of ROBERTO SALDANA.

II

Plaintiff MARIA DEL CARMEN CRUZ is a citizen of Mexico who was born on July 16, 1960, and has resided continuously in the United States since December of 1974. She maintains no other place of residency other than her domicile in Santa Barbara, California. She and her family have made an application for permanent residency with the American Consulate in Guadalajara, Mexico, and have received a priority date of September 10, 1976. (See Exhibit "B".)

III

Plaintiff RAMIRO GUILLEN is a citizen of Mexico who was born on July 31, 1959, and has resided continuously in the United States since May of 1975. He maintains no other place of domicile other than Santa Barbara, California. His family has already secured immigrant visas (Form I-151) into the United States, and he maintains a priority date with the American Consulate in Guadalajara, Mexico, of September 4, 1974. Attached hereto and marked as Exhibit "C" is a copy of the priority date received by the family of RAMIRO GUILLEN.

IV

Plaintiff FERMIN AURELIO INDA is a citizen of Mexico, over the age of eighteen, who has resided continuously in the United States since April of 1974. He and his family maintain no other place of domicile other than Santa Barbara, California. He has obtained a priority date with the American Consulate in Guadalajara, Mexico, of December 31, 1976, and has been issued authorization to seek employment, as well as authorization to live in the United

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States without threat of deportation or expulsion. Attached hereto and marked as Exhibit "D" is a copy of the priority date received from the American Consulate on behalf of FERMIN AURELIO INDA, along with a copy of the notice of non-deportable status received from the Department of Immigration and Naturalization.

IVa

Plaintiff VICENTE MENDOZA was born on February 28, 1952, and is a citizen of Mexico who has resided continuously in the United States since February of 1976. He is the father of a U.S. citizen child who was born on May 10, 1976. He maintains no other place of domicile other than Santa Barbara, California. He and his wife have made an application for permanent residency with the American Consulate in Guadalajara, Mexico, and obtained a priority date of June 29, 1976. Attached hereto and marked as Exhibit "D-1" is a copy of the priority date he has received from the United States Consulate, and the authorization received from the Immigration and Naturalization Service providing him with a lawful status and authorization for employment.

IVb

Plaintiff VICENTE MENDOZA has sought to obtain admission to Santa Barbara Community College, but because he lacked the requisite Form I-151, he knew he would be denied admission.

V

Defendant BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES is a political subdivision created by the California Education Code and has authority and jurisdiction to establish admission criteria for California Community Colleges.

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VI

Defendant TRUSTEES OF CALIFORNIA STATE UNIVERSITIES AND COLLEGES is a political subdivision created by the California Education Code and has authority and jurisdiction to establish admission criteria for California State Universities and Colleges.

VII

Defendant REGENTS OF THE UNIVERSITY OF CALIFORNIA is a political subdivision and has authority and jurisdiction to establish admission criteria for the University of California campuses.

VIII

Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES I through XX, inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named

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defendants is responsible in some manner for the occurrences herein alleged.

IX

Plaintiffs MARIA DEL CARMEN CRUZ and ROBERTO SALDANA are graduates of Santa Barbara High School, and plaintiff ROBERTO GUILLEN is a graduate of Dos Pueblos High School. Plaintiffs MARIA DEL CARMEN CRUZ, ROBERTO SALDANA, and RAMIRO GUILLEN have attempted to enroll in one of California's community colleges located in Santa Barbara. They were each denied admission to Santa Barbara Community College because they could not present the requisite immigration document, namely, Form I-151, required by the defendants to enroll a student for admission.

X

Plaintiff FERMIN AURELIO INDA is over the age of eighteen and would seek admission into the University of California, or another one of the California state colleges or university campuses However, he is informed and understands the policies adopted by the defendants and each of them regarding the admission for such individuals and understands that he is without the requisite documentation to secure entry.

XI

California Education Code (Reorganized) §68076, which replaces former §22855 of the California Education Code, provides as follows:

> A student who is an adult alien shall be entitled to resident classification if he has been lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States; provided, that he has had residence in the state for more than one year after

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such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution.

XII

The named plaintiffs and each of them are residing in the United States with permission under the authority of the Federal Government in conjunction with the orders followed by the Immigration and Naturalization Service.

XIII

Plaintiffs and each of them are residing in the United States pursuant to a court order entered in Silva v. Levi, 76 C. 4268 (Northern District of Illinois). This class action provides that members of a class of individuals who have secured priority dates between July 1, 1968 and December 31, 1976, with a United States Consulate pursuant to 22 C.F.R. 42.61-64 (1975), and have established entry into the United States prior to March 11, 1977, now have a non-deportable status in the United States and have authorization for employment. Attached and marked as Exhibit "E" is a copy of the order entered in the case of Silva v. Levi.

XIV

The challenged portion of California Education Code (Re-organized) §68076 provides residency classification if he (an alien) "has been lawfully admitted in the United States in accordance with all applicable laws of the United States".

XV

The named plaintiffs are residing in the United States in accordance with all applicable laws and are now residing in a lawful status.

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XVI

The challenged statute is being enforced in such a manner by the defendants and each of them as to preclude the plaintiffs and each of them from obtaining admission into the respective schools and to preclude the plaintiffs from obtaining residency classification for admission as students.

XVII

Plaintiffs and each of them are now residing lawfully in the United States and are entitled to admission into the respective colleges and universities controlled by the defendants and each of them. If plaintiffs are not allowed to obtain a higher education they, and all other similarly situated individuals, will suffer irreparable harm.

XVIII

An actual controversy exists between the named plaintiffs and the named defendants. Plaintiffs seek or have sought admission to the respective colleges controlled by the defendants. Plaintiffs were informed that without the proper documentation, Form I-151, they would not be accepted as students despite the presentation of the documentation referred to above. Thus, plaintiffs have been deprived of the fundamental right to education.

XIX

Plaintiffs are precluded from obtaining foreign student visas because they have sought admission as permanent residents and as such will not be given non-immigrant classification by the Immigration and Naturalization Service.

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XX

This Court has primary jurisdiction and can order relief either in the affirmative form and require that the plaintiffs be admitted as students with residency classification, or in the negative form by preventing the defendants from excluding the plaintiffs from residency classification as students.

XXI

Plaintiffs and each of them desire judicial determination of their rights and duties and a declaration as to their right to be admitted as students in one of the colleges controlled by the defendants. Plaintiffs have no other remedy available to them.

