REGISTRATION FORM

IN DEFENSE OF THE ALIEN
A Legal Conference on the Representation of Aliens
Georgetown University Law Center
600 New Jersey Avenue, N.W., Washington, D.C. 20001
February 8 and 9, 1978

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Registration Fee of $_____ is ☐ enclosed ☐ will be paid at the registration desk
Registration Fee is $50 for individuals and $95 for organizations. Scholarships are available.

Luncheon Reservation (February 8, 1978, Hyatt Regency, Washington)
Please reserve _____ tickets.
Luncheon fee is $11.00 per cover. ☐ enclosed ☐ will be paid at registration desk

PLEASE MAKE CHECKS PAYABLE TO THE CENTER FOR MIGRATION STUDIES.

Return this form to Conference Office, CMS, 209 Flagg Place, Staten Island, New York 10304

All sessions will be held at the Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001, unless otherwise noted.

WEDNESDAY, FEBRUARY 8

8:45-
9:15 a.m. **Registration**

9:15-
10:00 a.m. **Welcome**
Lydio F. Tomasi
Executive Director of the Center for Migration Studies of New York.

Opening Remarks:
Congressman Peter W. Rodino, Jr., of New Jersey
Chairman, House Committee on the Judiciary, U.S. House of Representatives.
Leonel Castillo
Commissioner, Immigration and Naturalization Service.

10:00-
10:45 a.m. **Interrogation, Arrest and Detention of Aliens**
Austin T. Fragomen, Jr.
Adjunct Professor of Law, New York University School of Law and Brooklyn Law School, practicing attorney, Fried, Fragomen, Del Rey & O'Rourke.

10:45-
11:00 a.m. **Coffee**

11:00-
11:45 a.m. **Deportation and Exclusion Proceedings**
Herman L. Bookford
Chief Immigration Judge, Immigration and Naturalization Service.

11:45-
12:30 p.m. **Relief from Deportation: Discretion and Waivers**
Maurice Roberts
Editor, Interpreter Releases. *Former Chairman, Board of Immigration Appeals, Department of Justice.*

12:30-
2:00 p.m. **Luncheon**
Columbia Ballroom
at the Hyatt Regency Hotel
400 New Jersey Avenue, N.W.
(walking distance from Conference site)
$11.00 per cover

Luncheon Program
Speaker to be announced

2:00-
2:40 p.m. **Special Consideration in Defending the Alien**
Jack Wasserman
Former member, Board of Immigration Appeals, Department of Justice, practicing attorney, Wasserman, Orlow, Ginsburg & Rubin.

2:40-
3:10 p.m. **Legal Problems Arising from American Consulates and the Department of State**
Cornelius D. Scully
Chief, Legislation and Regulations Division, Visa Office, Department of State.

3:10-
3:20 p.m. **Coffee**

3:20-
3:55 p.m. **Immigration Consequences of Criminal Law**
Peter Schey
Professor, San Diego University Law School.

3:55-
4:35 p.m. **Appeals, Judicial Review and Motion Practice**
Charles Gordon
Former General Counsel, Immigration and Naturalization Service, Adjunct Professor of Law, Georgetown University Law Center, practicing attorney, Carliner & Gordon.

4:35-
5:00 p.m. **Questions**

THURSDAY, FEBRUARY 9

9:15-
9:35 a.m. **Opening Remarks:**

Speaker to be announced

9:35-
10:10 a.m. **President Carter's Amnesty Proposal for Undocumented Aliens**
David Crossland
General Counsel, Immigration and Naturalization Service.

10:10-
10:25 a.m. **Coffee**

10:25-
11:05 a.m. **A Critique of President Carter's Amnesty Proposal**
Anthony Bevilacqua
Director, Immigration Assistance Program, Diocese of Brooklyn, Adjunct Professor of Law, St. John's Law School.

11:05-
11:35 a.m. **Needed Review of Current Immigration Policy**
Charles B. Keely
The Population Council, Member of the Board of Directors, American Immigration and Citizenship Conference.

11:35-
12:15 p.m. **Legal Consequences of Current Legislative Proposals and Suggested Alternatives**
Sam Bernsen
Former General Counsel, Immigration and Naturalization Service, practicing attorney, Lataif & Bernsen.

12:15-
1:00 p.m. **Questions**

A LEGAL CONFERENCE IN DEFENSE OF THE ALIEN

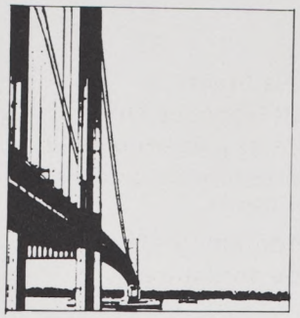
The most complex and yet the most important aspect in the legal representation of the alien is the presentation of his case in the judicial arena whether it is in exclusion or deportation proceedings, or before a federal judge in a writ of habeas corpus, a petition for review, or a declaratory judgement action. Today, the alien problem presented in the issue of undocumented migrants comprises one of the most complicated legal and political problems before the nation. The Carter Administration proposals on undocumented aliens has even further complicated this crucial issue of legal representation.

The Center for Migration Studies has called this conference to bring together experts on immigration law from throughout the country to present a legislative and judicial review on the legal representation of aliens and the efficacy of current legislation and its substance as a base for national immigration policy.

Conference Committee:

Coordinators:	Austin T. Fragomen Lydio F. Tomasi
Local Arrangements:	Donald H. Hohl, *USCC Migration and Refugee Affairs* Jose Medina, *Centro de Inmigración, Georgetown University Law Center*
Press Relations:	Caesar Donanzan *Director of Casa Italiana, Washington, D.C.* Andrew Brizzolara *Assistant Director of the Center for Migration Studies of New York.*

Conference Proceedings to be published in *Migration Today,* February 1978.



This Conference is sponsored by The Center for Migration Studies of New York, Inc. (CMS)

CMS is an educational non-profit institute founded in New York in 1964 committed to encourage and facilitate the study of sociological, demographic, historical, legislative and pastoral aspects of human migration and ethnic group relations. Since The National Consultation '77, CMS has been serving as the National Consultation Center and Clearing House on Undocumented Migrants and Public Policies.

CMS carries out its goals through

- Scientific research in the field of migration and ethnicity
- Collection and processing of archival documentation and expansion of its specialized library
- Regular publications of the **International Migration Review** — a scientific quarterly on immigration and ethnicity; **Migration Today** — a bi-monthly pastoral magazine on migrants in our midst; books, monographs, bibliographies, documents and occasional papers.
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A LEGAL CONFERENCE ON THE REPRESENTATION OF ALIENS

Washington, D. C.
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of New York, Inc.
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CENTRO DE INMIGRACION

GEORGETOWN UNIVERSITY LAW CENTER
600 NEW JERSEY AVENUE, N.W.
WASHINGTON, D.C. 20001
202-624-8374

October 23, 1978

Dear Friends,

We have completed our October monitoring report which includes all relevant legislative activity up to the final day of the 95th Congress. As the report indicates, Washington, D.C. has been very active in the field of immigration lately and important consequences are likely to be felt throughout many communities.

Two major legislative proposals were enacted into law during the last weeks of this legislative session. H.R. 12443 became Public Law 14 - 422 on October 12, 1978. The law establishes a worldwide immigration ceiling of 290,000 for alien admissions. It also established a Select Commission on Immigration and Refugee Policy. H.R. 12508 is now Public Law 14-427. This new law removes the current arbitrary limitation of two on the number of international adoptions an American family may make.

Centro is currently conducting inquiries into the nature of the Select Commission and the process for selection of its members. We will keep you posted on our progress. Senator Edward Kennedy's message to Centro concerning both new laws is enclosed for your review.

Another critical development concerns the possibility of making free legal services available to aliens detained under threat of deportation. The Immigration and Naturalization Service has promulgated rule number 4410 - 10 which would require that notice of the availability of free legal services programs be given to aliens subject to exclusion or deportation proceedings. The rule would also require that such aliens be given notice of their rights to appeal.

This is an excellent opportunity to voice our concerns for the due process of law and right to counsel problems associated with deportations. We have drafted a written "representation" as suggested by INS, which encourages the adoption of the rule and outlines the need for the inclusion of other human rights protections. We shall be meeting with Commissioner Leonel Castillo on this matter soon and will certainly keep you informed as to current trends concerning the rule. In the interim, we encourage you to send your comments to us so that we may effectively guage the utility of the rule in your work and advocate whatever changes or additions you might prefer. You will find a copy of the proposed rule enclosed.

Centro is also preparing for the next legislative Session of Congress. We are utilising this period of legislative quiet to organize a major conference on key immigration issues. Some of the issues which will certainly be discussed include:

(1) Undocumented children and Free Public Education

(2) Due Process, Right to Counsel, and Deportation Proceedings

(3) Employment Sanction Legislation (Constitutional Considerations)

(4) H - 2 Temporary Worker Program

(5) Use of State Agencies, and Local Police for Immigration Law enforcement, and others.

The conference shall be designed to increase the effectiveness of all organizations conducting litigation in these areas. We intend to dispense with the traditional "speakers' format" which is usually employed, and shall conduct litigation workshops directed by key individuals with special expertise with respect to particular issues. The format will be such that it will lend itself to reproduction in printed handbook form, which shall be made available to all those unable to attend. The conference shall be scheduled to roughly correspond with the reconvening of Congress in January, 1979.

We hope you find this material useful, and look forward to meeting many of you at our January conference.

Sinceramente,

Oscar Fuentes
Director

Joe Billings
Assistant Director.

