Stanley van den Noort, M.D.
Dean, College of Medicine
University of California, Irvine
Irvine, Calif.92664

RECEIVED
NOV 28 1977
DEAN'S OFFICE
COLLEGE OF MEDICINE

Dear Sir:

We are writing in severe protest of the recently instituted UCI Medical Center policy of disclosing the names of "undocumented aliens/Mexican Nationals" to the Mexican Consulate for the purpose of their transfer to "appropriate facilities in Mexico" -- i.e., identification and expulsion of all such aliens coming to us in medical need.

This policy violates our long-held premise that medical care is a right for all, not simply a priviledge for those who can afford it.

This policy also violates our medical duty to care for and treat the entire patient, and would quickly destroy the doctor/patient relationship of trust and confidentiality for future patients.

Finally, such patients will soon avoid seeking aid from our facilities except in the most critical cases; thus pre-natal care, well-baby care, and early acute care (when treatment is best, easiest, and cheapest) would cease for such patients.

We deplore this highly unethical practice, and request your assistance in rectifying the situation before too many individuals are hurt, and before our reputation with the community becomes too damaged.

Walter Bramson, UCI-4
Student Body President

Charlotte Morse, UCI-3
Student Body Vice-President
Chair, Committee on Patient Concerns

Debbie Satterfield, UCI-4
Committee on Patient Concerns

Luis Hernandez, UCI-3
Chicano Medical Student Assoc.

CC: Thomas Nelson, M.D.
Chair, Executive Committee

R.W. White
Director UCIMC

E. Tomsovic, M.D.
Medical Director, UCIMC

D. Aldrich, Ph.D.
Chancellor

D.S. Saxon, Ph.D.
President University of California

Honorable J. Brown
Governor, State of California

check out Mexican Consul attached letter looks like a self-out also.. it is a "steering operation for the lawyers who work for the Consul to get in + see - P.I. D.I. + other injured persons - to represent them -

COUNTY OF ORANGE

HEALTH AGENCY

J. R. ELPERS, M.D.
HEALTH OFFICER

SANTA ANA OFFICE
[illegible] NORTH ROSS STREET
TELEPHONE: (714) 834-[illegible]

Mailing Address: P.O. Box
Santa Ana, California 9270[illegible]

June 1, 1977

Fernando Fernandez
Consul General of Mexico
Secretaria de Relaciones Exteriores
Departamento de Proteccion
125 Paseo De La Plaza
Los Angeles, California

Numero: 02272
Expediente: 72-27/524.9 Gen. "77"

Dear Mr. Fernandez:

In late April we met to discuss Mexican nationals who require medical attention that is currently being provided by the County of Orange. You have since responded to our visit by outlining certain steps to be followed to return these individuals to their homeland. As we discussed, all of these patients are currently being cared for at the University of California Irvine Medical Center in Orange, California.

Attached you will find both a medical and social report which contains the information you requested in order for you to take the appropriate action in these cases.

If you or your staff have any questions, or there is any further information I can provide please give me a call at (714) 834-7037.

I appreciate your assistance in this most difficult matter.

Yours truly,

Murry L. Cable
Director, Medical Services Administration
UCIMC Contract

MLC:mm

cc: Julia Arriaza
Robert Berger, M. D.

SECRETARIA
DE
RELACIONES EXTERIORES
CONSULADO GENERAL

[illegible]

[illegible]

[illegible]: [illegible]-en. Hospitales

Los Angeles, California,
June 2[illegible], 1977

County of Orange
Health Agency
Post Office Box 355
Santa Ana, California 92702

Att: Mr. Murry Cable
Director, Medical Services
Administration
MIC Contract.

Dear Sirs:

In response to your letter of June 1, at the present time, I am attempting to set up a project with the County of Los Angeles, to take care of the Mexican nationals that receive health care services in County facilities. I have developed the project in the following manner: first, by introducing our role.

The Consulate General of Mexico is the legal representative for all Mexican nationals physically present in the United States. This means resident aliens as well as undocumented aliens. The mode of entry of the individual does not affect this relationship. At the present time, with the influx of Mexicans to California, those within the County Health facilities may benefit by a return to their homeland, if continued medical services can be arranged for them there. At this time, I am making arrangements with my Government, through the Ministry of Foreign Affairs, to account the chronically ill in Mexico and to provide for them with the necessary medical care. It is my intention to provide services of the Consular officers to make the necessary arrangements in Mexico with medical services, relatives and transportation services.

FORMA 101

SECRETARIA
DE
RELACIONES EXTERIORES
CONSULADO GENERAL

June 13, 1977

by doing so, I will make it possible to discharge patients from County facilities without compromising their on-going medical care. Additionally, at this time, I am offering to assist the County in recovering the cost of the health care that has been provided whenever this is possible, by interviewing the individual patients and finding out if there are any resources available.

Because of the working relationship that has been established with the Immigration and Naturalization Service, it is to the patient's and the County's advantage that the Consulate General of Mexico assumes the responsibility for handling immigration matters.

Protocol has been developed by the Los Angeles County Department of Health Services, and an amended copy thereof is attached for your perusal. I would like to work out something along the same lines with the County of Orange, and would appreciate your comments on the same.

As for the discharge of the patients, whose names follow:

[redacted] - UCIMC No. [redacted]
[redacted] - UCIMC No. [redacted]
[redacted] - UCIMC No. [redacted]
[redacted] - UCIMC No. [redacted]

As stated in our communication 2272 of May 12, 1977, I am notifying the Ministry of Foreign Affairs in Mexico to start the arrangements. However, it is necessary that you provide us with the names and addresses of the next of kin in Mexico, for each patient, probable date of entry into Mexico, the port of entry and if any special equipment is needed from the Mexican health authorities.

FORMA 101

SECRETARIA
DE
RELACIONES EXTERIORES
CONSULADO GENERAL

June 22, 1977

I regret being unable to handle the case of [redacted] -UCLMC [redacted], or any other which may be submitted by you, in the case that the patient is not a proven Mexican citizen.

Looking forward to hearing from you, I remain,

Very truly yours,
CONSUL GENERAL OF MEXICO

FERNANDO FERNANDEZ

Encs: 4
FFG:mbc.
c.c.p. C. Secretario de Relaciones Exteriores. Dirección General del Servicio Consular. Tlatelolco, D. F. Para su información.
c.c.p. Hidalgo y Aranda. 5220 E. Beverly Blvd. Los Angeles California 90022. For your information.

HIDALGO & ARANDA
ATTORNEYS AT LAW
P. O. Box 6722
5220 East Beverly Boulevard
Los Angeles, California 90022

TELEPHONES
(213) 685-4130
(213) 724-5171

MANUEL HIDALGO
MANUEL ARANDA JR.
GREGORIO W. MORENO

ASSOCIATE COUNSEL
MICHAEL R. COULTER

September 23, 1977

County of Orange
Department of Health
Post Office Box 355
Santa Ana, California 92702

Attention: Mr. Murry L. Cable
Director, Medical Services
Administration
UCIMC Contract

Re: Mexican National Patients

Gentlemen:

Confirming the results of the meeting at the Mexican Consulate, September 22, 1977:

This is to confirm our understanding that you approve the procedures outlined in the attached protocol for the handling of problems involving Mexican Nationals receiving medical care and treatment through Orange County medical facilities.

In order to complete documentation, please direct a letter to:

Honorable Mario Tapia
Consul General
Republic of Mexico
125 East Paseo de la Plaza
Los Angeles, California 90020

This letter should indicate your approval of the procedureal protocol.

We are enclosing a copy of the protocol which, at the meeting, was accepted and approved.

It appears the only items remaining will be simply working out mechanics of notification to Consulate personnel staff of currently treating patients who need services and/or protection of Consulate representation.

We are arranging for a meeting with the Catholic Social Services Director of Immigration, which we understand has been involved with Mexican Nationals in Orange County.

Hopefully the joint efforts of your good offices, this office and the Consulate of Mexico may solve many of the problems faced by Orange County, the patients, and the Consulate, and we look forward to working with you toward these ends.

Yours very truly,

HIDALGO & ARANDA

By
DON O'DELL
Manager

DO:ss
Enclosure

PROTOCOL FOR REFERRAL OF MEXICAN NATIONALS TO MEXICAN CONSULATE

I. DEPARTMENT OF HEALTH SERVICES

A. Social Services

1. Upon identification of a Mexican national, the Department of Health Services shall contact a staff person at the Consulate General of Mexico.