XXII

Plaintiffs require a declaration, and such declaration is necessary and appropriate at this time in order that the plaintiffs may ascertain their rights and that the duties of the defendants be defined and that the challenged statute, as applied, be declared unconstitutional.

XXIII

The statute, as enforced, violates the Due Process and Equal Protection clause of the United States and California constitutions, and is violative of the doctrine of federal pre-emption.

WHEREFORE, plaintiffs pray for judgment against the defendants and each of them as follows:

1. For a declaration that the plaintiffs and each of them are entitled to admission as resident alien students within the California community college system, state college system, state

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universities, and universities;

2. That California Education Code (Reorganized) §68076, as construed and applied by the defendants and each of them, is declared to be unconstitutional;

3. That defendants be ordered to cease and desist the use of their policies in denying similarly situated individuals the right to attend one of the various community colleges, state colleges, state universities, or universities which are controlled by the defendants. And that they further be ordered to admit as resident alien students any alien who has a priority date on the Western Hemisphere Consul post, and who is residing in the United States under the directives of the class action suit filed in Silva v. Levi;

4. For costs of suit incurred herein,

5. For reasonable attorney fees for the prosecution of this action; and

6. For such other and further relief as this Court may deem just and proper.

DATED: September 7, 1978 KINGSTON & MARTINEZ

By: _____
Abbe Allen Kingston
Attorney for Plaintiffs

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POINTS AND AUTHORITIES IN SUPPORT OF

COMPLAINT FOR DECLARATORY RELIEF

History

Prior to 1968, there were no annual limitations for the total number of persons from independent countries of the Western Hemisphere who could obtain immigrant visas. Effective July 1, 1968 this was changed and a quota of 120,000 visas for the Western Hemisphere was established.

Pub.L. 89-236 §21(e) (October 3, 1965).

Beginning in 1966, Congress implemented the Cuban Adjustment Act of 1966. [Pub.L. 89-732]. This Act permitted Cuban refugees to adjust their refugee status to that of permanent residents in the United States.

Starting July 1, 1968, visas issued under the Cuban Adjustment Act were charged to the annual limitation of 120,000 for Western Hemisphere immigrants.

This allocation of visa numbers for the Cuban refugees was in marked departure from the procedures which were usually followed in regards to the admission of refugees. Historically refugees were given visa numbers based on a separate and distinct category ordered by an act of Congress.

Because of the misappropriation of visa numbers a lengthy backlog of up to three years developed among prospective applicants from Western Hemisphere countries.

In Silva v. Levi, 76 C. 4268, a District Court in Illinois in a class action suit allowed a recapture of visa numbers which had been erroneously given to Cuban refugees. Thus, those individuals who had already applied at United States Consulates and were

natives of the Western Hemisphere and entered the United States prior to March 11, 1977, were given a non-deportable status and authorized employment.

The argument in Silva v. Levi was based in part on a governmental estoppel theory. If it had not been for the misuse of visa numbers by Cuban refugees, the members of the Silva class would have been issued immigrant visas.

The named plaintiffs in this suit and their families are members of the class established in Silva v. Levi.

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PLAINTIFFS ARE RESIDING IN THE UNITED STATES UNDER THE AUTHORITY OF THE FEDERAL COURT

Plaintiffs are memebrs of the class of individuals residing in the United States under the express authorization of the Immigration and Naturalization Service (hereinafter referred to as INS) pursuant to judicial orders entered by the District Court in the landmark case of Silva v. Levi, 76 C. 4268 (Northern District of Illinois).

Plaintiffs are memebrs of the class certified by the court in Silva v. Levi who have been authorized to remain in the United States in an indefinite non-deportable status. Plaintiffs and all members of the class have received specific authorization from the INS for employment and to obtain Social Security cards.

Thus, plaintiffs are not illegal aliens, but are residing in the United States with authorization from the Federal Government. They have express authorization for employment.

Plaintiffs are high school graduates or have reached the age of 18; but for lack of appropriate immigration document, namely, Form I-151 (green card), they would be entitled to higher education and residence classficiation as provided for by the California Education Code (Reorganized).

Plaintiffs have resided in the Santa Barbara area in excess of 1 year. They do not have a dwelling or property located elsewhere. Plaintiffs and their families have been paying all applicable state and federal taxes.

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Defendants have refused to accept the INS document reflecting the non-deportable status of plaintiffs as adequate proof of their lawful residence in the United States.

Defendants have refused to follow the order made by the Court in Silva v. Levi and the decree of the INS. The defendants have unlawfully and arbitrarily, in violation of their authority, denied plaintiffs admission to California community colleges and state universities.

Plaintiffs have no other remedy and have no other means of obtaining an education. Because of their application for permanent residency made with the U.S. Consulates pursuant to 22 C.F.R. §§42.61 - 42.64 (1975) they are not entitled to classification as non-immigrant students.

California Education Code (Reorganized) creates an invidious discrimination against aliens lawfully entitled to remain in the United States for an indefinite period. This creates an unconstitutional discrimination against the plaintiffs in violation of the due process, equal protection, and supremacy clause of the United States Constitution.

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FEDERAL PRE-EMPTION CHALLENGE

Defendants, in excluding from higher education those individuals residing in the United States with the authority of the Federal Government, have enacted a legislation in violation of the supremacy clause of the United States Constitution. [Article 6, Clause 2].

The supremacy of the Federal Government to regulate immigration and naturalization is a principle founded in the constitution of the United States and one that has been consistently upheld by the courts. [Nyquist v. Mauclet, 432 U.S. 1 (1977); Graham v. Richardson, 403 U.S. 365 (1971)].

Of undeniable significance is the California case of De Canas v. Bica, 424 U.S. 351 (1976). In De Canas the Supreme Court held that a state enactment dealing with aliens might not constitute a "regulation" of immigration such that it was necessarily pre-empted by federal legislation.

The Court adopted a two-pronged test for determining federal pre-emption. The state regulatory power is deemed pre-emptive if (1) "Congress has unmistakably so ordered", or (2) "If the nature of the regulated subject matter permits no other conclusion". [De Canas v. Bica, supra.].

Congressional Intent to Pre-empt.

In the De Canas case the Court held that Congress did not intend to pre-empt states from regulating the employment of illegal aliens. The Court's opinion was drafted with a narrow base, finding only that in reference to employment relationships the states have broad authority to protect their citizens; the wording of Immigration and Nationality Act did not intend to preclude

harmonious state regulations of employment of illegal aliens; employment of aliens is a "peripheral concern" of the Immigration and Nationality Act; and finally, the Federal Farm Labor Contractor Registration Act dealing expressly with the employment of illegal aliens specifically allowed supplemental state regulations.