Research Staff: Jose Batista
Harry Cook
Leopoldo Ochoa

CONGRESSIONAL BILLS ON
IMMIGRATION

95th Congress

Status of Legislation up to adjournment

1. EMPLOYMENT SANCTIONS

Bill Number	Sponsor	Description	Status
H.R. 197	Bigham (D-N.Y.)	To penalize employers who knowingly hire undocumented workers. Civil penalties for first violations, increasing to criminal. Contains provisions for HEW disclosure to INS of aliens receiving Social Security benefits unlawfully.	No action.
S. 993	Packwood (R -Ore.)	Penalties for employment of undocumented workers. Criminal penalties for first offense. Establishes procedures for the prevention of undocumented worker access to social security cards.	Judiciary Committee: Mar. 14, 1977. Immigration Subcommittee: April 7, 1977. No action.
S. 1601	Schweiker (R-Pa.)	To penalize employers who knowingly hire undocumented workers. Penalties would be civil. ($500 to $1000 for each undocumented worker-double for repeated offenses)	Referred to Judiciary Committee: May 25, 1977. Referred to Immigration Sub-committee: May 26, 1977. No action.
H.R. 1663	Eilberg (D-Pa.)	Employer Sanctions. Criminal After third violation	No action.
H.R. 6785	Minish (D-N.J.)	Employer Sanctions	Judiciary Committee: Jan. 31, 1977. Immigration Sub-committee: May 10, 1977.
H.R. 3145	Danielson (D-Cal.)	Employer sanctions. Criminal.	No action.

EMPLOYMENT SANCTIONS Contd.

Bill Number	Sponsor	Description	Status
H.R. 3395	Young (D - Fla.)	Employer Sanctions.	Judiciary Committee: Feb. 9, 1977. Immigration Sub-committee: Feb. 25, 1977.
H.R. 3671	Lott (R-Miss.)	Employer Sanctions.	No action.
H.R. 4449	Lott (R-Miss.)	Identical to H.R. 3671 with Co-sponsors: Simon, Thone, Beville, Devine, Daniel, Ginn, Whithurst, Milfrod, Gilman, Cochran, Abmor, Conte, Neal, Cleveland, Jenrette, Moakley, Edwards of Okl.	Judiciary Committee: Mar. 3, 1977. Immigration Sub-committee: Mar. 16, 1977.
H.R. 6560	Lehman (D-Fla.)	Employment sanctions.	Referred to Immigration Sub-committee: Apr. 29, 1977.
H.R. 6963	Ducan (R-Tenn.)	Employment sanctions.	Immigration Sub-committee: June 16, 1977.
H.R. 2753	Wylie (R- Ohio)	Employment sanctions.	Judiciary Committee: Jan. 31, 1977. Immigration Sub-committee: Feb. 9, 1977.
H.R. 7762	Ashbrook (R- Ohio)	Employment sanctions.	The following Bills were all introduced during the 2nd Session of the 95th Congress and introduced to the House Sub-committee on Immigration after July 6, 1978.
H.R. 5516	Vander Jagt (R - Mich.)	Employment sanctions.	
H.R. 6525	Biaggi (D- N.Y.)	Employment sanctions (Also would increase INS border personnel)	
II. ADJUSTMENT OF STATUS.			
H.R. 356	Eilberg (D- Pa.)	Precludes adjustment of status for certain groups of non-immigrants.	The following Bills were introduced during the 2nd Session of the 95th Congress and introduced to the House Sub-committee on Immigration after July 6, 1978.

ADJUSTMENT OF STATUS (Contd.)

Bill Number	Sponsor	Description	Status
H.R. 4438	Badiuo (D- N.Y.)	Providing record of admission for permanent residency of certain aliens entering the U.S. prior to July 4, 1976.	
III. ADMINISTRATION.			
H.R. 7731 H.R. 7778 H.R. 9085	Pease, et al (D- Ohio)	Change affidavits of support from a moral to a legal obligation	The following Bills were introduced during the 2nd Session of the 95th Congress and introduced to the House Sub-committee on Immigration after July 6, 1978.
H.R. 6732	Mikva (D- Ill.)	Requiring INS to provide a card to the public which may be used to assess the degree of courtesy encountered in their transaction.	
IV LOSS OF CITIZENSHIP			
H.R. 9637	Eilberg (D- PA)	Repealing certain sections of Title III relating to loss of nationality.	The following Bills were introduced during the 2nd Session of the 95th Congress and introduced to the Sub-committee on Immigration after July 6, 1978.
H.R. 10208	McClory (R- Ill.)	- do -	
H.R. 10323	Eilberg, et al (D -PA.)	- do -	
V GROUNDS FOR EXCLUSION			
H.R. 6308 H.R. 8107 H.R. 9965	Drinan, et al (D - Mass.)	No exclusion on basis of political association	- do -

VI DEPORTATION.

Bill Number	Sponsor	Description	Status
H.R. 7667	Holtzman (D-N.Y.)	To provide that under certain circumstances aliens convicted of marijuana offenses shall not be denied admission to, or deported from the U.S.	Judiciary Committee: June 8, 1977. Immigration Sub-committee: Feb. 9, 1977. Reports requested: Justice, Received May 16, 1977.
H.R. 1474 H.R. 9035	Delaney (DRC- N.Y.)	To make any alien who becomes a public charge within 24 months of arrival in the U.S. subject to deportation.	Judiciary Committee: Jan. 6, 1977. Immigration Sub-committee: Feb. 9, 1977.
H.R. 2388	Broomfield (R- Mich.)	Makes a deportable offense for an alien to obtain unemployment, welfare or other federally provided benefits.	No action.
H.R. 324	de la Garza (D- Tx.)	To prohibit the relocation of the Border Patrol Academy maintained by the INS at Los Fresnos, Tex. to Ginco, Georgia.	No action.
H.R. 5973	Sisk (D - Cal.)	Change within for deportations based on public charge criteria	Introduced after July 6, 1978. Sub-committee on Immigration.

VII- HEALTH SERVICES

S. 133	Inouye Matsunga (D- Hawaii)	To assure delivery of health services to recently arrived immigrants.	Referred to Human Resources: Jan. 10, 1977. Currently pending in Health and Scientific Research Sub-committee.
S.1048	Chiles, Stone (D-Fla.)	Delete five year residency requirement for participation in Medicare and extends program to refugees.	Pending in Immigration Sub-committee.
H.R. 7523 H.R. 7100 H.R. 7282	Pease (D- Ohio)	No supplemental income payments unless permanent resident over 5 years.	Introduced after July 6, 1978.

VIII - NATURALIZATION REQUIREMENTS.

Bill Number	Sponsor	Description	Status
H.R. 667	Rodino (D- N.J.)	Increases English language requirement for naturalization	Introduced after July 6, 1978.
H.R. 1859	McKinney (R- Conn)	Requires individual to be over 16 to be naturalized.	-do-

IX - TEMPORARY WORKERS.

H.R. 6022	Fish (R- N.Y.)	Facilitate admission of temporary domestic workers	-do -
H.R. 7117	Robinson (R- Va.)	- do -	-do -
H.R. 7939 H.R. 8646	Fish, et al (R - N.Y.)	- do -	-do-

X - IMMIGRANT ADMISSIONS.

H.R. 8250	Yatron (D- PA)	No admission unless U.S. citizen enters into an enforceable agreement to provide support for the alien for 5 years after admission.	Introduced after July 6, 1978.
H.R. 8703	- do -		
H.R. 8924	- do -	- do -	
H.R. 9195	- do -	- do -	
H.R. 4308	Patterson (D - Cal.)	Increase Western hemisphere quota to 130,000	(World-wide ceiling established Oct. 12, 1978).
H.R. 8576	White (D - Tex.)	Requires aliens to maintain a permanent residence in the U.S. as a condition for entering and remaining as immigrant in the U.S.	Introduced after July 6, 1978.

IMMIGRANT ADMISSIONS (Contd.)

Bill Number	Sponsor	Description	Status
H.R. 363	Eilberg (D- Pa.)	To establish a Select Commission on Territorial Immigration Policy.	Judiciary Committee: Jan. 4, 1977. Reports requested: Mar. 1, 1977.
S. 68	Cranston (D- Cal.)	To increase Western Hemisphere quota to 130,000.	Referred to Judiciary Committee July. 10, 1977 Immigration Sub-committee Apr. 1, 1977.
S. 158	Cranston (D- Cal.)	To allow aliens with no more than one violation for marijuana to be admissible to the U.S.	Immigration Sub-committee April 1, 1977.
S. 987	Anderson (D- Minn.)	To deny a petition for citizenship to immigrants seeking preference status by reason of marriage determined by the Attorney General to have been entered into for the purpose of evading immigration law.	Judiciary Committee: Mar. 14, 1977. Referred to Immigration Sub-committee: April 7, 1977.
S.1604	McClure (R -Ida.)	To provide that the availability of citizens for agricultural employment as a prerequisite for the certification of temporary alien workers shall be determined by the Governor of each respective state.	Referred to Judiciary Committee: May 25, 1977. Referred to Immigration Sub-committee: May 28, 1977. No action.
H.R. 8154 H.R. 8591	Krebs (D - Calif.)	Requires an alien sponsor to post a $ 5,000 bond to secure against the alien from becoming a public charge	Introduced after July 6, 1978.
H.R. 9500		- do -	
S. 1995	Abourezk (D- S.Dak.)	To grant admission to the United States nationals of Chile and their spouses, children, and parents of such nationals who if not in Chile would be in danger of persecution on account of political opinions upon return to Chile.	Referred to Judiciary Committee: August 3, 1977. Referred to Immigration Sub-committee: Aug.5,1977. No action.

IMMIGRANT ADMISSIONS (Contd.)