2. Together with the Consulate General of Mexico, develops the discharge plan based upon the patient's medical needs and condition.

3. Together with the Consulate General of Mexico, prepares the patient and relatives for discharge, furnishing the following information:

   (a) Names and addresses of the closest next of kin of patient.

   (b) Probable date of entry into Mexico.

   (c) Port of entry.

B. Medical Staff

1. Shall make the determination of appropriate discharge plan.

2. Furnish medical information necessary to make discharge arrangements, stating whether the patient will be needing special attention and of what nature.

3. Prepare medical reports.

II. ROLE OF THE CONSULATE GENERAL OF MEXICO

A. Furnish the Department of Health Services with a list of Consular officers that will be assigned to the project. This list will be kept in Nursing Director's Office.

B. In order to avoid exploitation of the project by persons who might pose as Consular officers for

their own profit, any Consulat officer will stop at the Nursing Director's office to have his credentials verified against the list before going on ward to visit patients.

C. The list will be updated as often as Consular officers change, and at least once a year.

D. The Consular officers will work closely with hospital staff to prepare the discharge plans. The Consulate General of Mexico will contact the appropriate health care facility in Mexico and arrange for the patient's ongoing care, based upon the medical recommendations supplied. They will report to the Department the conclusion of implemented plans.

III. MISCELLANEOUS SERVICES

A. Consent for Minors.

A number of Mexican national children live in the United States with friends and relatives while their parents remain in Mexico. These caretakers often have no official legal guardianship status and when the children require medical services, there is no one to give consent. The Consulate General of Mexico has agreed to obtain parent's signatures for us or obtain Court Order to be appointed temporary guardian in the case of an emergency.

B. Accident Cases, Litigation, Child Abuse and Other Problems.

The Mexican Consulate is the attorney in fact for all Mexican Nationals residing within its jurisdiction. In order to avoid exploitation of the patient, Consulate representatives will, in appropriate cases, render legal advice to the patient in order that rights of the Mexican National are protected.

C. All of the above problems should be referred to the officers of the Consulate General of Mexico in the manner described above for discharge planning.

COUNTY OF ORANGE
HUMAN SERVICES AGENCY

DAVID ODELL
DIRECTOR

211 W. SANTA ANA BOULEVARD
SANTA ANA, CALIFORNIA 92701
(714) 834-7007

October 10, 1977

Honorable Mario Tapia
Consul General
Republic of Mexico
125 East Paseo de la Plaza
Los Angeles, California 90020

SUBJECT: Transfer of Mexican National Patients

Dear Senior Tapia:

I appreciate the opportunity of meeting with Don O'Dell and Senior Olvera on the 22nd of September. Based upon that meeting, attached is a Protocol for referral of the Mexican Nationals which has been modified to conform with the organizational structure and responsibilities of Orange County. Individuals to be transferred back to Mexico will always use Tijuana for port of entry. Also attached is the updated information on the individuals we would like to transfer.

I look forward to seeing you this Friday and hope that we can come to final resolution on these problems. Thank you very much for your consideration and help in this matter.

Sincerely,

Murry L. Cable, Director
Medical Services Administration

MC:sk

Enclosure

PROTOCOL FOR REFERRAL OF MEXICAN NATIONALS

TO MEXICAN CONSULATE FROM ORANGE COUNTY

I. MEDICAL SERVICES ADMINISTRATION

A. Upon identification of a Mexican national, Medical Services Administration will contact a staff person at the Consulate General of Mexico.

B. Together with the Consulate General of Mexico, develops the discharge plan based upon the patient's medical needs and condition.

C. Together with the Consulate General of Mexico, prepares the patient and relatives for discharge, furnishing the following information:

(1) Names and addresses of the closest next of kin of patient.

(2) Probable date of entry into Mexico.

(3) Port of entry.

D. Medical staff in Medical Services Administration will make the determination of an appropriate discharge plan.

E. Furnish medical information necessary to make discharge arrangements, stating whether the patient will be needing special attention and of what nature.

F. Prepare medical reports.

II. ROLE OF THE CONSULATE GENERAL OF MEXICO

A. Furnish Medical Services Administration of the Human Services Agency with a list of Consular officers that will be assigned to the project. This list will be kept with Medical Services Administration's Supervising Public Health Nurse.

B. In order to avoid exploitation of the project by persons who might pose as Consular officers for their own profit, any Consulat officer will stop at the Supervising Public Health Nurse's office to have his credentials verified against the list before going on ward to visit patients.

C. The list will be updated as often as Consular officers change, and at least once a year.

D. The Consular officers will work closely with Medical Services Administration's staff to prepare the discharge plans. The Consulate General of Mexico will contact the appropriate health care facility in Mexico and arrange for the patient's ongoing care, based upon the medical recommendations supplied. They will report to Medical Services Administration the conclusion of implemented plans.

III. MISCELLANEOUS SERVICES

A. Consent for Minors.

A number of Mexican national children live in the United States with friends and relatives while their parents remain in Mexico. These caretakers often have no official legal guardianship status and when the children require medical services, there is no one to give consent. The Consulate General of Mexico has agreed to obtain parent's signatures for us or obtain Court Order to be appointed temporary guardian in the case of an emergency.

B. Accident Cases, Litigation, Child Abuse and Other Problems.

The Mexican Consulate is the attorney in fact for all Mexican Nationals residing within its jurisdiction. In order to avoid exploitation of the patient, Consulate representatives will, in appropriate cases, render legal advice to the patient in order that rights of the Mexican National are protected.

C. All of the above problems should be referred to the officers of the Consulate General of Mexico in the manner described above for discharge planning.

FORMA 101

SECRETARIA PARTICULAR

NUMERO: [illegible]

EXPEDIENTE: 73-27/524.9-Gen.
Hospitales Orange County

SECRETARIA
DE
RELACIONES EXTERIORES
CONSULADO GENERAL

Los Angeles, California,
October 13, 1977

Mr. Murry L. Cable, Director
Medical Services Administration
County of Orange
211 West Santa Ana Boulevard
Santa Ana, California 92701

SUBJECT: Transfer of Mexican National Patients.

Dear Mr. Cable:

I am looking forward to our next meeting on Friday October 14, 1977 in order that along with Mr. Manuel Hidalgo our legal counsellor, we may reach the conclusion of the Protocol for Referral of Mexican Nationals to Mexican Consulate from Orange County, received with your letter of October 10, 1977.

Enclosed please find a list of the official consular representatives authorized in accordance with paragraph II A), B) and C), of the aforementioned Protocol.

Yours very truly,

Mario Tapia Ponce
Consul General

ENCS: 1
MTP:mbc.

FORMA 101

SECRETARIA
DE
RELACIONES EXTERIORES
CONSULADO GENERAL

LIST OF OFFICIAL CONSULAR REPRESENTATIVES AUTHORIZED IN ACCORDANCE WITH PARAGRAPH II A), B) and C) of the PROTOCOL FOR REFERRAL OF MEXICAN NATIONALS TO MEXICAN CONSULATE FROM ORANGE COUNTY.

LIC. RODOLFO N. OLVERA G. - Consul

LIC. ERNESTO ACEVEDO C. - Consul

LIC. ALEJANDRO MAGALLON

MR. OSCAR RUIZ LLAGUNO

PATIENT INTERVIEW SHEET

I. PERSONAL DATA

NAME _____ TELEPHONE NO. _____

ADDRESS _____

AKA _____ OTHER TELEPHONE NO. _____

ADDRESS IN MEXICO:

_____

_____

_____

NEXT OF KIN:

Name _____

Address _____

_____

Telephone No. _____

DATE OF BIRTH _____ S.S. NO. _____

MARITAL STATUS _____ NAME OF SPOUSE _____

ADDRESS _____

II. EMPLOYMENT

EMPLOYER _____ TELEPHONE NO. _____

ADDRESS _____

LENGTH OF EMPLOYMENT _____ RATE OF PAY _____

GROUP INSURANCE? _____ INSURANCE CARRIER _____

ADDRESS _____

AUTO INSURANCE? _____ INSURANCE CARRIER _____

ADDRESS _____

III. DATE OF INCIDENT/ACCIDENT _____ TIME _____

LOCATION _____

POLICE INVESTIGATION? _____ WITNESSES? _____

IV. MEDICAL PROBLEM

REASON FOR HOSPITALIZATION _____

_____

HOSPITAL _____ TELEPHONE NO. _____

PATIENT NUMBER _____

V. RESOURCES

GROUP INSURANCE? _____ AUTO INSURANCE? _____ MEDI-CAL? _____

DISABILITY? _____ OTHER ASSETS? _____

_____

HUMAN RIGHTS, FAIR PLAY, PROTECTION OF RIGHTS OF PRIVACY AND THE CONTRIBUTIONS OF UNDOCUMENTED WORKERS TO THE COMMUNITY OF ORANGE COUNTY.