The factual situation in case at bar is substantially different to that of De Canas. Plaintiffs herein have been given authorization by the Federal Government for continued residency in the United States for an indefinite period of time. The Federal Government has specifically enacted regulations governing their lawful status, and their right to seek employment.

The California Education Code (Reorganized) §68076 is in direct conflict to the federal legislation and creates an intolerable intrusion upon the sovereign domain of the Federal Government.

The California Education Code (Reorganized) is in violation of the supremacy clause, and also due process rights of the plaintiffs under the fourteenth amendment of the United States Constitution, not to be deprived of the important liberties or property unless such deprivation is effected by a government body with proper constitutional or statutory authority to impose that deprivation. [Hampton v. Mow Sun Wong 426 U.S. 116 (1976)].

Mow Sun Wong involved a constitutional challenge to a regulation of the Civil Service Commission which barred resident aliens from employment in Federal Service. The Court held that the challenged regulation unconstitutionally deprived the plaintiff of liberty without due process of law. The Court stated:

> Since these residents were admitted as a result of the Court's decision made by Congress and the President implemented by Immigration and Naturalization

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> Service acting under the authority of Attorney General of the United States, due process requires this decision to impose a deprivation of an importan liberty be made at either a comparable level of government or if it is to be permitted to be made by the Civil Service Commision that it be justified by reasons which are properly the concern of the Agency.
>
> Hampton v. Mow Sun Wong, supra.

The California legislation cannot constitutionally d plaintiffs admission to California higher education by impo restrictions based on plaintiffs' alienage in that the defe have no constitutional or statutory authority to regulate w respect to immigration matters which are purely federal con By effectuating policies outside the scope of their author which results in denying plaintiffs admission to school, de have violated plaintiffs' due process rights. In a 1977 ca Nyquist v. Mauclet, 53 L.Ed.2d 63, the Supreme Court struc a New York statute which barred from student's scholarship permanent resident aliens who refused to apply for United citizenship or file intention to so apply when eligible fo naturalization and noted:

> Congress in an aspect of its power of immigration and naturalization enjoys rights to distinguish among aliens that are not shared by the State.

The central concern of the Immigration and National regards admission to this country, thus it can be presumed Congress intended to pre-empt any state action in this are States can neither "add to nor take from the conditions la imposed by Congress upon admission, naturalization and res of aliens in the United States or the several states." [T v. Fish and Game Commission, 334 U.S. 410 (1948)]

The conditions, terms and directive upon which an a

can be deported, excluded, or allowed to remain, have been set out by Congress [8 U.S.C. §1105(a)(1970)]. Therefore, states may not enact regulation violative of federal statutory schemes.

Pre-emption by Burdening Federal Objectives.

The second prong of the pre-emption test requires invalidation if the state regulation stands as an obstacle to the accomplishment and execution of the full purpose and objective of Congress in enacting the Immigration and Nationality Act. [De Canas v. Bica, supra.]

The legislation found in California Education Code (Re-organized) §68026 cannot be implemented without violation and without impairment of the superintendence of the field. It was on this issue that the Court remanded De Canas to state court for further review.

When a state regulation is allowed to determine a person's immigration status, a conflict with federal standards emerges. Only federal officials are charged with the responsibility of enforcing our immigration laws. [8 U.S.C. 1003(a)(1970)]. Federal standards must be followed in determining lawful permission to remain in the United States.

State officials are not in a position and do not possess the requisite knowledge nor authority to determine the immigration status of the plaintiffs.

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CALIFORNIA EDUCATION CODE (REORGANIZED) §68067

California Education Code (Reorganized) §68076 provides:

> A student who is an adult alien shall be entitled to resident classification if he has been lawfully admitted to the United States for permanent residence in accordance with all applicable laws of the United States; provided, that he has had residence in the state for more than one year after such admission prior to the residence determination date for the semester, quarter or term for which he proposes to attend an institution.

The California State Code section regarding the admission and classification of aliens for purposes of higher education is one enacted in order to protect the fiscal integrity of the education system.

The Supreme Court has expressly recognized that undocumented aliens are protected by the due process claim of the Fifth and Fourteenth Amendments. [Matthews v. Diaz, 426 U.S. 67 (1976)]

In Matthews the Court stated:

> The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property with due process of law . . . Even one whose presence in this country is unlawful . . . is entitled to that protection.

The named plaintiffs are not illegal aliens, they are residing in the United States with express authorization of federal authorities.

The California Education Code (Reorganized) §68076 in essence directs that "illegal aliens" or "undocumented aliens" are not entitled to the benefits of California higher education and specifically they are not entitled to resident classification.

The Supreme Court has held that non-resident aliens are

entitled to the proper functioning of the immigration process as established by Congress. [Shaughnessy v. United States, 345 U.S. 206 (1953)].

It has been consistently and uniformly held that the states have considerably less power over non-resident aliens than the federal government. [Clark v. Allen, 331 U.S. 503 (1947)].

State discrimination against lawfully admitted aliens (or aliens with lawful permission to remain in the United States) is "invidious" for two reasons. First, aliens as a class are a discrete and insular minority, for whom, heightened judicial solicitude is appropriate. [Examining Board of Engineers v. Flores de Otero, 426 U.S. 572 (1976)]. Second, the federal rather than the state government has primary authority in the field of immigration and naturalization. [Graham v. Richardson, 403 U.S. 365 (1971)].

A state cannot favor citizen over lawful residents when allocating state benefits; because there is no reason to deny aliens as a class state benefits when aliens, like citizens, support state government through their taxes. [Graham v. Richardson, supra.; Nyquist v. Mauclet, 432 U.S. 1 (1977)].

When a state has denied benefits to aliens in order to conserve the state resources, it has enacted legislation which is invidious and unconstitutional form of discrimination. [Nyquist v. Mauclet, supra.].

This principle has been applied to prohibit the denial of free public education to resident alien children when it is available to children of citizens. [Hoiser v. Evans, 314 F.Supp. 316 (1970)].

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In the California Court of Appeal, it was been held in Ayala that an undocumented worker who had complied with all state statutes could not be denied disability benefits solely because he was in the country illegally.

The Court stated:

> To conclusively presume that an illegal alien who has been attached to the labor force and who has in all respects complied with the section of Unemployment Insurance Code cannot simply because he is an illegal alien collect disability benefits is contrary to the statutes... In addition, the Supreme Court of the United States has consistently invalidated statutory or administrative classifications bottomed on such conclusive presumptions.