Bill Number	Sponsor	Description	Status
H.R. 6651	Eilberg (D-Pa.)	To establish a Select Commission on Immigration and Refugee Policy	Judiciary Committee: Apr. 26, 1977. Immigration Sub-committee: May 5, 1977. Reports requested: Justice and Labor, and State May 18, 1977.
H.R. 12443	Eilberg (D- Pa.)	Worldwide ceiling on immigration 290,000	Became law - Oct. 12, 1978.
XI -IMMIGRANT RIGHTS			
H.R. 368	Frenzel (R-Minn.)	To permit more than two petitions to be approved for the adoption of alien children. The following are similar bills all of which are before the sub-committee on Immigration. H.R. 3324 D.H.Clausen, H.R. 4636 Oberstar, H.R.5804 Sisk, H.R.6441 Sisk, H.R. 871 Fenwick, H.R.3704 Vander Jagt, H.R. 6488 Harris.	Judiciary Committee: Jan.4, 1977. Immigration sub-committee: Feb. 9, 1977.
H.R. 4790	Collins (D- Ill.)	To require that an alien who has been detained for further inquiry or who has been temporarily excluded from the U.S. shall have the right to be represented by counsel.	Judiciary Committee: Mar.9, 1977. Immigration Sub-Committee: Mar. 25, 1977. Reports requested: Justice, State, Mar. 8, 1977.
H.R. 1957	Edwards (Cal.)	To eliminate the legal custody requirement of residence and physical presence in the U.S. for the naturalization of children adopted by U.S. citizens.	Judiciary committee: Jan.17, 1977. Immigration Sub-committee: Feb. 9, 1977. Reports requested: Justice, May 11, 1977. Received May 16, 1977.
H.R. 3109	Quillen	- do -	Introduced after July 6, 1978.
H.R. 6488	Harris	- do -	
H.R. 9560	-do-	- do -	

XII- BILLS OF SPECIAL INTEREST

ROYBAL LEGISLATION

Bill Number	Sponsor	Description	Status
H.R. 6093	Roybal (D-Cal.)	Provides for amnesty through documentation by extending adjustment of status to those individuals entering the U.S. on or before Jan. 1, 1977. Provides for collection from employers of wages owed to undocumented workers. Establishes an increase in Western Hemisphere quotas to 170,000 and repeal 20,000 per-country limitation from Western Hemisphere. Hearings before voluntary departure pending deportation.	No action.
		President's Newly Proposed Bill	
S. 2252	Kennedy (D- Mass.) Eastland (D- Miss.) DeConcini (D-Ariz.) Bentsen (D- Tx.)	Civil Sanctions for hiring undocumented workers. Increased enforcement of the borders. Temporary worker provisions. Limited amnesty (for individuals in the U.S. by Jan. 1, 1970). Sanctions against smugglers of aliens.	Judiciary Committee: Oct. 28, 1977. Immigration Sub-committee Oct. 31, 1977. Field hearings held Sept. 1,2, 1978.
H.R. 9531	Rodino (D-N.J.)	House version of President's proposal indicated above.	Judiciary Committee; Oct. 12, 1977. Immigration Sub-committee: Oct. 21, 1977.

XIII-MISCELLANEOUS AND LEGISLATION WITH MIXED PROVISIONS.

H.R. 8452 H.R. 9268 H.R. 11718	Burgener et al (R - Cal.)	Employment sanctions, facilitate admissions for temporary employment, regulate issuance and usage of social security cards.	Introduced after July 6, 1978.

XIII - MISCELLANEOUS AND LEGISLATION WITH MIX PROVISIONS (Contd.)

Bill Number	Sponsor	Description	Status
H.R. 8904	Treen (R- LA)	Employment sactions, facilitate admissions for temporary employment, regulate issuance and usage of social security cards.	Introduced after July 6,1978.
H.R. 5547	Wilson (R-Cal)	Seizure of vessels, vehicles, aircraft used to transport aliens illegally	-do -
H.R. 11581	Udall (D- Ariz.)	- do -	-do-
H.R. 7058	Moorhead (R-Cal.)	- do -	-do-
H.R. 12367	Ashbrook (R-Ohio)	- do -	-do -
H.R. 12787	McDonald (D- GA)	-do -	-do-
H.R. 1481	Devine (R- Ohio)	Prohibits voluntary departures, penalties for illegal entry, require increased personnel at the border	Introduced after July 6,1978.
H.R. 4440	Ketchum (R- Calif)	-do -	-do-
H.R. 409	Holtzman (D-N.Y.)	Immediate relative status for illegitimate child of U.S. father.	-do-

CENTRO DE IMMIGRATION

Federal Court Decisions

United States v. Restrepo-Granda, 575 F. 2d 524 (5th Cir. 1978) The defendant was convicted of unlawful importation and possession of cocaine with intent to distribute and unlawful use of a passport and visa issued to another person.

The Court of Appeals held that the entering by the defendant with cocaine concealed in coathangers in a suitcase, and the defendant's giving an improbable explanation for his possession of cocaine was sufficient to support a finding that the defendant had knowledge of the presence of the cocaine in his suitcase. It also held that where the passport was issued by a foreign government, containing a U.S. non-emigrant visa, and the defendant admitted knowingly using said passport and visa issued to another person, the defendant was guilty of unlawful use of the passport and visa.

Perales v. Immigration and Naturalization Service, 575 F. 2d 1293 (9th Cir. 1978). The Board of Immigration Appeals denied a second motion to reopen deportation proceedings. The defendant sought review.

The Court of Appeals held that: 1) where the alien had conceded deportability in 1970 after having been in the country for only four years, the defendant did not qualify for suspension of deportation as an alien who had been continuously present for seven years; and, 2) the defendant was not eligible for suspension of deportation where, even if he could qualify for suspension as an alien who had been present continuously for seven years in the country, he could not qualify under the "extreme hardship" test of the statute.

Winestock v. Immigration and Naturalization Service, 576 F. 2d 234 (9th Cir. 1978). The defendant petitioned for a review of an INS decision ordering that he be deported following conviction for violation of a statute relating to counterfeit obligations.

The Court of Appeals held that the violation of the statute was a crime involving moral turpitude and thus a deportable offense.

Shon Ning Lee v. Immigration and Naturalization Service, 576 F. 2d 1380 (9th Cir.1978) The defendant petitioned the Court of Appeals to review a denial of his motion by the Board of Immigration Appeals to reopen deportation proceedings.

The Court of Appeals held that where the defendant's application for permanent resident status as a nonpreference immigrant exempted from labor certification requirements on the ground that the defendant was not a foreign investor, the subsequent motion to reopen the proceeding because she had bought a business constituted a new application for permanent resident status, so she could not rely on the filing date of the original application for visa purpose priorities.

Phatanakitjumroon v. Immigration and Naturalization Service, 577 F. 2d 84 (9th Cir. 1978). The defendant appealed a decision by the Board of Immigration Appeals affirming an immigration judge's denial of his motion for stay of his deportation, and to reopen said proceedings.

The Court of Appeals held that the failure of the government to approve or disapprove a visa petition by defendant's wife to classify the defendant as an immediate relative was not unreasonable, said petition being filed only 33 days before the defendant's voluntary departure date.

Moghanian v. Department of Justice, and The Board of Immigration Appeals, 577 F. 2d 141 (9th Cir. 1978). The defendant appealed a denial of his motion to stay

deportation on the ground that as a Jew in predominantly Muslim Iran, he would be subject to persecution.

The Court of Appeals held that the defendant's undocumented claim was nothing more than his opinion that he might be persecuted, and that the denial by the Board of Immigration did not constitute abuse of discretion.

Urbino de Malaluan v. Immigration and Naturalization Service, 577 F. 2d 589 (9th Cir. 1978). The defendant appeals the denial by the Board of Immigration Appeals of his motion to suspend deportation.

The Court of Appeals reversed and remanded the case because the documentary materials, stating that the defendant had married and given birth to two children in the U.S. made out a prima facie case that her deportation would constitute a case of extreme hardship . The Board could grant discretionary review taking into account the hardship that would be inflicted upon such citizens.

Castro-Nuno v. Immigration and Naturalization Service, 577 F. 2d 577 (9th Cir. 1978). The defendant challenges an order of the INS that he voluntarily depart from the U.S. or be deported because the deportation hearing was held when the defendant's lawyer was not present, thus constituting a violation of due process.

The Court of Appeals held that under the circumstances of this case, the immigration judge abused his discretion. The defendant's statutory right of representation was denied.

Jacobe v. Immigration and Naturalization Service, 578 F. 2d 42 (3rd Cir. 1978). The defendant appealed a decision by the Board of Immigration denying both a stay of deportation and a motion to reopen the deportation proceedings.

The Court of Appeals held that it lacked jurisdiction to entertain defendant's appeal because the defendant had not exhausted the administrative remedies available and the Board of Immigration Appeals did not abuse it's discretion in denying defendant's motion to reopen deportation proceedings, because immigrant visa was not immediately available to the defendant.

Der-Rong Chour v. Immigration and Naturalization Service, 578 F. 2d 464 (2nd Cir. 1978). The defendant, a chinese crewman, appeals an order by the Board of Immigration Appeals denying his motion for application to apply for adjustment of status, after he overstayed his authorized 29 day stay in this country, absconded and was eventually arrested.

The Court of Appeals affirmed an order of deportation, agreeing with the conclusion by a District Court Judge stating that Sec.245 of the Immigration and Nationality Act (which enables a person to apply for adjustment of status) expressly excluded alien seamen from its provisions.

Forstner v. Immigration and Naturalization Service, 579 F. 2d 506 (9th Cir. 1978). The defendant seeks review of an order finding him deportable under Sec.241 (a)(11) of the Immigration and Nationality Act, which requires deportation of any alien convicted of drug related offenses.

The Court of Appeals held that Sec. 241 (a)(11) encompassed the conduct made unlawful by the Oregon statute: that a plea of guilty was tantamount to a conviction, and also pointed at the flexibility of the Board of Immigration Appeals' decision permitting the defendant to move to reopen the proceedings if he could introduce evidence that he received no remuneration, or if his conviction is eventually expunged.