STATEMENT BY DEAN STANLEY VAN DEN NOORT, UNIVERSITY OF CALIFORNIA AT IRVINE MEDICAL SCHOOL BEFORE ORANGE COUNTY TASK FORCE ON HEALTH PROBLEMS OF UNDOCUMENTED ALIENS....NOVEMBER 28, 1977

UNDOCUMENTED WORKERS IN CALIFORNIA HAVE BEEN PRESENT IN VARYING NUMBERS SINCE THE REMOVAL OF THE STATE FROM MEXICAN CONTROL IN THE 19TH CENTURY. POPULATION GROWTH IN MEXICO AND GROWING DISPARITY IN INCOME BETWEEN THE TWO COUNTRIES HAS INCREASED THE PROBLEM IN THE LAST SEVERAL DECADES. THE POPULATION OF MEXICO HAS TREBLED SINCE WORLD WAR II. COMMON LABOR FOR ONE DAY IN MEXICO GENERATES THE SAME INCOME AS COMMON LABOR FOR ONE HOUR IN THE UNITED STATES. THERE HAS BEEN NO SERIOUS EFFORT TO PREVENT WORKERS AND THEIR FAMILIES FROM ENTERING THE UNITED STATES. OUR 1,200-MILE BORDER WITH MEXICO IS PROTECTED BY 1,200 TREASURY AGENTS. BY COMPARISON THE 150-MILE BORDER BETWEEN SOUTH AND NORTH KOREA IS MANNED BY ABOUT 15,000 AMERICAN TROOPS AND PERHAPS TWICE THAT NUMBER OF SOUTH KOREAN FORCES. THE 20 TO 30,000 U.S. MARINES IN THE SOUTHWEST PLAY NO ROLE IN BORDER CONTROL. IT IS OBVIOUS THAT WE HAVE MADE NO SERIOUS EFFORT TO CONTROL ENTRY. OPPORTUNITIES FOR EMPLOYMENT ABOUND AND, FOR THE MOST PART, DO NOT COMPETE WITH AMERICAN WORKERS WHO WILL NOT WORK FOR LESS THAN $3.00 PER HOUR. DOMESTIC WORK, RESTAURANTS, CLEANING SERVICES, MUCH LANDSCAPE WORK, AND MUCH LIGHT MANUFACTURING WOULD COME TO A NEAR HALT WITHOUT THE UNDOCUMENTED WORKER. THE RECREATIONAL VEHICLE INDUSTRY ABANDONED ITS ORIGINS IN THE MIDWEST AND HAS DEVELOPED IN THE SOUTHWEST LARGELY BECAUSE OF THE UNDOCUMENTED WORKERS. THESE PEOPLE HAVE BECOME A VERY IMPORTANT PART OF THE ECONOMIC FABRIC OF SOUTHERN CALIFORNIA. NO SERIOUS EFFORT TO CURTAIL THEIR EMPLOYMENT HAS BEEN MADE. IT IS DOUBTFUL THAT THE EFFORTS OF THE IMMIGRATION SERVICE REACH MORE THAN 1% OF THE UNDOCUMENTED WORKERS. I THINK IT IS FAIR TO STATE THAT OUR UNSPOKEN NATIONAL POLICY IS TO LET THEM COME HERE AND TO GIVE THEM WORK. I DO NOT SAY THAT IS IS WRONG BUT I DO SAY THAT WE SHOULD RECOGNIZE THAT WE ARE PRESENTLY WORKING UNDER SUCH A POLICY DESPITE VARIOUS PROTESTATIONS

TO THE CONTRARY. WITH ONE AGENT PER MILE OF BORDER, NO PENALTY FOR EMPLOYMENT, AND A WAGE DEFFERENTIAL OF 8:1, WE CANNOT SERIOUSLY BELIEVE THAT THE UNITED STATES, CALIFORNIA, OR ORANGE COUNTY CAN STATE THAT WE HAVE ANY POLICY OTHER THAN TOLERANCE OF THE PRESENCE OF UNDOCUMENTED WORKERS. IT WOULD BE FAIR TO ASK WHETHER THE STATE OR THE COUNTY BUDGETS ANY FUNDS TO LAW ENFORCEMENT FOR THE DETECTION AND REPORTING OF UNCERTIFIED WORKERS.

HOW MANY UNDOCUMENTED WORKERS AND FAMILY MEMBERS ARE THERE IN ORANGE COUNTY? I WOULD ESTIMATE 100,000. TO BE VERY CONSERVATIVE LET US ESTIMATE 50,000. WHAT WOULD IT COST TO PROVIDE STANDARD MEDICAL CARE SUCH AS BLUE CROSS-BLUE SHIELD TO SUCH A POPULATION? IF ONE ESTIMATES $100/MONTH FOR A FAMILY OF THREE, THE COST OF MEDICAL INSURANCE COMPARABLE TO OURS WOULD BE 20 MILLION DOLLARS FOR 50,000 PEOPLE OR 40 MILLION DOLLARS FOR 100,000 PEOPLE. WE DO NOT KNOW WHAT THESE PEOPLE BUY IN PRIVATE MEDICAL CARE AND WE DO NOT KNOW WHAT PRIVATE HOSPITALS SPEND. LET US GENEROUSLY ASSUME THAT THIS MAY BE TWO MILLION DOLLARS PER YEAR. UNIVERSITY FUNDS WERE USED TO PAY FOR MORE THAN ONE MILLION DOLLARS WORTH OF MEDICAL CARE FOR ILLEGAL ALIENS LAST YEAR. THE COUNTY INITIALLY ESTIMATED THEIR COST AT 4.5 MILLION BUT WITH A CLOSER LOOK AT THE BOOKS, REVISED THIS DOWN TO 2.5 MILLION. FROM ALL SOURCES THEN WE HAVE A COST OF APPROXIMATELY SIX MILLION DOLLARS (LESS THAN HALF PAID BY COUNTY) FOR A POPULATION WHICH, IF INDIGENOUS, WOULD COST 20 TO 40 MILLION DOLLARS. EITHER THESE PEOPLE UNDERUTILIZE MEDICAL SERVICES BY NECESSITY OR OUR POPULATION ESTIMATES ARE GROSSLY IN ERROR. I BELIEVE THE POPULATION ESTIMATES ARE CONSERVATIVE AND WOULD NOT BE SURPRISED TO FIND THAT THERE ARE 200,000 UNCERTIFIED ALIENS IN ORANGE COUNTY.