Ayala v. California Unemployment Insurance Co., 126 Cal.Rptr. 210 (1976)

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CALIFORNIA EDUCATION CODE (REORGANIZED) §67086 IS VIOLATIVE OF EQUAL PROTECTION

A legislative classification is invalid if:

1. It is not rationally related to a legitimate state purpose;

2. If a suspect classification may be used, if at all, only in unusual circumstances; and

3. The classification may not interfere to an impermissible extent with the exercise of a "fundamental right".

F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920);
Matthews v. Lucas, 427 U.S. 495 (1976);
U.S.D.A. v. Moreno, 413 U.S. 528 (1973);
Mass. Board of Retirement v. Murgia, 427 U.S. 307 (1976)
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).

Plaintiffs are entitled to the full protection of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The Supreme Court has recognized that the protection of due process and equal protection clause extends to aliens.

Wong Wing v. U.S., 163 U.S. 228 (1896);
Yick Wo v. Hopkins, 118 U.S. 356 (1889).

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DEFENDANTS' POLICY VIOLATES PLAINTIFFS' RIGHTS UNDER THE EQUAL PROTECTION CLAUSE

Plaintiffs seek admission to California schools of higher education in the district where they reside. Although present in this country with specific authorization of law, they have been denied the educational opportunities on the basis of their alienage. This discrimination is in violation of the plaintiffs' rights under the Fourteenth Amendment's equal protection clause.

The Supreme Court has long held that alienage is suspect classification requiring a compelling government interest in order to survive the strict scrutiny analysis which the courts must employ in such circumstances.

Graham v. Richardson, 403 U.S. 365 (1971);

In re Griffin, 413 U.S. 717 (1973);

Sugarman v. Dougall, 413 U.S. 634 (1973).

In the instant case plaintiffs have been denied a fundamental right, the right to have adequate education in California. This mandates that the courts apply a standard of strict scrutiny in order to evaluate the constitutionality of the programs being invoked.

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973);

Fialkowski v. Shapp, 405 F.Supp. 946 (1975);

Kruse v. Campbell, 431 F.Supp. 180 (1977);

Doe v. Pyler, Northeastern Texas, September 1977.

There can be no compelling government interest for the actions of the defendants. Rather, the defendants' actions resulted from indifference to the federal supremacy in the field

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of immigration.

In the case before us, there has been specific government action regarding the status of the plaintiffs. That action has been to allow them an indefinite and non-deportable status. The actions of the defendants are in direct contradiction to the directives of the Immigration and Naturalization Service.

The only judicial decisions which to date have examined the rights of undocumented children to receive an education have been in the cases of Doe v. Pyler, TY-261, and Limon v. Joseph Hannon, 77 C. 3007 (N.D. Illinois). Both those cases involve similar situations before the court today. They examine the applicability of state education statute as relates to the individuals who are the members of the class in Silva v. Levi. In Doe v. Pyler the court rejected the school's argument that the fiscal integrity of the school system demanded a policy which discriminated and charged tuition to illegal aliens. The court noted that in that case the state could advance no reason to support its choice in singling out undocumented children to support the brunt of the school's financial problems, and held that the state's concern with its limited resources is not a compelling state interest.

The court, in Limon v. Hannon, reached a similar conclusion after reviewing a series of recent Supreme Court decisions invalidating state statutes which penalize or stigmatize children based soley upon the status which is beyond their control.

California's challenged statute creates irrational classifications. California Education Code (Reorganized) §68076 differentiates between citizens, permanent resident aliens, and illegal aliens. This classification serves as the basis for

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denying higher education to certain individuals. This classification serves no fundamental government interest and creates a distinguished class of individuals, based soley on a federal immigration status and denies them a certain fundamental interest, namely the right to seek higher education.

California's colleges and universities are supported through a variety of local and federal funding. The named plaintiffs contribute in equal shares as all other individuals similarly situated regardless of immigration classification.

Undocumented aliens who own property are not immune from payment of property taxes, and the majority of undocumented aliens, who live in rented property, pay property tax through their monthly rent payments. Undocumented aliens also pay state and federal income taxes. See Human Resources Agency, San Diego County, A Study of the Socioeconomic Input of Illegal Aliens in the County of San Diego (1977).

Thus, aliens such as the named plaintiffs contribute on an equal footing with those individuals who are entitled to admission to California's schools of higher education.

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DUE PROCESS INFRINGEMENT

The Fourteenth Amendment to the United States Constitution protects all persons within the United States from state action which deprives them of life, liberty, or property without due process of law.

U.S. Constitution, XIV Amendment, §1, Cl. 1;

Matthews v. Diaz, 426 U.S. 67 (1976);

Yick Wo v. Hopkins, 118 U.S. 356 (1886).

Two distinct types of limitations are placed upon the states. First, procedural due process; and second, substantive due process. Thus, states cannot deprive a person of life, liberty, or property without proper notice of hearing and states may not enact arbitrary and unreasonable legislation.

Board of Regents v. Roth, 408 U.S. 564 (1972);

Palko v. Connecticut, 302 U.S. 319 (1937).

The challenged state action is in violation of both procedural and substantive due process. California Education Code (Reorganized) §68076 does not provide any review or hearing procedure to determine an individual's federal immigration status (lawful permanent residents) and it creates an arbitrary classification that works an invidious discrimination.

The plaintiffs are residing in the United States lawfully with the express authorization of the Federal Government, infra. Yet, this authorization is not honored nor recognized by the challenged statute. Plaintiffs have not had an opportunity to be heard regarding their applications for admission, which denies them procedural due process and also deprives them of a fundamental and protected interest; their right to obtain an education.

KINGSTON & MARTINEZ
ATTORNEYS AT LAW
212 - B EAST ANAPAMU STREET
SANTA BARBARA, CALIFORNIA 93101
(805) 962-7659

This conclusive presumption of inadmissibility from higher education has been traditionally disfavored by the courts as violative of procedural due process.

Vland's v. Kline, 412 U.S. 441 (1973);

U.S. Department of Agriculture v. Murray, 14 U.S. 508 (1974);

Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974).