McJunkin v. Immigration and Naturalization Service, 579 F. 2d 533 (9th Cir. 1978). The defendant appeals an order of the Board of Immigration Appeals affirming an

order finding the defendant deportable under Sec.241(a)(11) of the Immigration and Nationality Act which provides for the deportability of any alien who "is, or hereafter at any time after entry has been, a narcotic drug addict."

The Court of Appeals affirmed the deportation proceedings stating that: 1) the findings of the Narcotic Addict Rehabilitation Act constituted clear, convincing and unequivocal evidence sufficient to establish that the defendant was a drug addict and thus subject to deportation under Sec.241 (a)(11): and, 2) such findings, although not allowed to be used against the patient in any criminal proceedings, may be used in deportation cases, because such actions are civil and not criminal in nature.

Recent Board of Immigration Appeals Decisions.

IN RE RAHMATI (BIA, June 26, 1978). # 2654

The Board reversed a decision by the District Director revoking approval of a petition by a United States citizen applying for immediate relative status for the beneficiary as her spouse under Section 201 (b) of the INA, 8 U.S.C. 1151(b). The Board ruled that a determination by immigration judge in recession proceedings that an alien was accorded non quota status as the spouse of a United States citizen by reason of a nonviable marrige does not preclude the alien under Section 204(c) of the INA, 8 U.S.C. 1154(c) from obtaining immigrant status under a new visa petition since it does not follow from the fact that a marriage was nonviable that it was entered into to evade immigration laws.

In Re Au Yeung (BIA, June 28, 1978) # 2655

The Board dismissed an appeal from an Immigration judge's denial of a petition by the citizen petitioner for preference status for the beneficiary as his unmarried son under section 203(a)(1) of the INA, 8 U.S.C. 1153(a)(1). The Board decided that it did not have jurisdiction to consider whether a beneficiary of a visa petition who was once accorded lawful permanent resident status has abandoned that status when the Board had before it an appeal from the denial of a visa petition. In addition, the Board decided that an alien who is admitted as an "eligible orphan" pursuant to section 101(b)(1)(F) of the INA and is never adopted by the petitioner prior to leaving the country is not eligible for preference status as the "son" of the petitioner since that relationship never came into existence.

In RE MAN (BIA, June 29, 1978) # 2656

The Board upheld an immigration Judge's denial of a petition by the United States citizen petitioner for immediate relative status for the beneficiary as her step mother under section 201(b) of the INA, 8 U.S.C. 1151(b). The Board upheld the immigration judge's finding that a concubine cannot derive an immigration benefit through children born to her "husband" and his principal wife, and a visa petition by the child on behalf of the "stepmother" will be denied since the sole relationship between the parties is a polygamous marraige, which Congress has excluded from preference status in section 212 (a)(ii) of the INA, 8 U.S.C. 1182 (a)(11).

In RE AGDINAOAY (BIA, June 30, 1978) # 2657

The Board dismissed an appeal from the District Director's denial of citizen

in this country for a brief period of time, exhibited disregard for U.S. laws by beginning to work shortly after admission as a non-immigrant visitor for pleasure and who has a wife and child in the country illegally with no family ties entitling him to permanent residence was not inappropriately required to post bond. The jursidiction conferred upon an immigration judge under 8 C.F.R. 242.2(6) to redetermine the custody status of a detained alien excludes the authority to increase the amount of bond initially set by the District Director. Orders were entered sustaining the immigration judge's determination that bond be set at $2500, denying a motion to release respondent on his own recognizance, and allowing respondent release from custody under the posting of a bond of $1500.

In RE GONZALEZ (BIA, July 26, 1978) # 2662

The BIA dismissed an appeal from a decision by an immigration judge's finding that the respondent was deportable and was ineligible for the relief provided by section 241(f) of the INA, 8 U.S.C.1251(F). The Board's decision stressed that section 241(f) is not effective to relieve from deportation an alien who entered the country in violation of section 212 (a)(14) of the Act, 8 U.S.C. 1182 (a)(14). Furthermore section 241(f) is not operative where the alien is not "otherwise admissible" at the time of entry for lack of a labor certification and was not exempt therefrom.

In RE McNAUGHTON (BIA, July 26, 1978) # 2663

An appeal from an immigration judge's decision finding the respondent deportable as charged was dismissed by the Board. The respondent a citizen of the United Kingdom had been convicted in Canada of conspiring to affect the public market in securities with intent to defraud under a section of the Canadian Criminal Code covering substantially similar conduct that made criminal in the United States under the Securities and Exchange Act of 1934. The Board concluded that once guilt has been adjudicated by a foreign court and the adjudication has not been overturned the BIA will not retry guilt and furthermore, that a foreign conviction, to be the basis for a finding of inadmissibility, must be for conduct deemed criminal by United States standards. When a foreign conviction involves conduct deemed criminal in the United States, prevailing United States standards will be applied to determine whether the crime involves moral turputude. Here, the Board found the crime of conspiring to defraud the investing public to be one involving moral turpitude.

In RE YELLOWQUILL (BIA, August 1, 1978) # 2664

The Board sustained an appeal and terminated proceedings from a decision by an immigration judge finding the respondent, an American Indian born in Canada, deportable as charged. Following Allins v. Saxbe, 380 F. Supp. 1210 (D.Maine 1974), the Board decided that the historical right of American Indians born in Canada to pass the borders of the United States recognized by section 289 of the INA, 8 U.S.C. 1359 exempts such Indians from restrictions imposed on aliens by the immigration laws and immunizes them from deportation, MATTER OF A-, I & N Dec.600 (BIA 1943), overruled.

In RE RAHMAN (BIA, August 4, 1978) # 2665

On a remand of the record from the Court of Appeals following remand from the

Supreme Court, see Rahman v INS, 429 U.S. 1084 (1977), the Board terminated proceedings. It was decided that a lawful permanent resident who was excludable under section 212(a)(22) of the INA, 8 U.S.C. 1182 (a)(22), as having left the United States to evade military service was within the Presidential Pardon of January 24, 1977 as implemented by Executive Order 11967 since he had reentered the United States as a returning lawful permanent resident before June 1, 1978.

IN RE MARIN (BIA, August 4, 1978) # 2666.

The Board upheld an immigration judge's finding that respondent was deportable as charged for violation of the New York State penal code and that his application for a waiver of inadmissibility under Section 212(c) of the INA, 8 U.S.C. 1182(c) should be denied.

IN RE PEIEYRA (BIA, August 10, 1978) # 2667

The Board remanded the record to the immigration judge for further proceedings upon appeal from a decision finding the respondent deportable as charged and denying her application for suspension of deportation under Section 244(a) of the INA, 8 U.S.C. 1254(a). The Board found that an exchange visitor who is no longer subject to the foreign residence requirement in view of the amendment of section 212 (e) of the INA is not precluded from establishing statutory eligibility for suspension of deportation notwithstadning the provisions of section 244(f)(2) barring exchange visitors from that relief.

IN RE TONG (BIA, August 15, 1978) # 2668

The Board dismissed an appeal from a decision of an immigration judge finding the respondent deportable. The finding of deportability below was premised on the fact that, the respondent, a beneficiary of a visa petition temporarily authorized to remain in the United States as a student became self employed by opening a used car dealership without permission from the service. The Board's opinion states that unauthorized self-employment as a used car dealer is "unauthorized employment" writhin the purveiew of section 245(c) of the INA, 8 U.S.C. 1255(c) and thus precludes adjustment of status. Furthermore, 8 C.F.R. 214.2 (F)(6) provides that a nonimmigrant student is in violation of his status whether he is engaged in off-campus employment in the United States for an employer or independently, unless an application has previously been approved by the service.

IN RE ANDERSON (BIA, August 31, 1978) #2669

The Board dismissed an appeal from an immigration judge's finding of deportability and denial of respondent's application for suspension of deportation under section 244(a) of the INA, 8 U.S.C. 1254(a). The Board concluded that while political and economic conditions in an alien's homeland are relevant factors in determining extreme hardship under section 244 (a)(1), they do not justify a grant of relief unless other factors such as advanced age, severe illness, family ties, etc. combine with economic detriment to make deportation extremely hard on the alien, or the citizen or permanent resident members of his family.

RECENT REGULATIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE

Voluntary Departure Prior to Commencement of Hearing, 43 Fed. Reg.29526 (7-10-78).
This final rule amends the regulations of the INS by commending to regulation materials formerly contained in operationing instructions with respect to eligibility

of certain aliens for voluntary departure prior to commencement of a hearing. The rule also provides that third and sixth preference aliens with a priority date after August 9, 1978 as described by regulation will no longer be eligible for voluntary departure prior to commencement forthe purpose of remaining in the United States to await the availability of a visa number. Therefore, Chapter I of Title 8 of the Code of Federal Regulations, Part 242, 5242.5a is amended accordingly. The amendments contained in this order became effective August 9, 1978.

Application to Accept or Continue Employment by G-4 Non-immigrants,43 Fed.Reg. 33229 (7-31-78).

This final rule amends the regulations of the INS to establish a formal procedure under which alien spouses and unmarried dependent son and unmarried dependent daughters of officers or employees of international organizations, classified as G-4 under 8 C.F.R., Part 214 may apply for permission to work. It also establishes the procedure by which such permission is granted or denied. Before, the State Department informally adjudicated requests by G-4 aliens for permission to be employed. The informal procedure in use prior to these amendments were developed over the years on an ad hoc basis, thus causing a serious lack of uniformity. This rule ensures uniform procedure as it affords eligible G-4 aliens a reasonable opportunity to work and enjoy greater participation in the community during their temporary stay in this country. Accordingly, 8 C.F.R., Part 214, Section 214.2(g) is amended by redesignating the existing paragraph or sub-paragraph (1), and by adding a new sub-paragraph (2). The amendments also provide that reference to Form I 566 will be made in 8 C.F.R. Part 299, Sec. 299.1. The rule became effective August 30, 1978.