IS IT FAIR FOR THE COUNTY TAXPAYER TO BEAR THE BURDEN? WHILE PROPERTY TAXES

HAVE SOARED IT IS IMPORTANT TO REMEMBER TWO THINGS: (1) THEY ARE LOWER IN ORANGE COUNTY THAN ANYWHERE ELSE IN CALIFORNIA; AND (2) THAT UNCERTIFIED ALIENS PAY PROPERTY TAXES INDIRECTLY AS RENTERS AS DO MANY THOUSANDS OF CITIZENS WHO RENT PROPERTY IN ORANGE COUNTY. IF ONE ESTIMATES THAT 25% OF RENT GOES FOR PROPERTY TAXES, USES AN ESTIMATED UNCERTIFIED ALIEN POPULATION OF 50,000, ESTIMATES AN AVERAGE FAMILY SIZE OF FOUR, AND AN AVERAGE MONTHLY RENT OF $250, ONE FINDS THAT UNCERTIFIED ALIENS ARE CONTRIBUTING APPROXIMATELY 9 TO 10 MILLION DOLLARS TO THE PROPERTY TAX ROLLS. THEY ARE INELIGIBLE FOR MANY COUNTY SERVICES AND EXCEPT FOR SCHOOLS AND MEDICAL CARE PROBABLY ARE NOT A DRAIN ON THE COUNTY TAX ROLLS. IT IS TRUE THAT MANY UNCERTIFIED ALIENS PAY WITHHOLDING AND SOCIAL SECURITY TAXES TO THE FEDERAL GOVERNMENT AND ALSO PAY WITHHOLDING AND SALES TAXES TO THE STATE. FOR THESE PAYMENTS THEY GET PRACTICALLY NOTHING IN RETURN. IT IS PROPER FOR ALL OF US TO ASSIST THE COUNTY IN EFFORTS TO PERSUADE FEDERAL AND STATE AUTHORITIES TO HELP CARE FOR THE MEDICAL, SOCIAL, AND EDUCATIONAL NEEDS OF UNCERTIFIED ALIENS WHO ARE HERE IN RESPONSE TO THE AFOREMENTIONED UNSPOKEN BUT REAL NATIONAL POLICY OF TOLERANCE FOR UNCERTIFIED ALIENS. HOWEVER, I THINK THAT THIS SUPPORT CAN BE PROVIDED WITHOUT TOO MANY TEARS FOR THE PROPERTY TAXPAYER IN ORANGE COUNTY. THE ALLEGED PLIGHT OF THE ORANGE COUNTY TAXPAYER IS NOT A SUBJECT LIKELY TO GENERATE CREDIBILITY OR SYMPATHY IN WASHINGTON OR SACRAMENTO.

WHAT ARE THE MEDICAL NEEDS OF THE POPULATION? PEOPLE WHO COME HERE ARE GENERALLY YOUNG AND THIS MEANS A HIGH INCIDENCE OF INJURIES, A HIGH BIRTHRATE, AND LOTS OF CHILDREN. THE FREQUENCY OF SERIOUS INFECTIOUS DISEASES SUCH AS TUBERCULOSIS AND PARASITIC INFESTATION IS RELATIVELY HIGH. IN OTHER ASPECTS THEY RESEMBLE THE INDIGINOUS INDIGENT POPULATION WITH THE USUAL RANGE OF

DISEASES, MOST OF WHICH ARE DETECTED IN A LATE STAGE AS A MEDICAL EMERGENCY. THEY ARE NOT WELCOME IN MOST HOSPITALS AND IN MOST PHYSICIANS' OFFICES. FOR THE MOST PART, THEY COME TO UCIMC OR CCOC WHICH IS ALSO OPERATED BY UCI. AS AN EXAMPLE OF LATE STAGE ILLNESS, ABOUT 80% OF ALL DENTAL WORK AT CCOC IS FOR EXTRACTION OF TEETH DESTROYED BY CARIES. THEIR MAJOR BARRIERS TO MEDICAL CARE ARE IGNORANCE, LACK OF ACCESS TO THE ABOVEMENTIONED SITES, LANGUAGE BARRIERS, AND FEAR OF DETECTION. AT PRESENT THIS POPULATION RECEIVES A QUANTITY OF MEDICAL CARE WHICH IS PROBABLY SUBSTANDARD IN URBAN MEXICO. SUCH CARE AS THEY DO RECEIVE IS OF AN ACCEPTABLE STANDARD EXCEPT FOR LANGUAGE AND FOLLOW-UP PROBLEMS. MANY PATIENTS DO NOT FOLLOW THROUGH WITH RETURN VISITS FOR NECESSARY CARE. I BELIEVE THAT UNCERTIFIED WORKERS GROSSLY UNDERUTILIZE NECESSARY MEDICAL SERVICES. OUR NEED IS TO FACE UP TO OUR RESPONSIBILITIES AND SEEK ADDITIONAL FUNDS TO SUPPORT AN ACCEPTABLE STANDARD OF MEDICAL CARE.

RECENT COUNTY MANUEVERS TO QUALIFY UNCERTIFIED WORKERS FOR MEDI-CAL HAVE MOCKED THE HUMAN RIGHTS WHICH ARE INHERENT IN THE HELSINKI AGREEMENTS AND FOR NEGLECT OF WHICH WE PRESENTLY UPBRAID RUSSIA AND SOUTH AFRICA. PEOPLE HAVE RIGHTS WHETHER THEY ARE CITIZENS OR NOT. UNCERTIFIED CITIZENS HAVE RIGHTS, PARTICULARLY IN A COUNTY WHICH CLEARLY HAS CHOSEN TO TOLERATE IF NOT ENCOURAGE THEIR PRESENCE. I BELIEVE THAT ANY CONTACT BETWEEN A PATIENT AND A HOSPITAL OR A DOCTOR IS A PRIVATE MATTER. IT MAY BE NECESSARY TO COMMUNICATE THE PATIENT'S NAME AND THE SERVICE PROVIDED TO A THIRD PARTY, E.G., BLUE CROSS, ORANGE COUNTY GOVERNMENT, OR EVEN THE STATE. HOWEVER, THIS COMMUNICATION IS PRIVILEGED AND MUST DEAL ONLY WITH A REIMBURSEMENT MECHANISM. TO PROVIDE THESE NAMES TO THE INS UNDER ANY GUISE OR LAW IS A

PROFOUND VIOLATION OF BASIC HUMAN RIGHTS WHICH I REGARD AS ABHORRENT AND ABHOR THOSE WHO CARRY OUT THIS PROCESS REGARDLESS OF WHO TELLS THEM TO DO SO. TO PROVIDE THESE NAMES WITHOUT THE PERMISSION OF THE PATIENT TO THE MEXICAN CONSULATE IS A FURTHER VIOLATION OF BASIC HUMAN RIGHTS WHICH TRANSCEND CITIZENSHIP. NO USE OF THIS INFORMATION FOR ANY PURPOSE EXCEPT BILL PAYING AND DEMOGRAPHIC INFORMATION WOULD STAND A SERIOUS COURT TEST. UNFORTUNATELY, THE PLAINTIFFS CAN'T SUE, THEIR ADVOCATES HAVE BEEN SLOW TO SUE FOR THEM, COURTS ARE SLOW, AND AMERICAN JUSTICE IS MOST JUST FOR THE AFFLUENT. THESE EFFORTS BY THE COUNTY HAVE CLEARLY CAUSED MANY UNCERTIFIED ALIENS TO DEFER NEEDED MEDICAL CARE. WE HAVE CLEARLY CHOSEN TO SUPPORT SUFFERING AND IN SOME INSTANCES SEVERE DISABILITY AND DEATH IN AN EFFORT TO SHAVE A FEW DOLLARS FROM THE COUNTY BUDGET. WE CANNOT QUANTITATE THIS SUFFERING OR MEASURE ITS COST. WE DO HAVE CASE BY CASE INFORMATION OF INDIVIDUALS WHO HAVE REFUSED CARE RATHER THAN APPLY FOR MEDI-CAL. WE DO HAVE INFORMATION THAT MEDI-CAL APPLICATION HAS CAUSED INS TO CONTACT CERTAIN PATIENTS. WE DO KNOW THAT 20-30% OF CCOC PATIENTS, UCIMC PEDIATRICS PATIENTS, AND OBSTETRICAL PATIENTS ARE UNCERTIFIED ALIENS.