It should be noted that the court's decision in Vlandis v. Kline is of particular significance in the case before us. In the Vlandis case, there came a challenge to the Connecticut state statute which conclusively presumed that a student who had lived outside the state for any time during the prior year could not register for enrollment in a state university as a resident for tuition purposes. In striking down the challenged statute as an unlawful, conclusive presumption, the court reasons:

> In sum, Connecticut purports to be concerned with residency in allocating rates for tuition and fees at all of its university system. It is forbidden by the due process clause to deny any individual the resident rates on the basis of a permanent and irrebutable presumption of non-residency when that presumption is not necessary or universally true in fact, and when the State has reasonably alternative means of making the crucial determination. Rather standards of due process require that the State allow such an individual the opportunity to present evidence showing that he is a bona fide resident entitled to in-state rates.

The challenged statute works to deprive the plaintiffs of a protected fundamental interest; the right to receive an education. This right of education is encompassed within those privileges long recognized as essential to the orderly pursuit

of happiness by a free people.

Meyer v. Nebraska, 262 U.S. 390 (1923).

In enacting legislation not founded in reason or upon rational classifications, the Fourteenth Amendment rights of plaintiffs, to be free of state infringement, have been violated.

Respectfully submitted,
KINGSTON & MARTINEZ

By: _____
Abbe Allen Kingston
Attorney for Plaintiffs

KINGSTON & MARTINEZ
ATTORNEYS AT LAW
212 - B EAST ANAPAMU STREET
SANTA BARBARA, CALIFORNIA 93101
(805) 962-7659

VERIFICATION

We, ROBERTO SALDANA, MARIA DEL CARMEN CRUZ, RAMIRO GUILLEN, FERMIN AURELIO INDA, and VICENTE MENDOZA, declare:

We are the plaintiffs in the above-entitled matter.

We have read the foregoing COMPLAINT FOR DECLARATORY RELIEF [C.C.P. §1060] and know the contents thereof.

The same is true of our own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, we believe it to be true.

Executed on September 5, 1978, at Santa Barbara, California.

We declare under penalty of perjury that the foregoing is true and correct.

Robert Saldana
ROBERTO SALDANA

María Cruz
MARIA DEL CARMEN CRUZ

Ramiro Guillen
RAMIRO GUILLEN

Fermin Aurelio Inda Silva
FERMIN AURELIO INDA

Vicente Mendoza Sr.
VICENTE MENDOZA

KINGSTON & MARTINEZ
ATTORNEYS AT LAW
212 - B EAST ANAPAMU STREET
SANTA BARBARA, CALIFORNIA 93101
(805) 962-7659

American Embassy
Mexico, D. F., Mexico AUG 3 1 1974

Applicant's name:

Dear Sir or Madam: Teresa Saldaña Torres

The Embassy has received your recent inquiry concerning the immigrant visa application of the applicant named above. A reply is being made by form letter in order to provide you with the information you have requested as soon as possible. Our files have been checked and the paragraph(s) checked below pertains to the case in which you are interested.

( ) In order that we may be able accurately to identify the applicant concerned, please furnish the complete name (including both last names, paternal and mother's maiden name, and married name), date and place of birth and present address. Please return the attached correspondence.

( ) Immigrant visa procedures require certain applicants to complete the enclosed Form FS-497. Upon its return to this office, the applicant will be informed what further steps he should take.

( ) There is no record of a visa application under the above name. The applicant may have inquired concerning a visa or submitted a preliminary application on Form FS-497. However, the Embassy establishes a record only upon receipt of an approved petition, labor certification, or other evidence that the applicant has become entitled to immigrant classification.

( ) With the exception of persons born in the Western Hemisphere who are the parents, spouses or unmarried minor children of U.S. citizens or legal residents of the United States, all applicants born in the Western Hemisphere, who in the opinion of the consular officer will be gainfully employed after entering the United States must qualify under the labor certification provision (Section 212(a)(14) of the Immigration and Nationality Act. This section requires that the applicant's prospective employment be approved by the U.S. Department of Labor or that the applicant present proof that he is a member of one of the professions which are exempt from this certification or other professions determined by the Department of Labor to be in demand in the United States.

( ) The Embassy is unable to give further consideration to this case until we receive from the Department of Labor an approved certification of the applicant's prospective offer of employment in the United States.

( ) The applicant has been given an appointment to appear at the Embassy on _____ to present his formal application and supporting documents required for an immigrant visa. If he is found eligible for a visa and presents all the documents required, the visa normally will be issued the same day.

( ) The Embassy has no facilities for maintaining files of documents on pending cases. All visa documents should be sent directly to the applicant for presentation at the time of his formal application. The documents you have forwarded are therefore being returned.

( ) No person born in the Western Hemisphere may adjust his status from non-immigrant to immigrant while in the United States.

( ) Upon the completion of further administrative procedures, the applicant will be given an early appointment.

EXHIBIT "A" (page 1)

( ) Because of the heavy demand for immigrant visas from residents of our consular district, we regret to inform you that we are unable to accept applications from persons who have never resided in our consular district. Therefore, the case of _____ has been transferred to the American Consulate (General) in _____ for processing. It is suggested that if you have any further questions regarding this matter, please write directly to that Consulate.

( ) On _____ the applicant was sent Form DSL-869 concerning the documents required for an immigrant visa and was requested to sign and return the Form to us when he had obtained all his documents so that we may be able to continue the processing of his case. To date, the applicant has not yet notified us that he has assembled the required documents.

( ) Please send together with all the documents returned herewith your marriage certificate; the birth certificates of your children born in Mexico who are immigrating with you; and your original baptismal certificate.

( ) Please submit the applicant's correct address for future correspondence regarding his case.

(X) The applicant's name is registered under the numerical limitation for the Western Hemisphere with a priority date of April 7 1916. It is not necessary for you or the applicant to write this office. When his turn is about to be reached, we will automatically forward further instructions and continue the processing of this case.

( ) During this month we are issuing visas only to applicants with priority dates earlier than _____.

( ) Your case has been received from the American Consulate at _____ as it pertains to our consular district.

Sincerely,

American Consul

EXHIBIT "A" (page 2)

MEXVTSA-203
Rev. 1/10/74

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA

Ramiro Cruz Lopez.

Estimado(a) senor(a)(ita):

Nos referimos a su solicitud pendiente para una visa de inmigrante.

Usted HA SIDO ACEPTADO(A) en forma preliminar.

Su fecha de preferencia como establecen las leyes es:
Septiembre 10,1976

Personas con fecha de preferencia como lo indica arriba no pueden proceder con sus solicitudes hasta un aviso futuro debido al numero de personas con preferencia de fecha anterior que actualmente estan en tramite. La duracion de espera no puede precisarse.

TAN PRONTO COMO LLEGUE SU FECHA DE PREFERENCIA, se le notificara automaticamente para proceder a documentar su solicitud.

