city, a refrigerator van with 80 aliens inside, all at the point of suffocation, was found abandoned in a parking lot.

Some South American illegal immigrants travel by plane, another immigration official explained. "You can go from Peru to Kansas City or St. Louis to work in a leather works factory for $1,500."

Armed with this detailed knowledge, immigration officials say they could apprehend more illegal aliens. There remain, however, the problems of lack of enforcement manpower to do the job and the inability to capture the "big guys" behind the smuggling rings, a step that would require the cooperation of the alien's home countries.—**Jerry Hagstrom**

Labor leader Joaquin F. Otero



Wyoming Sen. Alan K. Simpson

Hispanic leader Vilma Martinez

would be allowed to stay in the United States for up to nine months, during which there would be no restriction on the workers' choice of location or employers.

Simpson said he has mixed feelings about the guest worker idea. "I grew up in a county where the bracero program [which brought Mexican workers to the United States from 1941 until the mid-1960s] was fully in place with the sugar beet industry, and I saw some abuses that I would never want to see repeated," Simpson said. "But there are human beings who say, 'I want to come,' and I think we should make arrangements for those people."

RESPONSE

Pro-immigration forces have given the select commission's recommendations mixed reviews. While applauding the commission for its "humane policy" on legalizing illegal aliens, Martinez said the Mexican American Legal Defense and Education Fund would continue to oppose the employer sanctions that the commission endorsed.

Population control groups are even less pleased with the recommendations. Phyllis Eisen, director of public affairs for Zero Population Growth, charging that the commission "simply ignored" the demographic impact of immigration and refugee policies, is trying to organize a coalition that may present alternative recommendations to Congress.

"We heard time and again of the serious economic and social consequences of our lack of a clearly defined immigration policy and the unrest resulting from the out-of-control nature of illegal immigration," she said. "The local officials and other witnesses who must deal with immigration and refugee problems on a daily basis expressed the need for responsive and responsible change." Yet now that the commission report is finished, she added, "it is clear that their needs and concerns—and indeed the needs and concerns of all Americans —have been largely ignored."

Despite the widespread belief that the public would prefer a restrictionist immigration policy, the restrictionist forces are not organized to press for such a policy, said David North, a former Labor Department official who is a consultant on labor and immigration issues. "The anti-restrictionists only have to drag their feet," North said. "It's easier to resist something than to get something changed."

Although the select commission failed to achieve compromises acceptable to both restrictionist and pro-immigration forces, the two sides are still working together to try to forge a consensus. But the effort has proved difficult; Torres recently pulled the League of United Latin American Citizens out of Eisen's coalition, calling it "too unwieldy and lacking the necessary focus and consensus required to influence Congress."

The newest immigration study group is a task force set up by the National Committee for Full Employment to build a consensus on undocumented workers. The task force receives money from the Ford Foundation and is led by former Health, Education and Welfare Secretary Wilbur J. Cohen. Its members include the National Conference of Puerto Rican Women, the American Jewish Committee, the National Urban League and the National Council of La Raza. Task force member Howard Samuels, president of the AFL-CIO's industrial union department, said that if the group is able to issue recommendations on how to deal with the economic impact of undocumented workers, a separate effort may be mounted to lobby for changes in immigration policy.

State and local officials may develop their own informal procedures to deal with illegal immigration. In California, resources secretary Huey Johnson touched off a firestorm of controversy last August when he suggested that the state should begin to plan for the inevitable pressure of an expanding population by employing not only immigration limits but also expanded abortion services, tax penalties for large families and cutbacks in low-income housing. Johnson's views were denounced as "elitist" and "insensitive" by many state legislators, some of whom demanded his resignation. But after the protests died down, the mail received in Gov. Edmund G. (Jerry) Brown Jr.'s office overwhelmingly favored Johnson's views, according to the *California Journal*.

Los Angeles County now requires applicants for welfare benefits to present U.S. birth certificates or naturalization papers or work permits. According to North, 16,725 applications by aliens for welfare were withdrawn in 1979 after the document request was made, saving Los Angeles County an estimated $50 million.

No one expects immigration issues to be resolved quickly. In addition to domestic considerations, there will inevitably be some concessions to populous Latin American countries important for their oil and trade with the United States.

As Simpson put it, "It took us 40 screwed-up years to get here, and I think it may take three or four years to begin to turn it around."

And on that point, many observers believe Simpson may be guilty of gross over-optimism. □

THE WASHINGTON POST March 6, 1981

A President 'Intrigued'

THAT SWARM of loose papers you saw blowing around Lafayette Square the other day might have been the final report of the Select Commission on Immigration and Refugee Policy. This is the group, dominated by legislators of both parties, that spent two years pondering the United States' immigration and refugee policies, especially the problem of illegal immigration. Its principal recommendations in this area—amnesty for old illegals and tighter controls on new ones—were what President Reagan appeared to sweep into the park in his interview with Walter Cronkite Tuesday night.

Mr. Reagan was obviously ready for a question on the new report. In a truly flabbergasting way, he brushed past its recommendations and pronounced himself "very intrigued" by a suggestion from elsewhere to end the flow of "what we're calling illegal immigrants" by declaring the flow legal, creating "open borders" and granting visas to those who now cross on the sly. Mexico needs the "safety valve," he said, and the stability of this friendly state is in the American interest. If the flow were legalized, employers could no longer exploit illegals by threatening deportation, and taxes could be collected, too.

Mr. Reagan did not dot every i, and it is premature to say he has rejected or perhaps even considered the basic bargain—close the back door, open a bit the front door—the select commission proposed. What he said, however, is consistent with his past favor for temporary workers. Temporary-worker programs go to the key economic issue of how immigrants affect the American economy and particular groups within it. Employers, especially in border states, traditionally argue that native workers are unavailable for the particular jobs. Organized labor and other opponents see the same programs as competitive on the one hand and exploitative and tension-building on the other. That's why the bracero program, which brought in up to half-a-million Mexicans a year for 22 years, was ended in 1964. The commission, containing representatives of both schools, ducked and said that the current small-scale temporary program (30,000 workers) could be run better and perhaps expanded, but only "slightly."

Demonstrably, it is not now possible to establish, to the satisfaction of a legislature necessarily representing different interest groups, whether temporary workers are good or bad. So it makes sense to put off the issue until the country has tested tighter controls on illegal immigration, as the commission urges. But that is precisely the view President Reagan swept past on Tuesday. Did he really mean to? Is he not prepared to review, in the light of his national responsibilities, a position that was plainly formed in a California context? Of the many questions posed by immigration, that's one of the first.