FINALLY, AND TO ME LEAST IMPORTANT, IS THE IMPACT THAT DISEASE AMONG UNCERTIFIED ALIENS HAS ON CITIZENS OF ORANGE COUNTY. WE DO KNOW THAT POOR PRENATAL CARE AND/OR HOME DELIVERIES WILL GENERATE A SIGNIFICANT INCREASE IN THE NUMBER OF DISABLED CHILDREN WHO REQUIRE CARE AT FAIRVIEW AND OTHER STATE FACILITIES. THAT IS ONE WAY TO TRANSFER COSTS TO THE STATE. WE DO KNOW THAT TUBERCULOSIS IS ON THE INCREASE AMONG INDIGENT U.S. POPULATIONS IN URBAN CENTERS INCLUDING ORANGE COUNTY. ONE CAN ONLY GUESS AT THE FIGURES BUT I WOULD ESTIMATE THAT A THIRD OF ORANGE COUNTY'S

UNCERTIFIED ALIENS ARE TUBERCULIN POSITIVE AND THAT A FRACTION OF THAT THIRD -- PERHAPS 10% -- HAVE ACTIVE AND INFECTIOUS TUBERCULOSIS. THAT MEANS THAT THERE ARE AT LEAST 1500 UNDETECTED ACTIVE CASES OF TB IN ORANGE COUNTY ALIENS WHO PROVIDE A SUBSTANTIAL AMOUNT OF DOMESTIC HELP AND RESTAURANT WORK. THERE ARE ABOUT 10,000 UNCERTIFIED ALIENS IN ORANGE COUNTY SCHOOLS. SOME OF THESE CHILDREN HAVE INFECTIOUS TUBERCULOSIS. A SIGNIFICANT NUMBER LIVE IN HOMES WHERE THERE IS ACTIVE TUBERCULOSIS. THE KNOWN INCIDENCE OF TUBERCULOSIS IN ORANGE COUNTY IS, TO THE BEST OF MY KNOWLEDGE, LOW BUT INCREASING. BUT IT IS A REAL HAZARD, IT COULD BECOME A SERIOUS PROBLEM, AND MODERN TUBERCULOSIS INCLUDES A REGRETTABLE PROPORTION OF CASES WHICH ARE RESISTANT TO TREATMENT. I AM CERTAIN THAT POOR MEDICAL CARE FOR UNCERTIFIED ALIENS ALSO CONTRIBUTES TO TYPHOID, SHIGELLOSIS, VENEREAL DISEASE, AMEBIASIS, AND OTHER SERIOUS BACTERIAL AND PARASITIC DISEASES WHICH DO NOT RECOGNIZE ALIEN STATUS AND CAN AFFECT INDIGENOUS RESIDENTS OF ORANGE COUNTY. WE DO NOT HAVE GOOD QUANTITATIVE DATA AND SUCH DATA AS IS AVAILABLE IS IN THE HANDS OF THE COUNTY. THE COLLECTION OF SUCH DATA IS IN ITSELF A COSTLY UNDERTAKING. I DO NOT WISH TO EAT IN RESTAURANTS WITH TUBERCULOUS WAITERS OR TO HAVE TUBERCULOUS DOMESTICS CLEAN MY FAMILY HOME; THERE IS SOME RISK TO THE HEALTH OF THE ORANGE COUNTY NATIVE. BUT I REGARD THIS AS THE LEAST OF OUR PROBLEMS AND ONE WHICH WE PERHAPS RICHLY DESERVE IN THE FACE OF OUR CALLOUS INDIFFERENCE TO THE REAL NEEDS OF A GROUP OF PEOPLE WHO CORRECTLY PERCEIVE THAT THEY ARE WELCOME IN ORANGE COUNTY AS LONG AS THEY DON'T GET SICK OR WISH TO HAVE CHILDREN.

TO ATTACK THE ILLEGAL ALIEN BY DIRECT OR INDIRECT DENIAL OF NEEDED MEDICAL CARE IS A WRETCHED ACT OF HUMAN INJUSTICE. TO PASS THE COST TO THE STATE

THROUGH A MECHANISM WHICH VIOLATES A BASIC HUMAN RIGHT OF THE SICK TO A REASONABLE DEGREE OF PRIVACY IS NO LESS A TRAVESTY. IT ALSO FRIGHTENS THOSE NOT YET ILL AND SERVES TO DENY FUTURE CARE. TO TRANSFER THE COST OF CARE TO THE UNIVERSITY IS PUBLIC IRRESPONSIBILITY.

AS AN INDIVIDUAL, MY RESPONSE TO THE ACTIONS OF THE COUNTY IN THE PAST SIX MONTHS AS IT PERTAINS TO MEDICAL CARE FOR UNCERTIFIED ALIENS IS ONE OF DISGUST, SHAME, AND ANGER.

THE SINGLE AREA IN WHICH I HAVE SOME SMALL COMPASSION FOR THE COUNTY IS IN THE COST OF CHRONIC CARE FOR PATIENTS WITH MAJOR DISABILITY REQUIRING COSTLY CONTINUING SERVICE SUCH AS HEAD INJURIES IN COMA, PARAPLEGICS, AND PATIENTS ON RENAL DIALYSIS. IN THESE CASES THE PATIENT OR THE FAMILY SHOULD BE CONSULTED FIRST. WITH INFORMED CONSENT FROM THE PATIENT OR RESPONSIBLE PARTY, APPLICATION FOR MEDI-CAL BENEFITS SHOULD BE MADE. WITH PATIENCE, PERSUASION, AND THE COOPERATIVE EFFORTS OF THE UNIVERSITY, I AM CONFIDENT THAT THIS APPROACH WILL SHIFT SOME COSTS TO STATE AND FEDERAL SOURCES.

THE PROBLEM IN ORANGE COUNTY IS NOT TO FIND A WAY TO AVOID CURRENT COUNTY COSTS FOR UNCERTIFIED CITIZENS. THE PROBLEM IN ORANGE COUNTY IS TO RECOGNIZE A MAJOR UNMET NEED FOR MEDICAL SERVICES TO ITS INDIGENT POPULATION OF WHICH UNCERTIFIED ALIENS MAY REPRESENT A THIRD. WE NEED TO WORK TOGETHER TO FILL THIS NEED AND TO FORCE THE STATE TO MEET ITS FINANCIAL RESPONSIBILITIES. AN ADVERSARY STATUS BETWEEN UNIVERSITY STAFF AND COUNTY STAFF IS A POOR WAY TO START THIS PROCESS. AT THE SAME TIME, I CANNOT ABDICATE A SENSE OF BASIC DECENCY AND A RESPONSIBILITY TO THE HUMAN RIGHTS OF THE SICK IN ORDER TO FOSTER COUNTY-UNIVERSITY COOPERATION.

THE IMMIGRANT WORKER:
His right to Medi-Cal and
Other Public Assistance Programs

Leg. Juan Lopez, San Diego

I. INTRODUCTION

The long standing controversy over the "illegal aliens" living, working, and receiving public assistance in the United States has been rekindled and is once again a major isaue among Americans. Underemployment, high unemployment, and the high cost of living among American workers due to inflationary times has given greater attention to Mexican immigrant workers employed in the Southwest. In a recent report, the Commissioner of the Immigration and Naturalization Service disclaimed the idea that most of the illegal workers are Mexican.[1] "At least half the illegal aliens are now non-Mexicans in cities working in good industry and service jobs, making big money. They come from every country in the world," he said.

Nevertheless, of the 7 to 8 million immigrant workers in this country, Mexicans make up 80% of apprehensions by immigrant authorities.[2] Many of these Mexican workers are unjustly hassled and deported because of the policy set forth by the Immigration and Naturalization Service. Hence, in Los Angeles the Special Committee on Deportation and Removal of Aliens, consisting of ten attorneys and a Superior Court judge, has been instituted by the Los Angeles County Bar Association to conduct an impartial study of various allegations relating to the mistreatment of aliens and others affected by the immigration and naturalization laws.[3]

A. Constitutional Law

The question which is being dealt with here is rights of a citizen versus non-citizens or whether non-citizens have equal protection under the United States Constitution's Equal Protection Clause. In addition, the Mexican immigrant worker has been faced with more discrimination by immigration authorities than those whose raciel or cultural background allows them to assimilate more easily with the Anglo-American culture.

Mexican immigrant workers may number from four to twelve million.[4] This large range is most likely due to the difficulty in estimating Mexican immigrant workers from Chicanos. Since estimates for Chicanos or Spanish surname citizens run as high as ten million, the differentiation between the Mexicano and thbe Chicano becomes almost impossible without requiring some proof of legal residence. In other words, the community of native Spanish-speakers is <u>one</u> community: Mexicanos, who for one reason or another are unable to prove legal residence and Chicanos, who <u>may</u> have some legal documents which show place of birth within the United States.

The purpose of this paper, then, is to examine the constitutional rights of Mexican immigrant workers in receiving free medical care and/or public assistance under federal and state programs, with an emphasis on California's Medi-Cal program which has required an applicant to be a citizen. It is argued that immigrant workers do have a right to receive public assistance benefits under the Equal Protection Clause of the United States Constitution, and through historical legal documents, as well as past and recent court decisions.