FAVOR DE AVISAR A ESTE CONSULADO GENERAL, YA SEA EN PERSONA O POR CORRESPONDENCIA CUALQUIER CAMBIO DE DOMICILIO DEBIDO A QUE LA CORRESPONDENCIA SE ENVIARA A LA ULTIMA DIRECCION INDICADA.

Atentamente,

EXHIBIT "B"

(TRANSLATION OF EXHIBIT "B")

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA

Ramiro Cruz Lopez.

Dear Mr., Mrs., or Miss:

We refer to your pending application for an immigrant visa.

You HAVE BEEN ACCEPTED on a preliminary basis.

Your priority date as established by the laws is:

September 10, 1976.

Persons with a priority date as indicated above cannot proceed with their applications until further notice due to the number of persons with earlier priority dates whose applications are presently being processed. The length of wait cannot be determined.

AS SOON AS YOUR PRIORITY DATE COMES UP, you will be automatically notified to proceed in documenting your application.

PLEASE ADVISE THIS CONSULATE GENERAL, IN PERSON OR BY MAIL OF ANY CHANGE IN ADDRESS, AS ALL CORRESPONDENCE WILL BE MAILED TO THE LAST ADDRESS INDICATED.

Sincerely,

I, Lisa Hughes, hereby certify that I am competent to translate from the Spanish language into English, and that the above is an accurate translation of the original document.
Dated: September 6, 1978, at Santa Barbara, California.

Lisa Hughes

Lisa Hughes
212-B E. Anapamu St.
Santa Barbara, CA 93101

EMBASSY OF THE
UNITED STATES OF AMERICA
VISA UNIT
MEXICO, D. F.

Sept 4/84

9/8/86

Estimado(a) señor(a)(ita): Lasiro Guillen García

Hacemos referencia a la información que nos pide con realción a los trámites que deben seguir al hacer solicitud para una visa de inmigrante para ser admitido a los Estados Unidos.

☐ Esta oficina ha recibido una petición aprobada que le concede a Ud. la categoría de "pariente directo".

☐ Esta oficina ha recibido una petición aprobada que le concede a usted la categaría de ..... preferencia.

☐ Esta oficina ha recibido una certificación aprobada por el Departamento de Trabajo.

☑ Se ha determinado que Ud. queda exento de las disposiciones de la Sección 212(a)(14) de la ley de Inmigración y Naturalización, reformada.

Aún cuando no se puede dar ninguna seguridad sobre la fecha aproximada en que se pueda asignar una cita para presentar la solicitud formal para una visa, Ud. deberá prepararse siguiendo estos tres pasos:

A. PRIMERO: Llene y regrese inmediatamente a esta oficina la forma DSP-70 adjunta (Datos Biográficos para la Tramitación de Visa).

B. SEGUNDO: Obtenga los siguientes documentos, pero NO LOS ENVIE A ESTA OFICINA. Al obtener cada documento, señale el cuadro a la derecha de cada párrafo.

1. PASAPORTES. Un pasaporte debe tener validez de seis meses, por lo menos, y estar legalizado por las autoridades que lo expiden para viajar a los Estados Unidos. Cada hijo(a) de dieciseis años o mayor, que está incluído en el pasaporte de sus padres, cuya fotografía no aparece en dicho pasaporte, debe obtener su propio pasaporte. ☐

SE ACEPTAN COPIAS FOTOSTATICAS DE CUALQUIER DOCUMENTO SIEMPRE Y CUANDO EL ORIGINAL SEA PRESENTADO AL OFICIAL CONSULAR PARA SU REVISION O QUE ESTAS COPIAS VENGAN CERTIFICADAS POR UN NOTARIO INDICANDO QUE SON COPIAS FIELES DE LOS ORIGINALES.

EXHIBIT "C"

NACIONES UNIDAS DE AMERICA

(TRANSLATION OF EXHIBIT "C")

W.H. (Western Hermisphere)
Sept. 4, 1974

EMBASSY OF THE
UNITED STATES OF AMERICA
VISA UNIT
MEXICO, D.F.

8/18/76

Dear Mr., Mrs., Miss: RAMIRO GUILLEN GARCIA and wife

We refer to your request for information regarding the steps which must be taken in making application for an immigrant visa to be admitted in the United States.

☐ This office has received an approved petition granting you the category of "direct relative".

☐ This office has received an approved petition granting you the category of _____ preference.

☐ This office has received approved certification by the Labor Department.

☑ It has been determined that you are exempt of the provisions of Section 212(a)(14) of the Immigration and Nationality Act, as amended.

Even though no assurance can be given of the approximate date on which you will be assigned an appointment to present the formal application for a visa, you should prepare yourself by following this three steps: . . .

I, Lisa Hughes, hereby certify that I am competent to translate from the Spanish language into English, and that the above is an accurate translation of the original document.

Dated: September 6, 1978, at Santa Barbara, California

Lisa Hughes

Lisa Hughes
212-B E. Anapamu St.
Santa Barbara, CA 93101

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA

1-11-12-791

FERMIN INDA AURELIO
1026 NILE PARL AVE.
SANTA BARBARA , CA. 93103

I-F Processed 12-8-77

Estimado(a) señor(a)(ita):

Nos referimos a su solicitud pendiente para una visa de inmigrante.

Usted ha sido aceptado(a) en forma preliminar debido al recibo de:

1. Forma I-550, verificando la admisión de _____ a los Estados Unidos.

2. Forma MA-7-50A & B, certificada por el Departamento de Trabajo en los Estados Unidos.

3. Otras pruebas que establecen haber cumplido con lo que establece la Sección 212(a)(14) de la Ley de Inmigración y Nacionalidad de 1952, y sus enmiendas.

UNDER DOCKET CONTROL LOS

Su fecha de preferencia como lo establecen las leyes es: DECEMBER, 31,1976.

Personas con fecha de preferencia como lo indica arriba, no pueden proceder con sus solicitudes hasta un aviso futuro debido al número de personas con preferencia de fecha anterior que actualmente están en trámite. La duración de espera no puede precisarse.

TAN PRONTO COMO LLEGUE SU FECHA DE PREFERENCIA, se le notificará automáticamente para proceder a documentar su solicitud.

FAVOR DE AVISAR A ESTE CONSULADO GENERAL, YA SEA EN PERSONA O POR CORRESPONDENCIA CUALQUIER CAMBIO DE DOMICILIO DEBIDO A QUE LA CORRESPONDENCIA SE ENVIARA A LA ULTIMA DIRECCION INDICADA.