FROM THE TRANSCRIPT OF THE WALTER CRONKITE INTERVIEW WITH PRESIDENT REAGAN, CBS TV, MARCH 3, 1981.

CRONKITE: Illegal immigration is one of the major problems we have in the country today, and the— the congressional task force has just come in with a study on it. One of its recommendations, besides putting responsibility on employers not to hire illegal aliens, is to provide some means of identification for the aliens, so that the employer will know who he's hiring. Would you support some form of national identification that could help attack this problem?

PRESIDENT REAGAN: Well now, I'm very intrigued by a pro— program that's been suggested by several border-state governors and their counterparts in the Mexican states on the other side of the— of the border. They have met together on this problem.

We have to remember we have a neighbor and a friendly nation on an almost 2,000-mile border down there, and they have an unemployment rate that is far beyond anything. There— a safety valve has to be— some of that we're calling illegal immigration right now. What these governors have come up with—and I'm very intrigued with it—is a proposal that we and the Mexican government get together and legalize this and grant visas, because it is to our interest, also, that that safety valve is not shut off and that we might have a breaking of the stability south of the border. At the same time, that would then make these people in our country— an employer could not take advantage of them and work them at sweatshop wages and so forth under the threat of turning them in. They, at the same time, then would be paying taxes in this country for whatever they earned. They would be able to go legally back across the border if they wanted to and come back across, but the border would become a two-way border for all our people. And I'm very intrigued with that. I'd like to talk about it and intend to in April when I meet with President Lopez Portillo.

THE WASHINGTON POST, TUESDAY MARCH 17, 1981.

Speaking of George Orwell

THERE IS a specter haunting the debate over illegal immigration, and his name is George Orwell. It is widely recognized, most recently by the Select Commission on Immigration and Refugee Policy, that any effective strategy to curb illegal immigration into the United States must focus on developing some means of distinguishing accurately between alien workers and legal residents. But the effort has stalled on the assertion that any form of national identity system would dangerously impair an entire series of privacy rights now enjoyed by Americans.

If the United States adopts a "universal identifier" while reforming its immigration laws, critics charge, the computerized record-keeping apparatus required to ensure its accuracy would usher in Mr. Orwell's totalitarian nightmare—*1984*. In this view, the cards would be used eventually as credit and police checks and, in other unspecified ways, would be perverted beyond their avowed purpose of verifying the employment eligibility of resident aliens. Worst-case arguments conjure up visions of all Americans being forced to produce the cards before registering at hotels, crossing state lines or for other abusive purposes unimagined today. Meanwhile, proposals to limit cards to aliens are denounced as both an assault on privacy and a blatant act of discrimination against the large number of Latins and Caribbean blacks among the illegal population.

The threat to privacy rights posed by a national identity card is real and is worthy of close scrutiny. But opponents have exaggerated it grossly. Even today, virtually every American uses daily a number of quasi-national (though not universal) identifiers, public and private: Social Security cards, drivers' licenses, Medicare and Medicaid numbers, armed forces identity cards and the familiar credit cards. A veritable army of government and private agencies collates and jostles these identifiers within their computer data banks constantly, using and abusing the data for purposes both benign and malevolent. Still, despite the warnings of civil libertarians, we have yet to fulfill our supposed rendezvous with an Orwellian destiny.

Why the fuss, then, about a more systematic identifier designed solely to deal with illegal immigration? The rights of illegals (including their privacy) would probably be strengthened through a national identity card system. The federal government would find it possible not only to identify provable abuses by employers or local authorities but also to extend legal protection and social services to workers whose presence in the United States had been legitimized by the new cards.

The system's main benefit, though, would be to allow the government to determine precisely and promptly the legal status of millions of alien workers who have inundated low-wage American labor markets. No humane and rational immigration policy stands a chance of success unless we reduce the currently uncontrollable rate of illegal entry.

Congress, while devising a national identity card system, should provide elaborate safeguards, possibly through amendments to the 1974 Privacy Act. Whether the identifier should be a forgery-proof Social Security card, a phone-in data bank, a new work identity card or some other proposed mechanism remains to be determined. Only through adopting such a system, however, can Americans reassert the primacy of *lawful* entry into this country. Endless and inappropriate evocations of George Orwell will not make the problem go away.

Executive Summary—Recommendations of the Select Commission on Immigration and Refugee Policy

Section I. International Issues

I.A. Better Understanding of International Migration:

The Select Commission recommends that the United States continue to work with other nations and principal international organizations that collect information, conduct research and coordinate consultations on migratory flows and the treatment of international migrants, to develop a better understanding of migration issues.

I.B. Revitalization of Existing International Organizations:

The Select Commission recommends that the United States initiate discussion through an international conference on ways to revitalize existing institutional arrangements for international cooperation in the handling of migration and refugee problems.

I.C. Expansion of Bilateral Consultations:

The Select Commission recommends that the United States expand bilateral consultations with other governments, especially Mexico and other regional neighbors regarding migration.

I.D. The Creation of Regional Mechanisms:

The United States should initiate discussions with regional neighbors on the creation of mechanisms to:

Discuss and make recommendations on ways to promote regional cooperation on the related matters of trade, aid, investment, development and migration;

Explore additional means of cooperation for effective enforcement of immigration laws;

Establish means for mutual cooperation for the protection of the human and labor rights of nationals residing in each other's countries;

Explore the possibility of negotiating a regional convention on forced migration or expulsion of citizens; and

Consider establishment of a regional authority to work with the U.N. High Commissioner for Refugees and the Intergovernmental Committee on Migration in arranging for the permanent and productive resettlement of asylees who cannot be repatriated to their countries of origin.

Section II. Undocumented/Illegal Aliens

II.A. Border and Interior Enforcement:

II.A.1. Border Patrol Funding:

The Select Commission recommends that Border Patrol funding levels be raised to the numbers and training of personnel, replacement sensor systems, additional light planes and helicopters and other needed equipment.

II.A.2. Port-of-Entry Inspections:

The Select Commission recommends that port-of-entry inspections be enhanced by increasing the number of primary inspectors, instituting a mobile inspections task force and replacing all outstanding border-crossing cards with a counterfeit-resistant card.

II.A.3. The Select Commission recommends that regional border enforcement posts be established to coordinate the work of the Immigration and Naturalization Service, the U.S. Customs Service, the Drug Enforcement Administration and the U.S. Coast Guard in the interdiction of both undocumented/illegal migrants and illicit goods, specifically narcotics.

II.A.4. Enforcement of Current Law:

The Select Commission recommends that the law be firmly and consistently enforced against U.S. citizens who aid aliens who do not have valid visas to enter the country.