II. HISTORICAL BACKGROUND

In examining the constitutional right of every citizen to receive health care, one usually looks to the Fourteenth Amendment which guarantees that any person residing in the Uni ted States shall have equal protection under federal and state laws. Legal arguments as to the protection of immigrants under the Fourteenth Amendment have been discussed extensively and have brought forth some major legal decisions. These decisions have affected the state welfare programs, in that, alternative procedures have been implemented to include immigrants in health and welfare programs. Yet, it is important to review a few early decisions that influenced later passages of federal laws.

As early as 1886, the discrimination of a Chinese alien was found unconstitutional under the Fourteenth Amendment. In Yick v. Hopkins,[5] the Supreme Court reversed a decision of descrimination based on alienage because it was of the opinion that the Equal Protection Clause was of universal application extending to all persons "within the territorial jurisdiction, without regard to nationality."[6]

A later ruling in Takahashi v. Fish and Game Commission[7] held that statutory classifications based on alienage are unconstitutionally a "suspect" classification. This early racial distinction may have been predicted on the view that a man should not be treated differently because of a congenital factor over which he has no control, such as, his/her race, but that alienage is a legal status which is subject to change.[8] The standard used in this case is based on the fact that the state created a "suspect" classification that could injure that person or group so classified. Moreover, the discrimination could have interfered with an exercise of a fundamental right, such as, protection under the Fourteenth Amendment.

To be sure, these two cases have influenced many important decisions that were made between the 1950's to the present. Although many cases were decided outside the state of California, statutes relating to welfare benefits and citizenship have placed the burden of responsibility on Medi-Cal administrators to comply with these court decisions.[9] Nevertheless, the immigrant worker has found difficulty over the years qualifying for Medi-Cal because of the legal residence requirement.

A. Treaties and International Agreements.

Mexican immigration began when the United States and Mexico signed the Treaty of Guadalupe-Hidalgo which gave the United States possession of the Southwest. Article VIII of the Treaty provided that "Mexicans now established in territories previously belonging to Mexico . . . shall be free to continue where they now reside. Those who shall prefer to remain in said territories, may either retain the title rights of Mexican citizens or acquire those of citizens of the United States."[10]

Those that did not declare intention to retain their Mexican citizenship were assumed to have become United States citizens after one year.

Many Mexicans crossed the border freely due to the "open door" policy between the two nations. No restrictions were established until 1875 and afterward the first racial discrimination law with the Chinese Exclusion Act of 1882 was passed.[11] Thereafter, many laws were passed to discourage "undesirables," (i.e., convicts, idiots, and persons likely to become a public charge) and to set up quotas.

Meanwhile, immigrant workers remained in the United States without registering. For example, in a recent Los Angeles Times article, Frank Del Olmo, a staff writer, reported that his mother had lived in the United States for fifty years without registering with the Immigration and Naturalization Service before dying in 1962.[12] She never registered because she felt she was here legally due to the "open door" policy. Under the Alien Registration Act of 1958, a form of statute of limitations for illegal entrants, she would have made her residence legal if she had entered prior to June 28, 1940. In 1965, the cutoff date was again advanced to June 30, 1948.[13]

Another type of international agreement which encouraged Mexicans to reside in the United States was the Agricultural Workers Agreement. An Agreement between the United States and Mexico on August 1, 1949, it was stated that "Mexican agricultural workers who on the effective date of this agreement are illegally in the United States, may be employed . . . and their immigration status will be adjusted accordingly (emphasis added)."[14]

Furthermore, no acts of discrimination against Mexicans were to be tolerated and sanitary and medical services were to be provided. The local governmental head was to report injustices so that they could be investigated.

Finally, certain treaties provided that immigrants shall have the same rights in specified respects as citizens.[15] These rights may be conferred on immigrants through the treaty-making power of the federal government.[16] Rights or privileges so conferred may not be interfered with by the state.[17]

In short, the treaties and international agreements between Mexico and the United States encouraged Mexican families to work and settle in this country. The questions of legal residence and citizenship could have been and were ignored when the United States needed cheap labor pools. In emphasizing the various contributions the immigrant worker makes to our society, the Court of Griffiths stated that: "From its inception, our nation welcomed and drew strength from immigration of aliens. Their contributions to social and economic life of the country were self-evident, expecially during the periods when the deman for human resources greatly exceeded the native supply. This demand was by no means limited to the unskilled or the uneducated."[18]

B. International Law and Remedies

International treaties and agreements for the protection of immigrants in foreign countries evolved during the middle ages and has since been more clearly interpreted, especially among Western hemisphere nations. Mexico in its 1847 and 1857 constitution's granted to immigrants the same civil rights and guarantees as citizens.[19] In 1916, E. de Vattel wrote his theory on

international protection of the immigrant in which he wrote, "whoever ill-treats a citizen (immigrant) indirectly injures the state, which must protect that citizen."[20] Of course, this was a European point of view, however, it provided a basis upon which theories of state responsibility for injuries to immigrants could be established.

The "Calvo Doctrine" and its corollary, Doctrine of Equal Protection has generally been accepted as a principle of international law by most Latin American nations and the United States. Basically, the principal states that each nation enjoys freedom from interference by other states (nations) in treatment of immigrants and that immigrants are entitled to seek redress for injuries or mistreatment in local courts of that nation in which they reside.

For example, the writ of habeas corpus or writ of "amparo" in Mexico guarantees an independent and impartial assessment of the circumstances surrounding a denial of individual freedom of a citizen and an immigrant alike.[21] Furthermore, the Federal Torts Claims Act of 1947 allows citizens and immigrants to sue the federal government. The alien must show that a United States citizen would be entitled to sue the govennment in the courts of the alien's country: "Citizens or subjects of any foreign government which accords to citizens of the United States the right to prosecute claims against their government in its courts may sue the United States in the courts of Claims if the subject matter of the suit is otherwise within such court's jurisdiction."[22]

However, the interpretation of this law is liberal, in that an immigrant must only show that citizens of the immigrant's government have no more rights on a particular claim than would be allowed United States citizens in those courts. And in the case of the Mexican immigrant, Mexico's constitution and civil procedure codes provide for the rights of United States citizens to litigate.[23]

Usually the rights of immigrants are sought and judged in the country in which he is residing. Still a claim may not be satisfied in the manner mentioned bove, thus the immigrant may look for assistance from an international tribunal or the international Law Commission. The "Convention on International Responsibliity of States for Injuries to Aliens" sought to set forth a constitution for an International Court of Justice.[24] In Article I, Section 2 (a) the Constitution states, "an alien is entitled to present an international claim under this convention only after he has exhausted the local remedies provided by the state against which the claim is made."[25]

In Article 14, pertaining to injuries, the Constitution defines an "injury" as:

a) bodily or mental harm
b) loss sustained by an alien as a result of the death of another alien
c) deprivation of liberty
d) harm to reputation
e) destruction of damage to, or loss of property

f) deprivation of use or enjoyment of property
g) deprivation of means of livelihood
h) loss or deprivation of enjoyment of rights under a contract or concession; or
i) any loss or detriment against which an alien is specifically protected by a treaty."[26]

Thus, the conventions purpose was to codify with some particularity the standards established by international law for the protection of immigrants from wrongful action of states and thereby to manifest the need to look toward safeguarding of human rights under new standards of international law or principles.

In summary, the international treaties and agreements between the United States and Latin American countries have generally guaranteed protection against discriminatory practices against immigrants and have sought to clarify the procedures for redress under international law. As Dawson and Head point out, "the Local Remedies Rule, which seeks to avoid international disputes by requireing aliens to exhaust all reasonably available avenues of recourse in their host states before invoking the protection of their own governments, would be of little relevance if states did not accept the obligation to open their courts and tribunals to alien litigants on a nondiscriminatory basis with nationals."[27]

This section has discussed some of the important historical documents which give the Mexican immigrant anearly basis from which his legal rights began. This historical approach is essential in reviewing the immigrant worker's right to equal protection under the Constitution. Bert Corona, National Organizer of C.A.S.A., (An immigrant worker's organization) stated recently, that the use of a historical approach is important in seeking "solutions" to the immigrants problems. Not to do so, he argued, "is fraud" and furthermore, "damaging" to the status of the immigrant workers in the United States.[28]

III. Court Decisions 1948-1970

In the last twenty-seven years, the courts have examined and clarified the legal status of immigrant workers in the United States. The immigrant who was not able to provide acceptable legal documents proving his legal residence in California has generally been excluded from Medi-Cal. Although federal and state health codes requiring that perso s unable to provide for their own health needs, be permitted to participate in public assistance programs, it is very likely that many Mexican immigrants are still excluded.