Filing of Visa Petition and Applications for Adjustment of Status on Permanent Resident, 43 Fed. Reg. 33677(8-1-78).

This final rule sets forth amendments to INS regulations which would permit the simultaneous filing of an immediate relative or preference visa petition and an application for adjustment of status in the service district where the beneficiary resides, even though it is different from the residence of the petitioner or place of intended employment. In the past, visa petitions could only be filed where the petitioner resided or in the service district which had jurisdiction over the intended place of employment. Simultaneous filing of visa petitions and application for adjustment of status was not allowed if different service districts would be involved. This rule removes that prohibition. The rule's purpose in the facilitation of filing visa petition and application for adjustment of status by aliens in the U.S. accordingly, this rule amends 8 C.F.R. Part 204, Sections 204.1(a) and 204.1 (c) so that they reflect INS policy. The rule became effective July 31, 1978.

Inspection of Persons Applying for Admission: Conditional Entry from Spain, 43 Fed. Reg. 35259 (8-9-78).

On July 15, 1977, the INS published, at 42 C.F.R. 36448, an amendment to 8 C.F.R. 235.9(a) in which Spain was added to the list of countries in which aliens could file applications for conditional entry into the United States under Section 203 (a)(7) of the Immigration and Naturalization Act, 8 U.S.C. 1153(a)(7). However, a subsequent agreement between the Government of Spain and the United States limited the class of aliens whose conditional entry applications could be processed in Spain to Cubans who were temporarily in Spain as visitors. Therefore, INS amended 8 C.F.R. 235.9 (a) by deleting Spain from the enumerated list of countries. Accordingly, Section 235.9 was further amended by adding sub-section (a-1) which

provides that applications for conditional entry pursuant to Section 203(a)(7) of the Act may be accepted in Spain by service officers on behalf of natives or citizens of Cuba who were temporarily in Spain as visitors. This does not prohibit Cubans from applying for conditional entry in those countries enumerated in 8 C.F.R. 235.9(a). The rule became effective August 9, 1978.

Termination of Program for Issuance of Permanent Crewman's Landing Permits and Identification Cards, 43Fed.Reg.37173 (8-22-78).

This final rule revises 8 C.F.R.252.4 by revoking 8 C.F.R. 252.4(b) as 8 C.F.R. 252.4 and publishing it without change. It's purpose is to revoke regulations under which the service issued permanent crewman's landing permits to nonimmigrant alien crewmen. Citing non-use and widespread non-compliance, INS has terminated the program. Therefore, INS will no longer maintain copies of Form I-184 at its various offices. However, the cards now in force will remain valid unless revoked and crewmen will still be eligible for conditional landing permits under existing Service regulations. This rule became effective September 22, 1978.

Termination of Expeditious Naturalization Board on Military Service, 43 Fed.Reg. 42237 (9-18-78).

On the 18th of September, 1978, President Carter pursuant to authority vested in him by Section 329 of the Immigration and Naturalization Act, as amended, 82 Stat. 1343,44; 8 U.S.C. 1440, 1440 (e), designated October 15, 1978 as the termination date of the Vietnamese hostilities. This termination date is of importance because it's to end the period in which active duty service in the U.S. Armed Forces qualifies for certain exemption from the usual requirements for naturalization, including length of residence and fees.

Availability of Free Legal Services Programs for Aliens facing Deportation or Exclusion Proceedings, 43 Fed. Reg. 43721 (10-27-78).

The Immigration and Naturalization Service in currently accepting comments to their regulations which will provide that aliens under exclusion and deportation proceedings must be advised of the availability of free legal services program and organizations in the service area. The proposed rule seeks to establish procedures and criteria under which free legal services programs can qualify to appear on the service list which will be furnished to the alien. These proposed regulations also provide that alien be advised of their rights to pursue an appeal. Comments must be submitted in writing, in duplicate, to Commissioner of I.N.S., Room 7100, 425 I Street, N.W., Washington, D.C. 20536 by November 27, 1978.

STATE AND LOCAL ACTIVITY

I. Introduction

This month's Report lists state and local legislation under the headings of bills enacted, bills pending, and bills defeated.

II. Surveyed Laws

A. Bills Enacted

1. FLORIDA
   a. Chapter 77, Section 250
   b. Status -- enacted June 16, 1977.

2. KANSAS
   a. Public Law No.275
   b. Status-- enacted May 10, 1972.

3. MASSACHUSETTS
   a. Massachusetts General Law, Chapter 149, Section 19c
   b. Status --effective January 18, 1977.

4. NEW JERSEY
   a. Assembly Bill No. A920
   b. Status--effective May 23, 1977.

5. CITY ORDINANCE OF LAS VEGAS, NEVADA
   a. Chapter 13, Section 6-13-2
   b. Status-- enacted, 1976.

6. VERMONT
   a. House Bill 472
   b. Status--enacted May 1, 1977.

7. VIRGINIA
   a. Assembly Bill 1857, adding 401-11.1 to Chapter 438
   b. Status-- enacted March 27, 1977; effective July 1, 1977.

B. Bills Pending

1. CALIFORNIA
   a. Labor Code, Section 2805
   b. Status--enacted 1971; defendants' injunction has kept the law from being enforced; state's decision on state-federal conflict still pending.

2. DISTRICT OF COLUMBIA
   a. Bill No.2-224
   b. Status--referred to the Committee on Economic and Employment Development; testimony given at public hearing currently under consideration.

3. MICHIGAN
   a. House Bill 4450
   b. Status--in House Committee on the Judiciary; no action taken

as of September 26, 1978.

C. Bills Defeated

1. COLORADO
   a. House Bill 1222
   b. Status-- died in committee

2. ILLINOIS
   a. House Bill 230
   b. Status-- failed to pass in Senate; died June 28, 1978.

3. INDIANA
   a. House Bill 1162
   b. Status-- no action taken after being ordered engrossed; hence because of committee inaction the bill failed.

4. NEBRASKA
   a. Labor Bill 507
   b. Status-- postponed indefinitely; must be reintrocued next session in order to be considered by the House.

5. NEVADA
   a. Senate Bill 278
   b. Status-- died in committee, August, 1977.

6. OHIO
   a. House Bill 359
   b. Status-- postponed indefinitely; must be reintroduced next session in order to be considered by the House.

7. RHODE ISLAND
   a. Senate Bill 77-S-4
   b. Status-- died in committee, March, 1977.

8. TEXAS
   a. House Bill 816
   b. Status--died in committee, March, 1977.

9. WISCONSIN
   a. Assembly Bill 535
   b. Status--died in committee on March 31, 1978.

Our recent Congressional Poll, conducted during the last week of September, showed that an increasing number of legislators have formed opinions with regard to President Carter's Immigration Proposal. Although no action was taken by the 95th Congress, a major immigration proposal, with provisions similar to the President's, will surely be introduced next January.

Whether swift action is taken on the new proposal will depend on the make-up of the House and Senate Judiciary Committees. The membership of the House Committee, barring any unforseen election results, will largely remain the same. However, the Senate Committee will have many new members who may well decide the fate of any major legislation. Senators Abourezk, Eastland and Scott are retiring. Senators Allen and Mclellan both passed away this year and their present successors will not be back. There is always the possibility that some members may decide to switch committee assignments. Thus, the Senate Judiciary Committee will have at least 5 new members and possibly more. Exactly what effect this turnover will have is unclear at the moment. As soon as the new assignments for the 96th Congress are made we will be in a better position to assess the impact the new members will have on immigration legislation.

CONGRESSIONAL OPINION POLL
SEPTEMBER 29,1978
SENATE JUDICIARY COMMITTEE

CODE

1. Strongly Agree
2. Agree
3. Disagree
4. Strongly Disagree
5. Undecided or No Opinion

SENATORS	AMNESTY	EMPLOYER SANCTIONS	INCREASED ENFORCEMENT	QUOTA RAISES
Abourezk (D.-S.D.)	1 2 3 4 (5)	1 2 3 (4) 5	1 (2) 3 4 5	1 2 3 4 5
Allen (D.-Ala.)	1 2 (3) 4 5	1 (2) 3 4 5	1 (2) 3 4 5	1 2 (3) 4 5
Bayh (D.-Ind.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Bidden (D.-Del.)	1 (2) 3 4 5	1 (2) 3 4 5	1 2 3 4 5	1 (2) 3 4 (5)
Culver (D.-Ia.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
DeConcini (D.-Ariz.) *	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5
Eastland (D.-Miss.) *	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5
Hatch (R.-Utah)	1 2 (3) 4 5	1 (2) 3 4 5	1 (2) 3 4 5	1 2 3 4 (5)
Kennedy (D.-Mass.)	1 (2) 3 4 5	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Laxalt (R.- Nev.)	1 2 3 4 (5)	1 2 (3) 4 5	1 (2) 3 4 5	1 2 3 4 (5)
Mathias (R.-Md.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Hodge (D.-Ark.)	1 (2) 3 4 5	1 (2) 3 4 5	1 2 (3) 4 5	1 2 3 4 (5)
Metzenbaum (D.-Ohio)	1 2 3 4 (5)	1 2 (3) 4 5	1 2 (3) 4 5	1 2 3 4 (5)
Scott (R.-Va.)	1 2 (3) 4 5	(1) 2 3 4 5	1 (2) 3 4 5	1 (2) 3 4 5
Thurmond (R.-S.C.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Wallop (R.-Wyo.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)