II.A.5. Nonimmigrant Visa Abuse:

The Select Commission recommends that investigations of overstays and student visa abusers be maintained regardless of other investigative priorities.

II.A.6. Nonimmigrant Document Control:

The Select Commission recommends that a fully automated system of nonimmigrant document control should be established in the Immigration and Naturalization Service to allow prompt tracking of aliens and to verify their departure. U.S. consular posts of visa issuance should be informed of non-departures.

II.A.7. Deportation of Undocumented/Illegal Immigrants:

The Select Commission recommends that deportation and removal of undocumented/illegal migrants should be effected to discourage early return. Adequate funds should be available to maintain high levels of alien apprehension, detention and deportation throughout the year. Where possible, aliens should be required to pay the transportation costs of deportation or removal under safeguards.

II.A.8. Training of INS Officers:

The Select Commission recommends high priority be given to the training of Immigration and Naturalization Service officers to familiarize them with the rights of aliens and U.S. citizens and to help them deal with persons of other cultural backgrounds. Further, to protect the rights of those who have entered the United States legally, the Commission also recommends that immigration laws not be selectively enforced in the interior on the basis of race, religion, sex, or national origin.

II.B. Economic Deterrents in the Workplace:

II.B.1. Employer Sanctions Legislation:

The Select Commission recommends that legislation be passed making it illegal for employers to hire undocumented workers.

II.B.2. Enforcement Efforts in Addition to Employer Sanctions:

The Select Commission recommends that the enforcement of existing wage and working standards legislation be increased in conjunction with the enforcement of employer responsibility legislation.

II.C. Legalization:

The Select Commission recommends that a program to legalize illegal/undocumented aliens now in the United States be adopted.

II.C.1. Eligibility for Legalization:

The Select Commission recommends that eligibility be determined by interrelated measurements of residence—date of entry and length of continuous residence—and by specified groups of excludability that are appropriate to the legalization program.

II.C.2. Maximum Participation in the Legalization Program:

The Select Commission recommends that voluntary agencies and community organizations be given a significant role in the legalization program.

II.C.3. Lgalization and Enforcement:

The Select Commission recommends that legalization begin when appropriate enforcement mechanisms have been instituted.

II.C.4. Unqualified Undocument/Illegal Aliens:

The Select Commission recommends that those are ineligible for a legalization program be subject to the penalties of the Immigration and Nationality Act if they come to the attention of immigration authorities.

SECTION III. THE ADMISSION OF IMMIGRANTS

III.A. Numbers of Immigrants:

III.A.1. Numerical Ceilings on Total Immigrant Admissions:

The Select Commission recommends continuing a system where some immigrants are numerically limited but certain others—such as immediate relatives of U.S. citizens and refugees—are exempt from any numerical ceilings.

III.A.2. Numerically Limited Immigration:

The Select Commission recommends an annual ceiling of 250,000 numerically limited immigrant visas with an additional 100,000 visas available for the first five years to provide a higher ceiling to allow backlogs to be cleared.

III.B. Goals and Structure:

III.B.1. Categories of Immigrants:

The Select Commission recommends the separation of the two major types of immigrants—families and independent (nonfamily) immigrants—into distinct admissions categories.

III.C. Family Reunification:

The Select Commission recommends that the reunification of families continue to play a major and important role in U.S. immigration policy.

III.C.1. Immediate Relatives of U.S. Citizens:

The Select Commission recommends continuing the admission of immediate relatives of U.S. citizens outside of any numerical limitations. This group should be expanded slightly to include not only the spouses, minor children and parents of adult citizens, but also the adult unmarried sons and daughters and grandparents of adult U.S. citizens. In the case of grandparents, petitioning rights for the immigration of relatives do not attach until the petitioner acquires U.S. citizenship.

III.C.2. Spouses and Unmarried Sons and Daughters of Permanent Resident Aliens:

The Select Commission recognizes the importance of reunifying spouses and unmarried sons and daughters with their permanent resident alien relatives. A substantial number of visas should be set aside for this group and it should be given top priority in the numerically limited family reunification category.

III.C.3. Married Sons and Daughters of U.S. Citizens:

The Select Commission recommends continuing a numerically limited preference for the married sons and daughters of U.S. citizens.

III.C.4. Brothers and Sisters of U.S. citizens:

The Select Commission recommends that the present policy of admitting all brothers and sisters of adult U.S. citizens within the numerical limitations be continued.

III.C.5. Parents of Adult Permanent Residents:

The Select Commission recommends including a numerically limited preference for certain parents of adult permanent resident aliens. Such parents must be elderly and have no children living outside the United States.

III.C.6. Country Ceilings:

The Select Commission recommends that country ceilings apply to all numerically limited family reunification preferences except to that for the spouses and minor children of permanent resident aliens, who should be admitted on a first-come, first-served basis within a worldwide ceiling set for that preference.

III.C.7. Preference Percentage Allocations:

The Select Commission recommends that percentages of the total number of visas set aside for family reunification be assigned to the individual preferences.

III.D. Independent Immigration:

The Select Commission recommends that provision should be made in the immigrant admissions system to facilitate the immigration of persons without family ties in the United States.

III.D.1. Special Immigrants:

The Select Commission recommends that "special" immigrants remain a numerically exempt group but be placed within the independent category.

III.D.2. Immigrants With Exceptional Qualifications:

The Select Commission recognizes the desirability of facilitating the entry of immigrants with exceptional qualifications and recommends that a small, numerically limited ctegory be created within the independent category for this purpose.

III.D.3. Immigrant Investors:

The Select Commission recommends creating a small, numerically limited subcategory within the independent category to provide for the immigration of certain investors. The criteria for the entry of investors should be a substantial amount of investment or capacity for investment in dollar terms, substantially greater than the present $40,000 requirement set by regulation.

III.D.4. Retirees:

The Select Commission recommends that no special provision be made for immigration of retirees.

III.D.5. Other Independent Immigrants:

The Select Commission recommends the creation of a category for qualified independent immigrants other than those of exceptional merit or those who can qualify as investors.

III.D.6. Selection Criteria for Independent Immigrants:

The Select Commission believes that specific labor market criteria should be established for the selection of independent immigrants, but is divided over whether the mechanism should be a streamlining and clarification of the present labor certification procedure plus a job offer from a U.S. employer, or a policy under which independent immigrants would be admissible unless the Secretary of Labor ruled that their immigration would be harmful to the U.S. labor market.

III.D.7. Country Ceilings:

The Select Commission recommends a fixed-percentage limit to the independent immigration from any one country.