Legal questions which have recently been decided will hopefully allow the needy to participate in the Medi-Cal program. Accordingly, a review of the most important decisions pertaining to rights of immigrants is appropriate at this time.

As mentioned before, in Takahashi v Fish and Game Commission,[28] the court set the stage for other decisions by invalidating a California statute which banned the issuance of commercial fishing licenses to "aliens" ineligible for citizenship. The states argument: that it had a "special public interest" in protecting its citizen's ownership rights of fish

swimming within the three mile limit.[29] The court decided that California could not discriminate against "aliens lawfully residing" in the state and furthermore, that these residents had as much right to earn a living as any other citizen.

In addition, the state argued that it had jurisdiction over the eligibility for citizenship because it was following in the footsteps of the federal government. The court, however, ruled that the immigration and naturalization of aliens lay solely with the federal government. Thus, as the Villanova Law Review points out, "Takahashi is important not only because it clearly affirmed the proposition that federal supremacy over the regulation of immigration and naturalization restricts the use of those powers by the state, but also because it underscored, by way of dicta, the judicial attitude toward state discrimination against aliens."[30]

Next, in Shapiro v. Thompson, the court held that a "citizen" receiving state aid had the right to travel outside the state and that the compelling state interest was not substantial. This ruling was later extended to other cases which will be discussed below.

This may have been one of the first courts to challenge the durational residence requirement practiced by many states. The one-year residence requirement was held unconstitutional because it violated the Equal Protection Clause. An argument by the state that immigrants would be encouraged to move in mass to receive public assistance was not accepted as fact. The court found that "any attempt to keep out the poor people was an invalid legislative purpose."[32] To deny anyone the right "to migrate, resettle, find a new job, and start a new life," the court opinioned, was to "penalize those persons who have excercised their constitutional right of interstate migration." Finally, that the denial of these "basic necessities of life" included denial of medical care and public assistance.[33]

Thus, Shapiro brought to light the importance of public assistance and medical care to indigent immigrant workers in their time of need. It could be argued that the Shapiro court set a precedent for later decisions which would attempt to interpret the legal status of the immigrant.

In Purdy and Fitzpatrick v State, the California Supreme Court struck down a provision of the State Labor Code which prohibited immigrant employment in public work projects. Emphasis was placed on the irrationality of preserving state resources solely for their supposed owners, the citizens of the state, when immigrant workers must pay taxes and in many cases, serve in the armed services. Moreover, imigrants live and work within the state, thus contributing to its economic growth. Any restrictions on employment opportunities would limit the immigrant's ability to achieve economic security which is "essential for the pursuit of life, liberty, and happiness."[35]

In applying the "strict scrutiny test," (i.e., testing every possible argument against the statute), the Purdy court offered the following explanation:

1) immigrant groups and individual immigrants have consistently been subject to prejudice, and
2) immigrants do not have the right to vote and thus are denied the most basic means of defending themselves.[36]

Classifying the immigrant as ineligible for public employment projects under the argument of a compelling state interest was found to be in violation of the Fourteenth Amendment which protects the rights of immigrant workers. However, this California decision was not applicable to other states becaue it was not a controlling decision.

As has been noted, the Shapiro court interpreted modern day thinking on the rights of immigrants to be no different frol those of citizens. The Purdy court, similarly, defined the legal status of immigrants in regards to employment in public jobs. Both courts relied on previous decisions which had tried to clarify the constitutionality of state laws discriminating against immigrant workers.

In a departure from the previous decision, the court held in Conzales v. Shea[37] that resident immigrants of the United States and the State of Colorado were not eligible to receive benefits under Colorado's Old Age Pension Plan. The reason: they could not meet the citizenship requirements. "While recognizing that aliens are protected by the Fourteenth Amendment, the court had a substantial interest in upholding the classification and distinguishing two other district court decisions. (Leger v. Sailer, 321 R Supp. 250 (E.D. 1970) and (Richardson v. Graham, 313 F Supp. 34 (D. Ariz. 1970) as not involving Colorado's unique pension program. Concluding that a holding of invalidity might destroy the entire pension program, the court granted the defendants motion for summary judgement."[38]

In other words, the court decided that the stat's pension program was more important than the individual interests of Conzales. The factors which were considered are the state's protection against economic loss versus the rights of individuals under the traditional Fourteenth Amendment standards. Moreover, in reviewing Conzales, the Duke Law Journal points out that "at no time did the Gonzales court consider how the exclusion of the class of immigrants from eligibility for pension benefits, as opposed to excluding any other group, furthered any permissive state interest. Proper equal protection analysis demands that a choice of a classification involves more than an ability to make a program politically acceptable."[39]

In Graham v. Richardson,[40] the court held that Arizona's statute denying public assistance benefits to immigrants who had not resided in the United States for fifteen years was in violation of the equal protection clause. The court stated that it had "rejected the concept that constitutional rights turn upon whether a government benefit is characterized as a 'right' or as a 'privilege'"[41]

Likewise, the court found that the state's concern for "fiscal integrity" was not sufficiently compelling justification for the denial of welfare payments to immigrants. The opinion also clarified that alienage is a "suspect" classification and is subject to strict judicial scrutiny. Hence, discrimination against non-citizens is unconstitutional unless the state can show affirmatively that the classification serves a compelling or overriding state interest.[42] The mere rationality of the legislation is no longer sufficient to support its validity under the equal protection clause.

In short, the Graham decision, as well as those previously noted, have contributed to the much needed clarification of the constitutional rights of immigrants in the United States. This historical review of the immigrants pursuit for recognition via the legal system as a participant and contributor to America's development, has been the result of many years of suffering and sacrifice. This is n t to say that the previous court accounts have cleared the way for total acceptance of the immigrants status in the United States by individual states. On the contrary, state public assistance programs probably will have to be convinced that the immigrant worker does have equal access as do citizens.

IV. Court Decisions 1972-1974

Focusing closer to recent court decisions which deal with the question of durational residency requirements by immigrants, the states of California and Arizona have both been challenged as to their practices of discrimination. For example, in Cuk v. Brian[43] the court held unconstitutional the Welfare and Institutions Code of California, Section 14005.6 (3), insofar as it requires persons seeking Medi-Cal benefits under the medically needy program to be citizens of the United States or if immigrants, proof of legal residence in the country for at least five years.

The three-judge district court held that the statute denied equal protection under the Fourteenth Amendment. In citing Graham, Judge Sweigert stated that the "California statute was an encrouchment upon the exclusive federal power over entrance and residence of citizens.[44] "Accordingly, we hold that a state statute that denies welfare benefits to resident aliens and one that denies them to aliens who have not resided in the United States for a specified number of years violate the Equal Protection Clause."[45]

The court, furthermore, ordered the state to identify those applicants who were denied Medi-Cal since October 1, 1971 "solely on the grounds of non compliance with requirements."[46] This ruling was applied to the plaintiff (CUR), the intervener (Maria Utizar) and the immigrants who were denied Medi-Cal benefits.

As a result, the state argued that the identification and notice to all involved, approximately 1875 persons, would entail considerable difficulty and administrative costs of $119,700.[47] In response, the court cited other cases[48] and pursued to argue with the plaintiff: "If the court were to deny retroactive payments because of increased administrative costs alone, the state would never be compelled to repay benefits to which recipients were later found entitled. As a result, the state would be consistently rewarded for its illegal behavior and the plaintiffs denied meaningful and deserved relief."[49]

Consequently, it could be argued that Mexican immigrants and others in the same situation applying for Medi-Cal after October 1, 1971 to the present, need not have resided in the United States within "specified" number of years. A residency requirement then becomes unnecessary, as well as unconstitutional.