Atentamente,

EXHIBIT "D"

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
300 North Los Angeles Street
Los Angeles, California 90012

IMPORTANT NOTICE

Date: 12 7 77

Re: Inda-Siva, Fermin Aurelio A 22 889 115

Due to Court Order in Silva v. Levi, 76 C 4268 entered by District Judge John F. Grady in the District Court for the Northern District, Illinois, we are taking no action on this case until further order from the Court. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice.

UNDER DOCKET CONTROL - LOS
EMPLOYMENT AUTHORIZED

District Director

NOTE: Please notify the nearest Immigration Office of any change of address.

IMPORTANTE DE AVISO

Fecha: _____

Tocante a _____ A _____

Debido a orden del Tribunal en Silva contra Levi, 76 C 4268, registrado por el juez de Tribunal de Distrito, John F. Grady, en el Tribunal de Distrito por el Distrito de Norte, Illinois, nosotros no procesaremos esta causa hasta recibir ordenes adicionales del Tribunal. Esto significa que Usted será permitido permanecer en los Estados Unidos sin amenaza de ser deportado o expulsado hasta aviso adicional.

EMPLEO AUTORIZADO

Director del Distrito

ANOTA: Si Usted se cambia de dirección favor de notificar la oficina del Servicio de inmigración mas cercana.

WR-495 (REV. 3-29-77)

Signature

Right Index

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Form Approved OMB No. 43 R0496

(TRANSLATION OF EXHIBIT "D")

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA

FERMIN INDA AURELIO
1026 NILE PARL AVE.
SANTA BARBARA, CA 93103

Dear Sir, Madam:

We refer to your pending application for an immigrant visa.

You have been accepted in a preliminary form due to the receipt of:

1. Form I-550, verifying the admission of _____ into the United States.

2. Form MA-7-50A & B, certified by the Labor Department of the United States.

3. Other documentary evidence which established that you have complied with the provisions of Section 212(a)(14) of the Immigration and Nationality Act of 1952, and its amendments.

Your priority date as established by the laws is:

December 31, 1976.

Persons with priority dates as indicated above, cannot proceed with their applications until further notice due to the number of persons with earlier priority dates who are presently being processed. The length of the waiting period cannot be determined.

AS SOON AS YOUR PRIORITY DATE IS REACHED, you will be automatically notified to proceed to document your application.

PLEASE KEEP THIS OFFICE NOTIFIED OF CHANGES OF ADDRESS, EITHER BY MAIL OR IN PERSON, AS FURTHER CORRESPONDENCE WILL BE SENT TO THE LAST ADDRESS OF RECORD.

Sincerely,

(signature)

I, Lisa Hughes, hereby certify that I am competent to translate from the Spanish language into English, and that the above is an accurate translation of the original document.

Dated: September 6, 1978, at Santa Barbara, California.

Lisa Hughes

Lisa Hughes
212-B E. Anapamu St.
Santa Barbara, CA 93101

American Embassy
Mexico, D. F., Mexico

AUG 12 1976

I-130 Received 2-15-78

Applicant's name:

Dear Sir or Madam: Vicente Mendoza Avila

The Embassy has received your recent inquiry concerning the immigrant visa application of the applicant named above. A reply is being made by form letter in order to provide you with the information you have requested as soon as possible. Our files have been checked and the paragraph(s) checked below pertains to the case in which you are interested.

( ) In order that we may be able accurately to identify the applicant concerned, please furnish the complete name (including both last names, paternal and mother's maiden name, and married name), date and place of birth and present address. Please return the attached correspondence.

( ) Immigrant visa procedures require certain applicants to complete the enclosed Form FS-497. Upon its return to this office, the applicant will be informed what further steps he should take.

( ) There is no record of a visa application under the above name. The applicant may have inquired concerning a visa or submitted a preliminary application on Form FS-497. However, the Embassy establishes a record only upon receipt of an approved petition, labor certification, or other evidence that the applicant has become entitled to immigrant classification.

( ) With the exception of persons born in the Western Hemisphere who are the parents, spouses or unmarried minor children of U.S. citizens or legal residents of the United States, all applicants born in the Western Hemisphere, who in the opinion of the consular officer will be gainfully employed after entering the United States must qualify under the labor certification provision (Section 212(a)(14) of the Immigration and Nationality Act. This section requires that the applicant's prospective employment be approved by the U.S. Department of Labor or that the applicant present proof that he is a member of one of the professions which are exempt from this certification or other professions determined by the Department of Labor to be in demand in the United States.

( ) The Embassy is unable to give further consideration to this case until we receive from the Department of Labor an approved certification of the applicant's prospective offer of employment in the United States.

( ) The applicant has been given an appointment to appear at the Embassy on _____ to present his formal application and supporting documents required for an immigrant visa. If he is found eligible for a visa and presents all the documents required, the visa normally will be issued the same day.

( ) The Embassy has no facilities for maintaining files of documents on pending cases. All visa documents should be sent directly to the applicant for presentation at the time of his formal application. The documents you have forwarded are therefore being returned.

( ) No person born in the Western Hemisphere may adjust his status from non-immigrant to immigrant while in the United States.

( ) Upon the completion of further administrative procedures, the applicant will be given an early appointment.

UNDER DOCKET CONTROL U.S.

UNDER DOCKET CONTROL U.S.

UNDER DOCKET CONTROL U.S.

EXHIBIT "D-1" (page 1)

( ) Because of the heavy demand for immigrant visas from residents of our consular district, we regret to inform you that we are unable to accept applications from persons who have never resided in our consular district. Therefore, the case of _____ has been transferred to the American Consulate (General) in _____ for processing. It is suggested that if you have any further questions regarding this matter, please write directly to that Consulate.

( ) On _____ the applicant was sent Form DSL-869 concerning the documents required for an immigrant visa and was requested to sign and return the Form to us when he had obtained all his documents so that we may be able to continue the processing of his case. To date, the applicant has not yet notified us that he has assembled the required documents.

( ) Please send together with all the documents returned herewith your marriage certificate; the birth certificates of your children born in Mexico who are immigrating with you; and your original baptismal certificate.

( ) Please submit the applicant's correct address for future correspondence regarding his case.

(✓) The applicant's name is registered under the numerical limitation for the Western Hemisphere with a priority date of June 29, 1976. It is not necessary for you or the applicant to write this office. When his turn is about to be reached, we will automatically forward further instructions and continue the processing of this case.