III.E. Flexibility in Immigration Policy:

III.E.1. Suggested Mechanism:

The Select Commission recommends that ranking members of the House and Senate subcommittees with immigration responsibilities, in consultation with the Departments of State, Justice, and Labor, prepare an annual report on the current domestic and international situations as they relate to U.S. immigration policy.

SECTION IV. PHASING IN NEW PROGRAMS RECOMMENDED BY THE SELECT COMMISSION

The Select Commission recommends a coordinated phasing-in of the major programs it has proposed.

SECTION V. REFUGEE AND MASS FIRST ASYLUM ISSUES

V.A. The Select Commission endorses the provisions of the Refugee Act of 1980 which cover the definition of refugee, the number of visas allocated to refugees and how these numbers are allocated.

V.A.1. Allocation of Refugee Numbers:

The Select Commission recommends that the U.S. allocation of refugee numbers include both geographic considerations and specific refugee characteristics. Numbers should be provided—not by statute but in the course of the allocation process itself—for political prisoners, victims of torture and persons under threat of death.

V.B. Mass First Asylum Admissions:

V.B.1. Planning for Asylum Emergencies:

The Select Commission recommends that an interagency body be established to develop procedures, including contingency plans for opening and managing federal processing centers, for handling possible mass asylum emergencies.

V.B.2. Determining the Legitimacy of Mass Asylum Claims:

The Select Commission recommends that mass asylum applicants continue to be required to bear an individualized burden of proof. Group profiles should be developed and used by processing personnel and area experts (see V.B.4.) to determine the legitimacy of individual claims.

V.B.3. Developing and Issuing Group Profiles:

The Select Commission recommends that the responsibility for developing and issuing group profiles be given to the U.S. Coordinator for Refugee Affairs.

V.B.4. Asylum Admissions Officers:

The Select Commission recommends that the position of asylum admissions officer be created within the Immigration and Naturalization Service. This official should be schooled in the procedures and techniques of eligibility determinations. Area experts should be made available to these processing personnel to provide information on conditions in the source country, facilitating a well-founded basis for asylum determinations.

V.B.5. Asylum Appeals:

The Select Commission holds the view that in each case a simple asylum appeal be heard and recommends that the appeal be heard by whatever institution routinely hears other immigration appeals.

V.C. Refugee Resettlement:

The Select Commission endorses the overall programs and principles of refugee resettlement but takes note of changes that are needed in the areas of cash and medical assistance programs, strategies for resettlement, programs to promote refugee self-sufficiency and the preparation of refugee sponsors.

V.C.1 State and Local Governments:

The Select Commission recommends that state and local governments be involved in planning for initial refugee resettlement and that consideration be given to establishing a federal program of impact aid to minimize the financial impact of refugees on local services.

V.C.2. Refugee Clustering:

The Select Commission recommends that refugee clustering be encouraged. Mechanisms should be developed, particularly within the voluntary agency network, to settle ethnic groups of similar backgrounds in the same areas.

V.C.3. Resettlement Benefits:

The Select Commission recommends that consideration be given to an extension of federal refugee assistance reimbursement.

V.C.4. Cash-Assistance Programs:

The Select Commission recommends that stricter regulations be imposed on the use of cash-assistance programs by refugees.

V.C.5. Medical-Assistance Programs:

The Select Commission recommends that medical assistance for refugees should be more effectively separated from cash-assistance programs.

V.C.6. Resettlement Goals:

The Select Commission recommends that refugee achievement of self-sufficiency and adjustment to living in the United States be reaffirmed as the goal of resettlement. In pursuance of this goal, "survival" training—the attainment of basic levels of language and vocational skills—and vocational counseling should be emphasized. Sanctions (in the form of termination of support and services) should be imposed on refugees who refuse appropriate job offers, if these sanctions are approved by the voluntary agency responsible for resettlement, the cash-assistance source and, if involved, the employment service.

V.C.7. Sponsors:

The Select Commission recommends that improvements in the orientation and preparation of sponsors be promoted.

V.D. Administration of U.S. Refugee and Mass Asylum Policy:

V.D.1. Streamlining of Resettlement Agencies:

The Select Commission recommends that the Administration, through the office of the Coordinator for Refugees, be directed to examine whether the program of resettlement can be streamlined to make government participation more responsive to the flow of refugees coming to this country. Particular attention should be given to the question of whether excessive bureaucracy has been created, although inadvertently, pursuant to the Refugee Act of 1980.

V.D.2. U.S. Coordinator for Refugee Affairs:

The Select Commission recommends that the office of the U.S. Coordinator for Refugee Affairs be moved from the State Department and be placed in the Executive Office of the President.

SECTION VI. NONIMMIGRANT ALIENS

VI.A. Nonimmigrant Adjustment to Immigrant Status:

The Select Commission recommends that the present system under which eligible nonimmigrants and other aliens are permitted to adjust their status into all immigrant categories be continued.

VI.B. Foreign Students:

VI.B.1. Foreign Student Employment:

The Select Commission recommends that the United States retain current restrictions on foreign student employment, but expedite the processing of work authorization requests; unauthorized student employment should be controlled through the measures recommended to curtail other types of illegal employment.

VI.B.2. Employment of Foreign Student Spouses:

The Select Commission recommends that the spouses of foreign students be eligible to request employment authorization from the Immigration and Naturalization Service under the same conditions that now apply to the spouses of exchange visitors.

VI.B.3. Subdivision of the Foreign Student Category:

The Select Commission recommends dividing the present all-inclusive F-1 foreign student category into subcategories: a revised F-1 class for foreign students at academic institutions that have foreign student programs and have demonstrated their capacity for responsible foreign student management to the Immigration and Naturalization Service; a revised F-2 class for students at other academic institutions authorized to enroll foreign students that have not yet demonstrated their capacity for responsible foreign student management and a new F-3 class for language or vocational students. An additional F-4 class would be needed for the spouses and children of foreign students.

VI.B.4. Authorization of Schools to Enroll Foreign Students:

The Select Commission recommends that the responsibility for authorizing schools to enroll foreign students be transferred from the Immigration and Naturalization Service to the Department of Education.

VI.B.5. Administrative Fines for Delinquent Schools:

The Select Commission recommends establishing a procedure that would allow the Immigration and Naturalization Service to impose administrative fines on schools that neglect or abuse their foreign student responsibilities (for example, failure to inform INS of changes in the enrollment status of foreign students enrolled in their schools).

VI.C. Tourists and Business Travelers:

VI.C.1. Visa Waiver for Tourists and Business Travelers from Selected Countries:

The Select Commission recommends that visas be waived for tourists and business travelers from selected countries who visit the United States for short periods of time.