CONGRESSIONAL OPINION POLL
SEPTEMBER 29,1978
HOUSE JUDICIARY COMMITTEE

REPRESENTATIVES	AMNESTY	EMPLOYER SANCTIONS	INCREASED ENFORCEMENT	QUOTA RAISES
Ashbrook (R.-Ohio)	1 2 3 (4) 5	1 2 3 (4) 5	1 2 3 (4) 5	1 2 3 (4) 5
Beilenson (D.-Cal.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Brooks (D.-Tex.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Butler (R.-Va.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Cohen (R.-Me.)	1 2 3 4 (5)	1 (2) 3 4 5	1 (2) 3 4 5	1 2 (3) 4 5
Conyers (D.-Mich.)	1 (2) 3 4 5	1 2 (3) 4 5	1 (2) 3 4 5	1 (2) 3 4 5
Danielson (D.-Cal.	1 2 3 4 (5)	1 (2) 3 4 5	1 (2) 3 4 5	1 2 3 4 (5)
Drinan (D.-Mass.)	1 (2) 3 4 5	1 (2) 3 4 5	1 (2) 3 4 5	(1) 2 3 4 5
Edwards (D.-Cal.)	1 (2) 3 4 5	1 2 3 (4) 5	1 (2) 3 4 5	1 (2) 3 4 5
Eilberg (D.-Pa.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
ERTEL (D.-Pa.)	1 (2) 3 4 5	1 (2) 3 4 5	(1) 2 3 4 5	1 2 3 4 (5)
EVANS (D.-Ga.)	1 2 3 4 (5)	1 (2) 3 4 5	1 2 3 4 (5)	1 2 3 4 (5)
Fish (R.-NY)	1 2 3 4 (5)	1 (2) 3 4 5	1 (2) 3 4 5	1 2 (3) 4 5
Flowers (D.-Ala.)	1 2 3 (4) 5	(1) 2 3 4 5	1 (2) 3 4 5	1 2 (3) 4 5
Gudger (D.-NC)	1 2 (3) 4 5	1 (2) 3 4 5	1 (2) 3 4 5	1 2 (3) 4 5
Hall (D.-Tex.)	1 2 (3) 4 5	1 2 (3) 4 5	1 (2) 3 4 5	1 2 (3) 4 5
Harris (D.-Va.)	1 2 (3) 4 5	1 (2) 3 4 5	1 (2) 3 4 5	1 2 (3) 4 5
Holtzman (D.-NY)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Hughs (D.-NJ)	1 2 (3) 4 5	1 (2) 3 4 5	1 (2) 3 4 5	1 2 3 4 (5)
Hyde (R.-Ill.)	1 2 3 (4) 5	1 (2) 3 4 5	(1) 2 3 4 5	1 2 3 4 (5)
Jordan (D.-Tex.)	1 2 3 4 (5)	1 (2) 3 4 5	1 (2) 3 4 5	1 2 3 4 (5)

CONGRESSIONAL OPINION POLL (2)
SEPTEMBER 29, 1978
HOUSE JUDICIARY COMMITTEE

REPRESENTATIVES	AMNESTY	EMPLOYER SANCTIONS	INCREASED ENFORCEMENT	QUOTA RAISES
Kastemeir (D.-Wisc.)	1 (2) 3 4 5	1 (2) 3 4 5	1 (2) 3 4 5	1 (2) 3 4 5
Kindress (R.-Ohio)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Mann (D.-S.C.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Mazoli (D.-Ky.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
McClory (R.-Ill.)	1 2 3 4 (5)	1 2 (3) 4 5	1 (2) 3 4 5	1 2 3 4 (5)
Morrhead (R.-Cal.)	1 2 (3) 4 5	1 2 (3) 4 5	1 2 (3) 4 5	1 2 (3) 4 5
Railsback (R.-Ill.)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)	1 2 3 4 (5)
Rodino (D.-NJ) *	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5
Santini (D.-Nev.)	1 (2) 3 4 5	1 2 3 4 (5)	1 2 (3) 4 5	1 2 (3) 4 5
Sawyer (R.-Mich.)	1 2 (3) 4 5	1 (2) 3 4 5	(1) 2 3 4 5	1 2 (3) 4 5
Seiberling (D.-Ohio)	1 2 3 4 (5)	1 (2) 3 4 5	1 (2) 3 4 5	1 (2) 3 4 5
Volkmer (D.-Mo.)	1 2 (3) 4 5	1 (2) 3 4 5	1 (2) 3 4 5	1 2 3 4 (5)
Wiggins (R.-Cal.)	1 2 3 4 (5)	1 2 3 4 (5)	1 (2) 3 4 5	1 2 3 4 (5)

* Sponsor of President Carter's Proposal and as such is in favor of most of the provisions.

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate

WASHINGTON, D.C. 20510

September 21, 1978

Knowing of your interest and concern in immigration legislation, I wanted you to know that the Senate acted yesterday on two immigration reform bills I have sought to expedite. Both were adopted by the Senate and cleared for the President's signature. The bills were:

H. R. 12508, removing the current arbitrary limitation of two on the number of international adoptions an American family can make, replacing it with a requirement that a valid home study be made to protect the interests and welfare of the child.

H. R. 12443, establishes a worldwide immigration ceiling, providing for the more flexible and humane use of the preference system, and creates a Select Commission on Immigration and Refugee Policy. It also provides for the adjustment of status of refugees admitted under the parole authority.

Enclosed, for your information, is a copy of the proceedings in the Senate. With best wishes.

Sincerely,

Edward M. Kennedy

Enclosure

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124 WASHINGTON, WEDNESDAY, SEPTEMBER 20, 1978 No. 147

Immigration of adopted children: Senate passed without amendment and cleared for the President H.R. 12508, to facilitate the admission into the United States of more than two adopted children, and to provide for the expeditious naturalization of adopted children.

Worldwide immigration ceiling: Senate passed without amendment and cleared for the President H.R. 12443, to amend in several respects the Immigration and Naturalization Act, and to establish a Select Commission on Immigration and Refugee Policy.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 12508, which is at the desk, and that upon the disposition of that bill, still working within the constraints of the time agreement on the natural gas conference report, the Senate proceed to the consideration of H.R. 12443, which is at the desk, which bills have been cleared by the minority.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate H.R. 12508, an act to amend the Immigration and Nationality Act to facilitate the admission into the United States of more than two adopted children, and to provide for the expeditious naturalization of adopted children.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second times and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the bill will be considered as having been read twice by its title, and the Senate will proceed to its consideration.

● Mr. KENNEDY. Mr. President, this is a noncontroversial, but extremely important bill reforming the immigration law. It repeals the current arbitrary limitation on the number of international adoptions permitted a single American family.

Currently, the Immigration and Nationality Act contains a limitation of only two adoptions. But there was, and is, no rational basis for this number or any other arbitrary limitation. The sole criteria should be the ability of the petitioner family to care and provide for an adopted child, and this must be governed by valid home studies conducted by State or recognized private agencies, or authorized individuals.

That is what this bill does. It writes this home study requirement into law—and makes this the sole basis for granting a petition under the immigration law. This will also go a long way toward eliminating some abuses that can occur under existing law.

Mr. President, this bill has strong support from many quarters—from the voluntary agencies and church groups involved in international adoption, to professional persons and others involved in the administration of intercountry adoption programs. It eliminates an arbitrary provision of law, and replaces it with sound requirements that protects the interests of all adopted children.

Finally, this action is in keeping with our Nation's effort to respond to the "International Year of the Child"—by recognizing the special needs of orphans around the world, and their need for an opportunity to share life with a family instead of alone in an orphanage.

This bill is also in keeping with the spirit of the action we took 2 months ago on an amendment I offered to the foreign assistance bill to provide a special $2 million fund to assist disadvantaged children and orphans in Asia. I am gratified that this provision was sustained in conference and that it will soon be signed into law.

Mr. President, our Nation has a long and proud tradition of humanitarian concern for the needs of orphans and children around the world. I am confident this bill will help us better fulfill this tradition.●

● Mr. ANDERSON. I am pleased to join with Senator KENNEDY in supporting legislation which will facilitate the adoption of foreign children by American families and provide for their expeditious naturalization. This legislation which removes several serious obstacles for American families seeking to adopt foreign children, passed the House under suspension of the rules on July 18 by 413 votes. Not a single Member of the House of Representatives voted against the measure.

Among the important modifications embodied in the bill are provisions of S. 987, which removes the limitation in the Immigration and Nationality Act which now restricts the number of foreign adopted children which may be granted an immigration preference. As original Senate sponsor of S. 987, I am very gratified that these long-overdue changes are now before the Senate.

Under the present law, only two foreign adopted children can immigrate to the United States on immediate relative status. The alternative immigration status—nonpreferred—routinely results in delays of a year or even several years before a third child can be admitted to this country. This arbitrary limit is troublesome at the least, and at the worst can have tragic effects due to illness or failure to thrive of foreign children awaiting entry into the United States. In the past, the only other alternative to parents seeking to adopt a third child has been to request a private bill waiving the two-petition limit, a procedure which in itself can be prolonged and time-consuming. American families who choose to open their homes and hearts to foreign children clearly should not have to face these unnecessary burdens and bureaucratic obstacles any longer.

The bill now under consideration would protect the well-being of foreign adoptees by requiring a valid adoption home study by a licensed state agency or U.S. licensed agency abroad prior to granting either a nonpreference or immediate relative status visa for an alien child adopted abroad or coming to the United States for adoption. These required studies would insure that families seeking a third child would have the financial and emotional resources to meet his or her needs.

The legislation, including this home study requirement, has been strongly endorsed by a number of organizations including the Organization for United Response (OURS), which is a national group of some 4,500 adoptive parents and child welfare professionals. OURS, headquartered in my home State of Minnesota, has been enormously helpful to the progress of the bill through public education and information. It has been a

privilege to work with the members of OURS, and I am very hopeful that this Congress will bring good news to them and to the other adoptive parents who have waited so long for this bill's passage. I strongly urge my colleagues to pass this important measure.●

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 12506) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate H.R. 12443, an act to amend sections 201(a), 202(c), and 203(a) of the Immigration and Nationality Act, as amended, and to establish a Select Commission on Immigration and Refuge Policy.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second time and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the bill will be considered as having been read twice by its title, and the Senate will proceed to its consideration.