Fortunately, in Memorial Hospital v. Maricopa County,[50] the court decided that such a residency requirement of one year was unconstitutional. The durational residence requirement of one year by Arizona County governments was found to be in violation of the Equal Protection Clause.[51] This violation creates an "invidious classification" and denies newcomers to Arizona the "basic necessities of life."[52]

In citing Shapiro, the court found Arizona's durational residence requirement unconstitutional because it injustly classified indigent residents eligible for free nonemergency hospitalization or medical care, i.e., "residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction."[53] The second class was denied welfare aid solely on the basis they could not meet the residency requirement. Moreover, the statute was unable to prove a compelling state interest in the residency requirement.

What the court made explicitly clear is that "medical care is an much a 'basic necessity of life' to an indigent as is public assistance. It would be odd, indeed, to find that the stae of Arizona was required to afford (an indigent) public assistance to keep him from discomfort of inadequate housing or the pangs of hunger, but could deny him the medical care necessary to relieve . . . his illness."[54] Furthermore, the court added," . . . to allow a serious illness to go untreated until it requires emergency hospitalization is to subject the sufferer to the danger of substantial and irrovocable deterioration in his health."[55]

In brief, the courts have responded to the need of clarifying the state's role in providing public assistance and medical care to anyone who presents himself/herself to a state agency regardless of the length of residence. The residence requirement cannot be utilized without the burden of justification of compelling state interest, which generally will be very difficult to prove.

Finally, a recent decision by Judge Irving Perluss of the Ninth District Court ruled unconstitutional state procedures which require proof of legal residence during screening of applicants for public assistance.[56] The court made clear that benefits cannot be denied or terminated because the United States Department of Immigration and Naturalization informed California that no records exist on the immigrant worker's legal status. Unless the individual is under deportation orders, he/she is entitled to public assistance without showing proof of his/her legal entry.

To sum up, the court decisions which have been discussed here are some of the most important decisions that have examined the constitutionality of unjust laws directed at discriminating against the immigrant workers. Many questions have been reviewed and clarified. More specifically, California, one of the states which has a large concentration of Mexican immigrant workers, has had to conform to the new rulings. For example, probably as a result of Cuk v. Brian, the Welfare and Institutions Code, 14005.6(3) which refers to Medi-Cal has deleted the words "citizen of the United States" from the list of requirements. To be sure, more states will be doing likewise.

V. Conclusion

No one can deny the presence of the Mexican people in these United States. No one can deny that their labor has been beneficial to development of towns, cities, documents, court decisions, and literature, it becomes obvious that the Mexican immigrant has suffered undue discrimination. To deny him, as the courts have so correctly communicated, his "basic necessities of life" is a violation of the Equal Protection Clause of the United States Constitution.

What is less understandable is the length of time that the legal system has taken to begin to resolve and clarify the immigrant workers status. The Equal Protection Clause gave equal rights to citizens, as well as to "any person" within the jurisdiction of these United States. Furthermore, the inconsistent policies of Immigration and Naturalization Services has caused confusion and hardship to many immigrant families. For example, the INS policy of deporting large numbers of immigrants while simultaneously permitting the immigration of Vietnamese, many without legal documents which are required of Mexican immigrant workers.

With the recent court decisions, the states' public assistance programs will be pressed to meet the needs of the immigrant worker. Medi-Cal is but one program in one of many states. Similar types of programs in other states must recognize the problems facing the Mexican immigrant worker.

In conclusion, as has been established, the Mexican immigrant worker is treated unjustly and prejudiciously. To deny anyone their inalienable human rights, regardless of their race or nationality, is unconstitutional.

FOOTNOTES

1. "Only 50% of Illegal Aliens are Mexican, Official Says, " Los Angeles Times, 13 March, 1975, Part I, p.8.
2. Ibid, p.9.
3. Andrea Sheridan Ordin. "Bar Assn. Inquiry at Midpoint," Los Angeles Times, 23 February, 1975, Part V, p. 5. Also for documentation of claims of mistreatment by citizens, as well as immigrant workers, contact CASA, 2673 W. Pico Blvd., Los Angeles, California.
4. "Illegal Aliens: What to Do?" Los Angeles Times, 6 February, 1975, Part II, p.2.
5. Yick v. Hopkins, 118, U.S. 356 (1886).
6. Ibid, p. 369.
7. Takahashi v. Fishand Game Commission, 334, U.S. 410, (1948).
8. Teresa M. Schwartz, "State Discrimination Against Mexican Aliens," George Washington Law Review, Vol. 38, No. 5, July, 1970, p. 1102.
9. Cuk v. Brian, No. 720298 WTS (N.D. Cal. 1972).
10. Charles I. Bevans. Treaties and Other International Agreements of the United States of America, 1776-1949, Vol. 9, p.796.
11. Sanford Jay Rosen, "With Special Refercne to the Problems of the Mexican American," Unpublished Lecture at a Mexican American Conference Held Under the Auspices of the National Office of Indigent Defense, NAAP, LDF, at Bandera, Texas, 10 November, 1967, p.2.

12. Frank Del Olmo, "Why Citizen Chicano Fear Fresh Eurmoil," Los Angeles Times, 23 February, 1975, Part V, p.5.
13. Charles Gorden and Harry N. Rosenfield, Imigration Law and Procedues (New York, 1970), Supp. 1, Sect. 7.6 (a) (b).
14. United States Treaties and Other International Agreements. (Washington, D.C., 1952), Vol. 2, Part 1, p. 1050.
15. Fulco v. Schuylkill Stone Company (CCPA) 163 F 124 Affd. (CA 3, 169, 68).
16. An example of this is given in Provisions of the Executive Order No. 8802, 25 June, 1971. "Mexican Nationals Who Enter the United States as a Result of Any=Understanding Between the Two Governments Shall Not Suffer Discriminatory Acts of Any Kind." (Emphasis Added) See Bevan, p. 1137. Also, See Santovincenzo v. Egan, 284 U.S. 30, 76.
17. Clark v. Allen, 331 U.S. 503, 91.
18. In re Griffiths, 413 U.S. 722 (1973).
19. Frank Griffith Dawson and Ivan L. Head. International Law, National Tribunals, and the Rights of Aliens. (New York, 1971), p.6.
20. Dawson and Head, pp. 15-18 and pp. 113-118.
21. Dawson and Head, pp. 6-7 and pp. 90-91. Also see, Nishiawka Ekio v. United States, 142 U.S. 651 (1891).
22. 62 Stat. 976 (1948). As Amended, 28 U.S.C. Section 2502 (a) (Supp. v. 1965-1969).
23. Dawson and Head, pp. 117-118 and pp. 150-152.
24. Louis B. Sohn and R.R. Baxter, Convention on the International Responsibility of States oor Injuries to Aliens., (Harvard Law School,
25. Sohn)apd Baxter, p.4.
26. Sohn and Baxter, p. 14.
27. Dawson and Head, p. 311.
28. Mr. Corona's Lecture on the Status of the Immigrant Worker was presented at the University of California, Los Angeles (UCLA) on 26 April, 1975.
29. Takahashi, at 421, cited in "Aliens, "Employment, and Equal Protection," Villanova Law Review, Vol. 19, p. 593.
30. Ibid, p. 597.
31. Shapiro v. Thompson, 394, U.S. 618 (1969).
32. Shapiro, p. 1109.
33. Shapiro, p. 1112.
34. Purdy and Fitzpatrick v. State, 71 Cal., 2d 566, 456, p. 2d 645 79 Cal., Rptr, 77 (1969).
35. Cited in Villanova, p. 597.
36. Purdy, p. 579.
37. Gonzales v. Shea, 318 F Supp. 572 (D. Colo. 1972). Also see "Protection of Alien Rights Under the Fourteenth Amendment," Duke Law Journal Vol. 1, 1971, pp. 583-599.
38. Ibid, p. 593.
39. Ibid, p. 594.
40. Graham v. Richardson 403, U.S. 365 (1971).
41. Graham, p. 374.
42. Graham, p. 376.
43. Cuk v. Brian, Supra.
44. Cuk, p. 376.
45. Cuk, p. 376.
46. Cuk, p. 377.
47. Cuk, pp. 378-379.
48. Tripett v. Coff 331 F Supp. 652 (N.D. Miss, 1971): Rothstein v. Wyman (S.D.N.Y., 1969) Civ. 2763, (. February, 1972 and 25 February, 1972).
49. Cuk, p. 379.