VI.C.2. Improvement in the Processing of Intracompany Transferee Cases:

The Select Commission recommends that U.S. consular officers be authorized to approve the petitions required for intracompany transfers.

VI.D. Medical Personnel:

VI.D.1. Elimination of the Training Time Limit for Foreign Medical School Graduates:

The Select Commission recommends the elimination of the present two- to three-year limit on the residency training of foreign doctors.

VI.D.2. Revision of the Visa Qualifying Exam for Foreign Doctors:

The Select Commission recommends that the Visa Qualifying Exam (VQE) be revised to deemphasize the significance of the Exam's Part I on basic biological science.

VI.D.3. Admission of Foreign Nurses as Temporary Workers:

The Select Commission recommends that qualified foreign nurses continue to be admitted as temporary workers, but also recommends that efforts be intensified to induce more U.S. nurses who are not currently practicing their professions to do so.

VI.D.4. Screening of Foreign Nurses Applying for Visas:

The Select Commission recommends that all foreign nurses who apply for U.S. visas continue to be required to pass the examination of the Commission on Graduates of Foreign Nursing Schools.

VI.E. H-2 Temporary Workers:

The Department of Labor should recommend changes in the H-2 program which would improve the fairness of the program to both U.S. workers and employers. Proposed changes should:

Improve the timeliness of decisions regarding the admission of H-2 workers by streamlining the application process;

Remove the current economic disincentives to hire U.S. workers by requiring, for example, employers to pay FICA and unemployment insurance for H-2 workers; and maintain the labor certification by the U.S. Department of Labor.

The Commission believes that government, employers, and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers.

The above does not exclude a slight expansion of the program.

VI.F. Authority of the Attorney General to Deport Nonimmigrants:

The Select Commission recommends that greater statutory authority be given to the Attorney General to institute deportation proceedings against nonimmigrant aliens when there is conviction for an offense subject to sentencing of six months or more.

SECTION VII. ADMINISTRATIVE ISSUES

VII.A. Federal Agency Structure:

The Select Commission recommends that the present federal agency structure for administering U.S. immigration and nationality laws be retained with visa issuance and the attendant policy and regulatory mechanisms in the Department of State and domestic operations and the attendant policy and regulatory mechanisms in the Immigration and Naturalization Service of the Department of Justice.

VII.B. Immigration and Naturalization Service:

VII.B.1. Service and Enforcement Functions:

The Select Commission recommends that all major domestic immigration and nationality operations be retained within the Immigration and Naturalization Service, with clear budgetary and organizational separation of service and enforcement functions.

VII.B.2. Head of the INS:

The Select Commission recommends that the head of the Immigration and Naturalization Service be upgraded to director at a level similar to that of the other major agencies within the Department of Justice and report directly to the • • •

VII. B. 3. Professionalism of INS Employees:

The Select Commission recommends the following actions be taken to improve the responsiveness and sensitivity of Immigration and Naturalization Service employees:

Establish a code of ethics and behavior for all INS employees.

Upgrade employee training to include meaningful courses at the entry and journeymen levels on ethnic studies and the history and benefits of immigration.

Promote the recruitment of new employees with foreign language capabilities and the acquisition of foreign language skills in addition to Spanish—in which all officers are now extensively trained—for existing personnel.

Sensitize employees to the perspectives and needs of the persons with whom they come in contact and encourage INS management to be more sensitive to employee morale by improving pay scales and other conditions of employment.

Reward meritorious service and sensitivity in conduct of work.

Continue vigorous investigation of and action against all serious allegations of misfeasance, malfeasance and corruption by INS employees.

Give officers training to deal with violence and threats of violence.

Strengthen and formalize the existing mechanism for reviewing administrative complaints, thus permitting the Immigration and Naturalization Service to become more aware of and responsive to the public it serves.

Make special efforts to recruit and hire minority and women applicants.

VII. C. Structure for Immigration Hearings and Appeals:

Article I Court:

The Select Commission recommends that existing law be amended to create an immigration court under Article I of the U.S. Constitution.

VII.C.2. Resources for Article I Court:

The Select Commission urges that the court be provided with the necessary support to reduce existing backlogs.

VII.D. Administrative Naturalization:
The Select Commission recommends that naturalization be made an administrative process within the Immigration and Naturalization Service with judicial naturalization permitted when practical and requested. It further recommends that the significance and meaning of the process be preserved by retaining meaningful group ceremonies as the forum for the actual conferring of citizenship.

VII. E. Review of Consular Decisions:
The Select Commission recommends that the existing informal review system for consular decisions be continued but improved by enhancing the consular post review mechanism and using the State Department's visa case review and field support process as tools to ensure equity and consistency in consular decisions.

VII.F. Immigration Law Enforcement by State and Local Police:
The Select Commission recommends that state and local law enforcement officials be prohibited from apprehending persons on immigration charges, but further recommends that local officials continue to be encouraged to notify the Immigration and Naturalization Service when they suspect a person who has been arrested for a violation unrelated to immigration to be an undocumented/illegal alien.

SECTION VIII. LEGAL ISSUES

VIII.A. Powers of Immigration and Naturalization Officers:

VIII.A.1. Temporary Detention for Interrogation:
The Select Commission recommends that statutes authorizing Immigration and Naturalization Service enforcement activities for other than activities on the border clearly provide that Immigration and Naturalization Service Officers may temporarily detain a person for interrogation or a brief investigation upon reasonable cause to believe (based upon articulable facts) that the person is unlawfully present in the United States.

VIII.A.2. A rests With and Without Warrants:
The Select Commission recommends that:
Arrests, effected with or without the authority of a warrant, should be supported by probable cause to believe that the person arrested is an alien unlawfully present in the United States.

Warrantless arrests should only be made when an INS officer reasonably believes that the person is likely to flee before an arrest warrant can be obtained.

Arrest warrants may be issued by the Immigration and Naturalization Service District Directors or Deputy District Directors, the heads of suboffices and Assistant District Directors for Investigations acting for the Attorney General.

Persons arrested outside the border area without a warrant should be taken without unnecessary delay before the Immigration and Naturalization Service District Director, Deputy District Director, head of suboffice or Assistant Director for Investigations acting for the Attorney General or before an immigration judge who will determine if sufficient evidence exists to support the initiation of deportation proceedings. With respect to arrests at the border, persons arrested without a warrant should be taken without unnecessary delay before an immigration judge or a supervisory responsible Immigration and Naturalization Service official who will determine whether sufficient evidence exists to support the initiation of deportation proceedings.