● Mr. KENNEDY. Mr. President, I am pleased to support the House-passed bill to establish a worldwide ceiling on immigration, and to create a Select Commission on Immigration and Refugee Policy. These are two proposals that I have strongly advocated for a number of years, and I am gratified that we are able to act expeditiously upon them today.

The establishment of a worldwide ceiling corrects an anomaly in the law, and is a logical step in consequence of the major immigration reforms Congress enacted in 1965—which I served as floor manager at the time.

In the long-term, this reform makes more flexible the provisions of the preference system, and in the short-run it has the likely effect of allowing the use of more nonpreference visas next year for the backlog in the Western Hemisphere and the use of more conditional entry visas for Indochina refugees—a need that is extraordinarily urgent in Southeast Asia today. All this will not involve, however, any increase in the total annual immigration authorized under the law.

Regarding the establishment of a Select Commission on Immigration and Refugee Policy, I have long urged the formation of a high level commission to take a thorough look at the immigration and nationality statutes. The time is past due for us to approach the revision of our antiquated immigration law like we have approached the revision of the criminal code—to dump the old law, and start anew. To do this, we need to have an objective and thorough study of current immigration law and practice—a review that is beyond the capacity and scope of a single agency of the executive branch or a committee of Congress, and which must involve a broad spectrum of opinion and groups concerned with immigration reform. I would hope the Select Commission could begin functioning by the beginning of next year.

It is for these reasons that I strongly support the creation of the Select Commission envisioned in H.R. 12443, and why I have sought to expedite the legislation before us.

In the days ahead, I will look forward to working with the voluntary agencies, various immigration and citizenship groups, and other citizen organizations deeply concerned over immigration policy and practice, to seek their counsel in the organization and functioning of this Select Commission once it is established next year. For the Select Commission to do its job, it must look as widely and as deeply as possible into the many different views that exist over immigration reform.

Mr. President, I move the adoption of this bill.●

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 12443) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Arizona.

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 906]

ORANGES AND GRAPEFRUIT GROWN IN TEXAS

Proposed Container Requirements

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposal to delete 1⅘ bushel wirebound boxes and 8-pound bags as containers authorized for handling oranges and grapefruit grown in Texas. Information indicates that a very small volume of citrus fruit is currently packaged in such containers. The proposed action is designed to effect a reduction in the number of shipping containers and therby reduce inventory costs.

DATES: Comments must be received on or before October 13, 1978. Proposed effective date: December 4, 1978.

ADDRESSES: Send two copies of comments to the Hearing Cleark, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: The proposals under consideration were submitted by the committee, established under marketing Order No. 906, as amended (7 CFR part 906), regulating the handling of organges and grapefruit grown in the Lower Rio Grande Valley in Tex., effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer its terms and provisions.

§ 906.340 [Amended]

The proposal is to delete in § 906.340 *Container, pack, and container marking regulations,* paragraph (a)(l)(v) closed wirebound wooden box with inside dimensions of 24⅝₁₆×11⅜×11⅜ inches, described in Freight Container Tariff 2G as container No. 3680; and the language referring to the 8-pound bag in paragraphs (a)(l)(v), (a)(l)(vi), and (a)(3), while authorizing handlers to use prior to July 31, 1979, existing supplies of these 2 containers in their inventories as of September 1, 1978.

Dated: September 22, 1978.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-27219 Filed 9-26-78; 8:45 am]

[4410-10]

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[8 CFR Parts 235, 236, 242, 287, and 292a]

ALIENS; AVAILABILITY OF FREE LEGAL SERVICES PROGRAMS

Proposed Rules

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This is a notice of proposed rulemaking proposing amendments to the regulations of the Immigration and Naturalization Service which will provide that aliens under exclusion and deportation proceedings must be advised of the availability of free legal services programs, and organizations recognized pursuant to 8 CFR 292.2. The proposal also establishes procedures and criteria under which organizations offering free legal services may qualify for appearance on the Service listing of such organizations which is to be furnished to the aliens. Proposed regulations will also provide that the alien be furnished with a Notice advising him of his appeal rights.

These proposals are necessary and intended to establish procedures for informing aliens of the availability of free legal services programs to afford them full opportunity to obtain legal representation when involved in deportation or exclusion proceedings before this Service.

DATES: Representations must be received on or before November 27, 1978.

ADDRESSES: Please submit written representations, in duplicate, to the Commissioner of Immigration and Naturalization, room 7100, 425 I Street NW., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: 202-376-8373.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking proposes amendments to several sections of the Service's regulations (8 CFR 235.6(a); 236.2(a); 242.1(c); 242.2(a); 242.2(b); 242.16(a); 287.3) to provide that aliens involved in exclusion and deportation proceedings will be advised of the availability of free legal services programs and be furnished with a list of such free legal services programs and organizations recognized under 8 CFR 292.2. These proposed regulations will also provide that aliens be furnished with Form I-618, Written Notice of Appeal Rights.

The proposal also sets forth proposed rules in new 8 CFR Part 292a under which free legal services programs may qualify to appear on the listing which must be provided to the aliens under these regulations.

These proposed regulations are needed and intended to provide aliens with advice and listings of available free legal services programs and recognized organizations under 8 CFR 292.2 to enable them to fully exercise their privilege of having legal representation in exclusion and deportation proceedings, and to provide a procedure and criteria under which free legal services programs may qualify for appearance on the Service listing.

In the light of the foregoing, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as set forth below.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. It is proposed to revise the title of § 235.6 and to revise § 235.6(a) as set forth below:

235.6 Referral to immigration judge.

(a) *Notice.* If, in accordance with the provisions of section 235(b) of the Act, the examining immigration officer detains an alien for further inquiry before an immigration judge, he shall immediately sign and deliver to the alien a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122). If the alien is unable to read or understand the notice, it shall

be read and explained to him by an employee of the Service, through an interpreter, if necessary, prior to such further inquiry. In addition the alien shall be advised of his right to representation by counsel of his own choice at no expense to the Government, and of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the alien is being detained. He shall also be furnished with a list of such programs.

* * * * *

PART 236—EXCLUSION OF ALIENS

2. It is proposed to amend § 236.2(a) by revising the third sentence to read as follows:

§ 236.2 Hearing.

(a) *Opening.* * * * The immigration judge shall ascertain whether the applicant for admission is the person to whom Form I-122 was previously delivered by the examining immigration officer as provided in Part 235 of this chapter; enter a copy of such form in evidence as an exhibit in the case; inform the applicant of the nature and purpose of the hearing; advise him of the privilege of being represented by an attorney of his own choice at no expense to the Government, and of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2, of this chapter located in the district where his exclusion is to be held; and shall ascertain that the applicant has received a list of such programs; and request to ascertain then and there whether he desires representation; advise him that he will have a reasonable opportunity to present evidence in his own behalf, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government; and place the applicant under oath.

* * * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. It is proposed to revise § 242.1(c) by adding three new sentences to the end thereof. As revised, § 242.1(c) reads as follows:

§ 242.1 Order to show cause and notice of hearing.

* * * * * *

(c) *Service.* Service of the order to show cause may be accomplished either by personal service or by routine service; however, when routine service is used and the respondent does not appear for hearing or acknowledge in writing that he has received the order to show cause, it shall be re-served by personal service. When personal delivery of an order to show cause is made by an immigration officer, the contents of the order to show cause shall be explained and the respondent shall be advised that any statement he makes may be used against him. He shall also be advised of his right to representation by counsel of his own choice at no expense to the Government. He shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his deportation hearing will be held. He shall be furnished with a list of such programs, and a copy of Form I-618, Written Notice of Appeal Rights, regardless of the manner in which the service of the order to show cause was accomplished. Service of these documents shall be noted on Form I-213.

* * * * * *

4. It is proposed to amend § 242.2(a) by changing the term "special inquiry officer" to "immigration judge" wherever it appears. It is proposed to further amend § 242.2(a) by adding three new sentences between the existing fourth and fifth sentences a respecting advice to aliens concerning free legal services programs. The three sentences to be added read as follows:

§ 242.2 Apprehension, custody, and detention.

(a) *Warrant of arrest.* * * * He shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his deportation hearing will be held. He shall be furnished with a list of such programs, and a copy of Form I-618, Written Notice of Appeal Rights. Service of these documents shall be noted on Form I-213. * * *

* * * * * *

5. It is proposed to amend § 242.2(b) by amending the title as set forth below and by changing the term "special inquiry officer" to "immigration judge" wherever it appears. It is proposed to further amend § 242.2(b) by adding four new sentences between the existing fifth and sixth sentences pertaining to notificaiton of aliens of the availability of free legal services and appeal rights. The four sentences to be added read as follows:

(b) *Authority of immigration judge; appeals.* * * * In connection with such application the immigration judge shall advise the respondent of his right to be represented by counsel of his own choice at no expense to the Government. He shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his application is to be heard. The immigration judge shall ascertain that the respondent has received a list of such programs, and the receipt by the respondent of a copy of Form I-618, Written Notice of Appeal Rights. Upon rendering a decision on an application under this section, the immigration judge (or district director if he renders the decision) shall advise the alien of his appeal rights under this section. * * *

* * * * * *

6. It is proposed to revise § 242.16(a) to read as follows:

§ 242.16 Hearing.

(a) *Opening.* The immigration judge shall advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice authorized to practice in the proceedings and require him to state then and there whether he desires representation; advise the respondent of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the deportation hearing is being held; ascertain that the respondent has received a list of such programs, and a copy of Form I-618, Written Notice of Appeal Rights; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf and to cross-examine witnesses presented by the Government; place the respondent under oath; read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in the record. Deportation hearings shall be open to the public, except that the immigration judge may, in his discretion and for the purpose of protecting witnesses, respondents, or the public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time.

with priority being given to the press over the general public.