H+W processed 3-15-78

( ) During this month we are issuing visas only to applicants with priority dates earlier than _____.

( ) Your case has been received from the American Consulate at _____ as it pertains to our consular district.

UNDER DOCUMENT CONTROL LOG

Sincerely,

American Consul

EXHIBIT "D-1" (page 2)

MEXVISA-203
Rev. 1/10/74

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
300 North Los Angeles Street
Los Angeles, California 90012

IMPORTANT NOTICE

Date: 2/15/78

Re: Mendoza-Avila, Vicente A 22 395 592

Due to Court Order in Silva v. Levi, 76 C 4268 entered by District Judge John F. Grady in the District Court for the Northern District, Illinois, we are taking no action on this case until further order from the Court. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice.

UNDER DOCKET CONTROL - LOS
EMPLOYMENT AUTHORIZED

District Director

NOTE: Please notify the nearest Immigration Office of any change of address.

UNDER DOCKET CONTROL LOS

IMPORTANTE: Se AVISO

Fecha: _____

Tocante a _____ A _____

Debido a orden del Tribunal en Silva contra Levi, 76 C 4268, registrado por el Juez de Tribunal de Distrito, John F. Grady, en el Tribunal de Distrito por el Distrito de Norte, Illinois, nosotros no procesaremos esta causa hasta recibir ordenes adicionales del Tribunal. Esto significa que Usted será permitido permanecer en los Estados Unidos sin amenaza de ser deportado o expulsado hasta aviso adicional.

EMPLEO AUTORIZADO

Director del Distrito

ANOTA: Si Usted se cambia de dirección favor de notificar la oficina del Servicio de Inmigración mas cercana.

Signature Vicente Mendoza

Right Index

I-395 (REV. 3-29-77)

EXHIBIT "D-1" (page 3)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

A TRUE COPY ATTEST
H. STUART CUNNINGHAM, CLERK
By _____
DEPUTY CLERK
NORTHERN DISTRICT OF ILLINOIS
DATE: JAN 6 1978

REFUGIO SILVA, et al.,

Plaintiffs

vs.

EDWARD LEVI, et al.,

Defendants.

NO. 76 C 4268

TEMPORARY RESTRAINING ORDER

This cause having come before this Court, and it appearing from the record that the factors which were the bases for this Court's decision to enter in this cause on March 10, 1977, a Temporary Restraining Order continue to exist and the Defendants having consented to entry of this Temporary Restraining Order until further order of this Court;

It is therefore ORDERED, ADJUDGED, and DECREED:

1. Except as specifically provided in this order, any alien from an independent country of the Western Hemisphere who is known by the Immigration and Naturalization Service (hereinafter INS) to have a priority date for the issuance of an immigrant visa between July 1, 1968, and December 31, 1976, inclusive, shall be permitted by the Immigration and Naturalization Service to remain in the United States and the Immigration and Naturalization Service shall not begin, continue or conclude any effort to expel such an alien. The prohibited efforts include, but are not limited to, detention, requiring the posting of bond, issuing orders to show cause, holding deportation hearings,

entering deportation orders, terminating voluntary departure, issuing warrants of deportation, delaying stays of deportation, and issuing bag and baggage letters (Form I-166).

2. Any alien known to the INS to be a native of an independent country of the Western Hemisphere who hereafter has contact with the INS shall be informed by the INS in writing that such person may have rights under this order.

3. No alien who entered the United States on or after March 11, 1977, shall be protected by this order. However, the INS shall apply its usual policies and procedures concerning the application of discretion in determining the length of time the alien may be permitted to remain in the United States.

4. The INS may begin, continue or conclude any effort to expel an alien otherwise protected by this order, including the taking of any of the efforts specifically mentioned in paragraph 1, if:

(a) the regional commissioner or acting regional commissioner personally concludes that the alien's continued presence in the United States would be contrary to the national interest or security, in which case that official shall set forth in writing all his reasons for reaching that conclusion; or

(b) the regional commissioner or acting regional commissioner personally concludes, after due consideration of possible waivers of grounds of excludability and of permission to reapply for

(Exclusion pursuant to Section 212(a)(16) & (17) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(16) & (17), that an alien is clearly not eligible for an immigrant visa under Section 212(a)(15), (16), (17) or (19) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(15), (16), (17) or (19), in which case that official shall set forth in writing all his reasons for reaching that conclusion and shall give the alien a minimum of seven days notice before the INS proceeds with any effort to expel the alien; or

(c) the District Director, Acting District Director, or Deputy District Director, personally concludes, after due consideration of possible waivers of grounds of excludability, that the alien is clearly not eligible for an immigrant visa on any grounds other than those specified in subparagraphs (a) and (b) above, in which case that official shall set forth in writing all his reasons for reaching that conclusion.

5. The Board of Immigration Appeals shall not dismiss an alien's appeal nor sustain an INS appeal in a deportation case in which the record of proceedings clearly shows that the alien is a native of an independent country of the Western Hemisphere and has a priority date for the issuance of an immigrant visa between July 1, 1968, and December 31, 1976, inclusive, unless: (1) the alien entered the United States after March 10, 1977; or (2) the Board determ

after due consideration of possible waivers of inadmissibility, and of permission to reapply for admission, pursuant to Section 212(a)(16) and (17) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(16) and (17), that the alien is clearly not eligible for an immigrant visa; or (3) the regional commissioner or acting regional commissioner informs the Board in writing that the alien's continued presence in the United States would be contrary to the national interest or security. In any case involving a native of an independent country of the Western Hemisphere in which the record does not clearly show that the alien has a priority date between July 1, 1968, and December 31, 1976, inclusive, the Board may adjudicate the case without restriction, but shall enclose a copy of the following notice in both English and Spanish with its order:

> Regardless of the enclosed decision, you may be allowed to stay in the United States because of a recent court ruling if you registered with an American consul for an immigrant visa before January 1, 1977, and entered the United States prior to March 11, 1977. The court ruling relates to the case of Silva v. Levi, 76 C 4268 (N.D.Ill.). Please contact your attorney or authorized representative or an INS office for further information.

6. Nothing in this order shall prevent a deportation hearing from being held, nor a decision from being rendered by a special inquiry officer (Immigration Judge) in any case in which the alien seeks relief under either Section 244(a) or Section 245 of the Immigration and Nationality Act, 8 U.S.C. §1254(a) or §1255, or seeks any other form of relief from deportation. The enforcement of any resulting decision that may be unfavorable to the alien is subject to the terms of this order.