VIII.A.3. Searches for Persons and Evidence:
The Select Commission recommends that the Immigration and Nationality Act include provisions authorizing Immigration and Naturalization Service officers to conduct searches:

With probable cause either under the authority of judicial warrants for property and persons, or in exigent circumstances;

Upon the receipt of voluntary consent at places other than residences;

When searches pursuant to applicable law are conducted incident to a lawful arrest; or

At the border.

VIII.A.4. Evidence Illegally Obtained:
The Select Commission recommends that enforcement officials using illegal means to obtain evidence should be penalized. The evidence thus obtained should not be excluded from consideration in deportation cases.

VIII.B. Right to Counsel:

VIII.B.1. The Right to Counsel and Notification of that Right:
The Select Commission recommends that the right to counsel and notification of the right be mandated at the time of exclusion and deportation hearings and when petitions for benefits under the INA are adjudicated.

VIII.B.2. Counsel at Government Expense:
The Select Commission recommends amending the current law to provide counsel at government expense only to permanent resident aliens in deportation or exclusion hearings, and only when those aliens cannot afford legal counsel and alternative sources of free legal services are not available.

VIII.C. Limits on Deportation:

VIII.C.1. Revision of Section 244 of the Immigration and Nationality Act:

The Select Commission recommends that the words "extreme hardship" in Section 244 of the Immigration and Nationality Act be changed to "hardship." And that the reference to congressional confirmation of suspension of deporttaion be eliminated from this section.

VIII.C.2. Long-Term Permanent Residence as a Bar to Deportation:
The Commissioners did not reach a consensus on this issue.

VIII.D. Exclusions:

VIII.D.1. Grounds for Exclusion:
The Select Commission believes that the present exclusionary grounds should not be retained. The Select Commission recommends that Congress reexamine the grounds for exclusion set forth in the INA.

VIII.D.2. Reentry Doctrine:
The Select Commission recommends that the reentry doctrine be modified so that returning lawful permanent resident aliens (those who have departed from the United States for temporary purposes) can reenter the United States without being subject to the exclusion laws, except the following:

Criminal grounds for exclusion (criminal convictions while abroad);

Political grounds for exclusion;

Entry into the United States without inspection; and

Engaging in persecution.

SECTION IX. LANGUAGE REQUIREMENT FOR NATURALIZATION

The Select Commission recommends that the current English-language requirement for naturalization be retained, but also recommends that the English-language requirement be modified to provide a flexible formula that would permit older persons with many years of permanent residence in the United States to obtain citizenship without reading, writing or speaking English.

SECTION X. TREATMENT OF U.S. TERRITORIES UNDER U.S. IMMIGRATION AND NATIONALITY LAWS

The Select Commission recommends that U.S. law permit, but not require, special treatment of all U.S. territories.

THE NATIONAL COUNCIL OF LA RAZA
1725 "Eye" Street, N.W.
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(202) 293-4680

Advocacy Network Questionnaire

The National Council of La Raza (NCLR) is currently in the process of adding to its advocacy network by contacting key Hispanics throughout the nation and developing an information-sharing system between such individuals and NCLR's Office of Research, Advocacy and Legislation. In light of your activities as a government official and community leader, NCLR considers your expertise and knowledge vital to its future efforts. By establishing strong links within the Hispanic community NCLR hopes to be a part of effective advocacy efforts which will lead to the advancement of opportunities among all Hispanics.

If you would like to be a part of the National Council of La Raza's information-sharing and advocacy network, please complete the attached questionnaire. The form is pre-addressed so that you simply have to fold along the indicated lines and return it at the earliest possible date.

Name_____

Current Title_____

Current Employer_____

City_____ State_____

Mailing Address_____

City_____ State_____Zip Code_____

Telephone( )_____

Current areas of interest (please mark)

___Community Development
___Education
___Employment
___Immigration
___Health
___Criminal Justice
___Housing
___Energy
___Youth
___Affirmative Action
___Others (please specify)

_____ _____

_____ _____

May NCLR contact you for information or advice regarding your special areas of expertise? If so, please list these areas

_____ _____

_____ _____

Would you like to receive any of the following NCLR publications? If so, please mark.

___Further information on the National Council of La Raza
___Backgrounders (comprehensive analyses of select issues which will have significant impact on Hispanics and which will demand future action by community members)
___Action Alerts (advocacy information and action items on certain select issues which require immediate response by community members)
___Information on NCLR's National Affiliate Convention in San Antonio, Texas August 19-21, 1981
___Information on becoming an NCLR Associate Member

National Council of La Raza

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Attention: Janet Schroyer

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April 1, 1981

TO: Colleagues in the Program

FROM: Carl E. Schwarz

RE: NOTES ON THE LEGAL IMPLICATIONS OF THE FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY OF MARCH 1, 1981

I. Introductory Note

It is often alleged that national commissions rarely have concrete impacts on public policy and legislation. Don't believe it. Thomas Wolanin's recent study found that Presidential commissions established during 1945-73, 100 in all, did not result in issue avoidance; two out of three commission reports were followed in subsequent legislatinn or executive policies to a"substantial" degree.

The Select Commission on Immigration and Refugee Policy was created by Congress precisely to by-pass Carter Administration proposals, particularly on the "amnesty" and "guestworker" issues. As such, it is a national commission which should be taken quite seriously as a prelude to specific legislative changes in the Immigration and Nationality Act. I say this in spite of the possibility that the new Republican majority in the Senate and the increased conservative strength in the House will want to put their own stamps on such changes. The bottom line is that there is not much in this Final Report that will produce great discomfort to conservatives on immigration issues.

My objective in reviewing the Commission Report was limited to legal dimensions and implications. I did not approach it as a statement of coherent policy, though would enjoy doing so later.

What follows is a list of notes made sequentially as I went through the Report. Manuel García y Griego agreed that such a "listing out" of the legal implications of the Report would serve as a basis for several of us to make a joint effort at the Seminar on April 17. I would hope all of us on that roundtable panel could do the same before we meet so as to synthesize and interrelate our analyses.

II. General Observations

While the Commission Report might well "hang together" as a set of policy recommendations, I find the legal aspects inadequately discussed, poorly supported in several parts, and incomplete on the long-term consequences arising from some recommendations. Perhaps that is an unfair comment, given the supporting documents and staff reports which I did not see. Questions I pose below could well be answered by such supplemantary data and commentary.

II. (cont.) One overall omission of the Report should be noted at the outset. This was the failure even to mention or explain briefly recent legislative and judicial developments as they have treated the rights of aliens (legal and illegal) in all sectors of society: employment, political participation, ownership of private property, health and welfare benefits and education at all levels, as well as in the criminal justice system.

It is true that by PL 95-412 of 5 October 1978, the Commission was charged "only" with reviewing "existing laws, policies, and procedures governing the admission (emphasis mine) of immigrants and refugees to the United States ...". But certainly the status of aliens under our constitutional and public law would effect the flow and nature of immigrant populations into this country. For example, a concern often stated throughout the Report was for creating an "underclass" of illegal aliens subject to exploitation and breeding disrespect for the laws. All manner of specific recommendations, including limited legalization for aliens already here, flowed from this concern. But little attention was given to the exact legal status of those aliens residing in the U.S. in the private and public activity sectors mentioned above. In short, policies affecting the admission of aliens should be at least partially influenced or informed by status conditions of aliens already here. My research project will address the latter issue area at a later date.

III. Specific Observations

Page 55 -- Recommendation that aliens should be required to pay their own transportation costs of deportation or removal "when able to do so" and "under adequate safeguards." It would seem that because most of aliens affected by this requirement would be Mexican who already constitute 90 per cent of the aliens apprehended (though making up about half of the illegal population), it would be interesting to define "able to do so" and "adequate safeguards." The bureauacratic criteria and procedures required to make such determinations seem staggering. The INS and other agencies are going to have their hands full with the bureaucratic demands if other Commission recommendations are followed; i.e., in II.B.1 and 2, establishment and enforcement of employer sanctions and an "improved" employee verification system.

Page 60 -- "Without ... strong, new efforts to curtail illegal migration, ... any attempt to regularize the status of illegal aliens already living in the U.S. could serve as an inducement for further illegal immigration." In other words, LAW ENFORCEMENT MUST PRECEDE EFFECTIVE LEGALIZATION, and this logic pervades the Report on the "amnesty" issue. Police activities, employer sanctions/worker eligibility identification, enforcement of wage/working standards, followed by legalization.

Query: how will the non-documented alien view the credibility of legalization, especially with the span of residence left undefined and not inclusive of temporary/seasonal migrants (a conspicuous omission of the Report)? His suspicion will no doubt be reinforced by the plethora of law enforcement activity, especially given recommendation II. C. 4., that all aliens failing to qualify will be immediately "subject to the penalties of the INA ..." (p. 83)

Pages 76-81 -- Perhaps a positive element encouraging non-documented response are recommendations II.C.1. and 2., providing at least one-year for legalization and use of private organizations for "education" purposes. But recommending a cut-off date of January 1, 1980 without specifying the minimum residence in the U.S. for eligibility leaves the whole legalization proposal in limbo. Judge Cruz Reynoso (pages 399-400) questions whether the tough law enforcement prerequisite and the failure to define residence will produce more than five per cent of illegals now residing in the country. Furthermore, even the January 1, 1980 cut-off is of questionable value given the delays expected from a review of the whole Report by the new Reagan Administration and Congress. By the Commission's own estimate (pages 77-80); a residence requirement of two years will disqualify 40 per cent of illegals, and with three years, some 65 per cent.

Failure of the Commission to agree on what grounds aliens could be excluded casts even further doubt on the credibility of legalization as proposed. Recommendation VII.D.1. (page 282) urges Congress to "reexamine" such grounds to eliminate some of the thirty-three currently in effect, but without specifying which ones.

Page 230 -- Recommendation VI.F. would give the Attorney General authority to deport nonimmigrant aliens (both legal and illegal) "when there is conviction for an offense subject to sentencing of six months or more." No discussion follows indicating the massive numbers of aliens prospectively affected by lowering the present minimum period of sentencing for a criminal offense from one year to the recommended six months. Effectively, this makes any non-immigrant alien subject to deportation who has been convicted for any misdemeanor offense (in almost every state of the Union); such offenses under the California Ciminal Code include drunken driving, failure to appear on a moving traffic violation, midwifery, trespass, petty theft, and littering a public highway.

Page 248 -- Recommendation VII.C.1. would create an Immigration Court (statutory court) by Act of Congress, which would parallel the standing of the U.S. Tax Court and Court of Customs and Patent Appeals. This would in effect provide an administrative court of considerable stature and act as a buffer/conduit between the INS and Federal District Courts which handle most immigration appeals. Unfortunately, as noted by Commissioner Rodino, the Commission rejected an Immigration Advisory Board (III.E., page 142) which could have been a technical tool to raise and lower admission quotas as the need arises. On the Immigration Court, see also page 5 of this Memo.

Page 256 -- State and local police should be prohibited from apprehending persons on immigration charges, though may inform INS on illegal aliens arrested on unrelated charges (Rec. VII.F.). This is already established by current law, which provides only one instance for such apprehensions by local law enforcement: harboring an alien (per 8 U.S.C. 1324(c)). The 1980 Report of the U.S. Civil Rights Commission (pp. 91-95), however, details the frequent violations of this stricture, often at the encouragement of the INS. The Commission "encourages state and local officers to notify the INS," but recommends no procedure to oversee such violations nor does it specifically mandate the INS to curtail such support.

Legal Issues (pp. 259-86)

Page 261 et. seq. -- The Commission recommends that statutes "clearly provide that INS officers may temporarily detain a person for interrogation or a brief investigation upon a reasonable cause to believe (based on specific articulable facts) that the person is unlawfully present in the U.S."(Rec. VIII.A.1.). This recommendation is intended to cover enforcement in non-Border areas where a host of court decisions have delimited INS search-and-seizure conduct on Fourth Amendment grounds. See, e.g., Illinois Migrant Council v. Pilliod, 540 F.2d 1062 (1976), rehearing and modification, 548 F.2d (1977) Blackie/s House of Beef v. Castillo, 467 F.Supp.170 , 480 F. Supp. 1078 (1979). The modified decision in Pilliod distinguished "questioning,"as permissible, from "temporary detention,"which is not, without reasonable suspicion based on specific, articulable facts. Piliod thus joins U.S. v. Brignoni-Ponce, 422 U.S. 873 (1975), Blackie/s Beef, and Marquez v. Kiley, 436 F. Supp. 100 (1977), as well as other decisions in holding that interrogation of an individual based solely on race or ethnic appearance is unconstitutional. See especially Douglas concurring opinion in Brignoni-Ponce, at 889. Only at Border checkpoints within reasonable proximity to Border may officers stop vehicles or persons without reasonable suspicion as defined above. See U.S. v. Martinez-Fuerte, 96 S.Ct. 3074 (1976), distinguishing such checkpoints from arbitrary stops by INS roving patrols which was invalidated in Almeida-Sanchez v. U.S. 413 U.S. 266 (1973). The Commission argues for including in federal statute the "reasonable suspicion" standard for enforcement activities outside the Border zone.

Query: What can be the grounds for "reasonable suspicion" other than race or nationality in areas outside the Border itself which can thus authorize detention by the INS? In "area control operations" and "surveys" of residential neighborhoods and businesses, the INS has been checked frequently by federal court decisions (see above) because race was the sole criterion. Brignoni-Ponce and the more recent U.S. v. Cortez, (U.S. Sup. Ct. 79-404, Bull. 834 (1981) allow for vehicular stops when "specific articulable facts" such as patterns of movement, time of day, and other activities are observed before the detention and interrogation. The Commission stops short of language which would specify that race cannot be the sole criterion for detaining individuals as suspected non-documented aliens.

Page 264 -- The Commission would authorize arrest warrants to be issued by INS supervisors alone, without judicial authority, and further permits warrantless arrests on likelihood of escape(Rec. VIII.A.2.). This enables only INS officers to determine "probable cause" for arrest and elevates such discretion to the high level of federal statute.

Page 267 -- Recommendation VIII.A.3. permits INS searches of persons and property anywhere (not just near Border) without judicial warrants on probable cause and as incident to lawful arrest. I question whether the first procedure would withstand judicial scrutiny (administrative search warrants under Rule 41 of the Federal Rules of Criminal Procedure conducted by INS for "persons" was enjoined unequivocally in Blackie s Beef, cited above). The continuation of a search incident to lawful arrest, say for a traffic violation, is permitted under federal jurisprudence regarding vehicles (see U.S. v. Robinson (1978), but is rejected by numerous state courts, including California as excessive police authority without either reasonable or probable cause.

Page 269 -- The Commission rejects the exclusionary rule and would have illegal searches "penalized" through administrative punishment of the offending INS officers. The victims in such cases receive no direct benefit, except through litigating civil tort actions against the constitutional violators. Because these actions depend on proof of deliberate intent, they are infrequently successful in gaining money damages. (Rec. VIII.A.4.)

Pages 271-73 -- In its discussion of Recommendation VIII. B.1., the Commission refused to provide right to counsel to those detained, investigated and arrested as deportable aliens except "at the time of exclusion and deportation hearings" or when benefit petitions under INA are being tried. Thus right to counsel will apply to some 70,000 aliens (those formally deported or excluded in 1978) out of more than a million "voluntary departures." The INS already informs all deportees of their right to consult a lawyer and request a hearing (per Commission narrative at p. 273). But in contrast to the Commission urgency to incorporate law enforcement recommendations throughout the Report into federal statute, they were reluctant to accord this practiced right the same level of formal legality. The clear implication was that the Commission feared the administrative costs involved with educating the alien public on this right, which might well extend into the right to government-paid counsel (per Miranda v. Arizona (1966) and Argersinger v. Hamlin (1971)).

Pages 276-78 -- The Commission recommends that "discretionary relief" under Section 244 of the INA be accorded to those aliens who have 7-10 years residence and can show "hardship" during deportation proceedings. By lowering the burden on the alien petitioner from the present "extreme hardship" to"hardship,"the recommendation would permit more aliens to remain, barring serious crimes present "serious risks" to the U.S. Per the Supreme Court decicion in Wang v. INS(1981), however, such aliens may no longer argue economic dislocation or deprivation as a basis for "extreme hardship." It remains to be seen whether such economically-grounded petitions for Section 244 relief would pass INS and judicial screening if the less burdensome "hardship" test were adopted by Congress.

Page 278 -- The Commission seemed to anticipatethe recent Court of Appeals decision in Chadha v. INS, 634 F.2d 408 (1980), striking down the power of one house of Congress to veto suspensions of deportation where the INS hearing officer determined that the deportee would suffer "extreme hardship" on returning to his native country(VIII.C.1.).

Page 282 -- Recommendation VIII.D.1. criticizes current grounds for exclusion of alien immigrants, some 33 in all, as archaic, ambiguous, and difficult to enforce. It urges Congress to "reexamine" some grounds for elimination. The problem is that the Commission was itself unrealistic and ambiguous in failing to specify which of the thirty-three should be eliminated or how they should be rewritten. Without such precise direction, Congress is unlikely to agree on streamlining and equitable language. Among other problems, lack of reform on this portion of the INA will continue to pit State Department Visa Office interpretations against these of the INS, resulting in a serious enforcement problem.

ADDENDA (Afterthoughts)

Re page 248 and recommendation for an Immigration Court -- Creation of such a couft would shift appellate responsibility over immigration grievances from the District Courts to the U.S. Courts of Appeal, who presently review final decisions of most administrative courts and independent executive agencies. Lost would be de novo fact-finding now conducted by District Courts in reviewing INS actions. Courts of Appeal focus on questions of law and tend to defer to agencies and administrative tribunals (such as the proposed Immigration Court) via rules like "substantial evidence" and "presumptive validity."

Page 136 et. seq. -- The Commission would establish "specific labor market criteria" for admission of independent (non-family connected) immigrants, but could not decide on the mechanism to make such determinations -- i.e., job-offer plus Department of Labor certification, or simple "negative certification" by Labor Dept. INA now allows in such immigrants on proof of job offer, but Labor Dept. certification depends on showing of statistical non-displacement of U.S. workers.

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April 27, 1981

Herman Baca
1837 Highland Ave.
National City, CA 92050

Estimado Herman Baca,

I am writing to send you a copy of some materials that I have come into contact with and thought that you might find them useful for your work on immigration. One is a copy of a critique of the Select Commission on Immigration and Refugee Policy, or at least the notes of such a critique, written by one of the people here at the program. The other is a copy of the Immigration Law Bulletin that seems to have some important stuff in it. You may already have this information. If so, please disregard it.

The Schwartz piece was for a general seminar we had on the Select Commission Report. We should soon have a transcript of the seminar available. At the seminar, we had a number of speakers, some from the program here and others who came in for it, such as Vilma Martinez and some of the lawyers that work with her, and another lawyer that works on immigration problems. If you would like a copy of the talks, I will be happy to send it to you.

Also, the Tribunal idea I think was excellent and I hope someone pays attention to the work you went through and the cases you present. As part of my job, I come into contact with a lot of Undocumented immigrants from Mexico and they sometimes tell me how they were picked up by the police rather than the INS and then turned over to INS. If you would like this information I can also make it available to you, however, it will not be available for awhile, until I get a chance to organize it. If anyone tells me of abuses, especially physical or even psychological, I will urge them to make their cases public, or at least bring it to your attention and the attention of the CCR.

Atentamente,

Leo R. Chavez

Leo R. Chavez
Research Coordinator