* * * * *

PART 287—FIELD OFFICERS; POWERS AND DUTIES

7. It is proposed to amend § 287.3 by changing the term "special inquiry officer" to "immigration judge" wherever it appears. It is proposed to further amend § 287.3 by revising the fourth sentence and adding two new sentences, immediately preceding the existing fifth sentence. The proposed amendments read as follows:

§ 287.3 Disposition of aliens arrested without warrant.

* * * After the examining officer has determined that formal proceedings will be instituted, an alien arrested without warrant of arrest shall be advised of the reason for his arrest and his right to be represented by counsel of his own choice, at no expense to the Government. He shall also be provided with a list of the available free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his deportation hearing will be held. It shall be noted on Form I-213 that such a list was provided to the alien. * * *

* * * * *

8. It is proposed to add a new Part 292a which is proposed to read as follows:

PART 292a—LISTING OF FREE LEGAL SERVICES PROGRAMS

Sec.
292a.1 Listing.
292a.2 Qualifications.
292a.3 Applications.
292a.4 Approval and denial of applications.
292a.5 Removal of an organization from list.

AUTHORITY: (Sec. 103; 8 U.S.C. 1103.)

§ 292a.1 Listing.

District directors and officers-in-charge shall maintain a current list of organizations qualified under this part and organizations accredited under § 292.2 of this chapter within their respective jurisdictions for the purpose of providing aliens in deportation or exclusion proceedings with a list of such organizations as prescribed in this chapter.

§ 292a.2 Qualifications.

An organization which seeks to have its name appear on the Service list described in § 292a.1 must show that it is established in the United States, provides free legal services to indigent aliens, and has on its staff, attorneys as defined in § 1.1(f) of this chapter who are available to render such free legal services by representation in deportation or exclusion proceedings. Bar associations which provide a referral service of attorneys who render pro bono assistance to aliens in deportation or exclusion proceedings may also qualify to have their names appear on the Service list. Listing of an organization qualified under this Part is not equivalent to recognition under § 292.2 of this chapter.

§ 292a.3 Applications.

Applications by organizations to qualify for listing under this part shall be submitted to the district director or officer-in-charge having jurisdiction over each area in which free legal services are being provided by the organization. The application shall be supported by a declaration signed by an authorized officer of the organization that the organization complies with all the qualifications set out in § 292a.2.

§ 292a.4 Approval and denial of applications.

District directors or officers-in-charge shall have the sole authority to grant or deny an application submitted by an organization under this Part, within their respective jurisdiction. If an application is denied, the applicant shall be notified of the decision in writing giving the grounds for such denial. The decision denying the application shall be final.

§ 292a.5 Removal of an organization from list.

If the district director or officer-in-charge is satisfied that an organization listed under § 292a.1 does not meet the qualifications as set out in § 292a.2, he shall notify the organization concerned, in writing, of his intention to remove its name from the Service list. The organization may submit an answer within 30 days from the date the notice was served. If, after considering the answer by the organization, in the event an answer is submitted, the district director or officer-in-charge determines that the organization does not qualify under § 292a.2, he shall remove its name from the list, and his decision shall be final.

PUBLIC COMMENTS INVITED

In accordance with 5 U.S.C. 553 the Service invites representations of interested parties on this proposed rule. All relevant data, views, or arguments submitted on or before November 27, 1978, will be considered. Representations should be submitted in writing, in duplicate, to the Commissioner of Immigration and Naturalization at the address shown at the beginning of this notice.

Dated: September 21, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

APPENDIX

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

WRITTEN NOTICE OF APPEAL RIGHTS

YOUR APPEAL RIGHTS

READ THIS NOTICE CAREFULLY

1. You will have a hearing by an immigration judge who will enter a decision after the hearing is completed. If you are not satisfied with that decision, you have a right to appeal to the Board of Immigration Appeals, unless you waive your right to appeal.
2. A notice that you wish to appeal your case must be filed with the immigration judge within 10 days after the immigration judge announces his decision in your case. If the immigration judge mails his decision to you, you must file a notice that you wish to appeal your case within 13 days after the immigration judge has mailed his decision.
3. You must complete and file a Form I-290A, in triplicate, in order to appeal your case. These forms can be obtained from the immigration judge or an immigration officer.
4. You must pay a $50.00 fee when filing the Form I-290A unless you cannot afford this fee. Then you may apply for a fee-waiver under 8 C.F.R. Sections 3.3(b) and 103.7(c). In order to get a fee waiver you must file an affidavit asking for permission to file your appeal without a fee payment and stating why you believe you are entitled to this waiver and the reasons for your inability to pay the fee. This affidavit may be filed with the Form I-290A.
5. You may consult with an attorney in order to assist with your appeal, or you may seek legal assistance from any of the legal services programs included on the list which you have been furnished.
6. Unless you have waived your right to appeal from the immigration judge's decision to the Board of Immigration Appeals, you will not be required to depart from the United States during the time allowed for the filing of an appeal; further, you will not be required to depart from the United States while an appeal is pending before the Board or while your case is pending before the Board by way of certification.
7. If you have decided to waive your right to appeal the immigration judge's decision in your case, you may execute the following waiver:

The immigration judge has rendered a decision in my deportation case on 5————. He has explained that decision to me and has advised me of my right to appeal his decision to the Board of Immigration Appeals.

I hereby accept the immigration judge's decision and waive my right to appeal.

....
(Date) (Signature)

.....
(Signature of Interpreter) A..... .....

[FR Doc. 78-27074 Filed 9-26-78; 8:45 am]

[4410-10]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 341—CERTIFICATE OF CITIZENSHIP

Suspension of Regulatory Provision

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule, extension of suspension of rule.

SUMMARY: This notice further suspends until April 1, 1979, the special procedure provided in 8 CFR 341.1(b) which permits certain naturalization applicants to make application for certificates of citizenship for their children who are under 16 years of age and will derive citizenship under section 320 or 321 of the Immigration and Nationality Act, in advance of the naturalization of the parents. This further suspension is necessitated by manpower considerations in the Service.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Lowell R. Palmes, Deputy Assistant Commissioner for Naturalization, Immigration, and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, telephone, 202-376-8459.

SUPPLEMENTARY INFORMATION: On September 1, 1970, the Service implemented a procedure whereby applicants for naturalization who believed that their children under 16 years of age would derive U.S. citizenship under section 320 or 321 of the Immigration and Nationality Act could apply for certificates of citizenship on behalf of such children in advance of the parents' naturalization. However, due to manpower considerations which arose subsequently, it became necessary to suspend the operation of this procedure by notices published in the FEDERAL REGISTER October 21, 1974 (39 FR 37355), September 15, 1975 (40 FR 42532), March 17, 1976 (41 FR 11172), October 1, 1976 (41 FR 43393), March 28, 1977 (42 FR 16378), September 26, 1977 (42 FR 48869), and March 31, 1978 (43 FR 13494). The provisions now stand suspended to October 1, 1978.

Due to the continuing manpower considerations which resulted in the temporary suspension of the special procedure provided by 8 CFR 341.1(b) as set forth in the above-cited prior notices, it is necessary to suspend the provisions of § 341.1(b) for an additional period, until April 1, 1979, unless manpower considerations render feasible or practicable their reinstitution at an earlier date.

In the light of the foregoing, the provisions of 8 CFR 341.1(b) are hereby suspended until April 1, 1979, unless the suspension is revoked prior thereto by notice published in the FEDERAL REGISTER.

Dated: September 25, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 78-27360 Filed 9-27-78; 8:45 am]

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

[Docket No. ERA-R-77-4]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Public Hearing on Entitlements Program Adjustments for California Crude Oil and Request for Comments

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of public hearing and opportunity for submission of written comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it will hold a public hearing and receive written comments regarding the effect of the amendments to the entitlements program and other measures which were adopted in June 1978 to provide greater incentives for refiners to purchase California crude oil at prices that will enhance the potential for maximum domestic crude oil production.

DATES: Requests to speak due on or before October 10, 1978, 4:30 p.m. Hearing: October 18, 1978, 9:30 a.m. Comments due on or before October 31, 1978, 4:30 p.m.

ADDRESSES: Send requests to speak to: Department of Energy, Region IX, Attn: Robert Laffel, 111 Pine Street, Third Floor, San Francisco, Calif. 94111. Send comments to: Docket No. ERA-R-77-4, Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Hearing location: Long Beach City Hall, City Council Chambers, Plaza Level, 333 West Ocean Boulevard, Long Beach, Calif. 90802.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street NW., Room 2214-B, Washington, D.C. 20461, 202-254-5201.

Rue Dann (Media Relations), Economic Regulatory Administration, 2000 M Street NW., Room B-110, Washington, D.C. 20461, 202-634-2170.

Edwin Mampe (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2310, Washington, D.C. 20461, 202-254-7200.

Douglas McIver (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 6128-I, Washington, D.C. 20461, 202-254-8660.

Judith H. Garfield (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 5136, Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On June 15, 1978, we adopted certain amendments to the entitlements program with respect to crude oil produced in California (43 FR 26540, June 20, 1978). The purpose of these amendments is to provide greater incentives for refiners to purchase price-controlled California crude oil at prices that will enhance the potential for maximum domestic crude oil production, by better equalizing the afterentitlements costs to refiners of controlled California crude oil and uncontrolled crude oils. Under the amendments, refiners of lower tier and upper tier crude oil prouced in California receive additional entitlement benefits which are graduated by reference to the gravity of the crude oil so as to provide greater benefits for the lower gravity crude oils. In addition, the regulatory provisions previously in effect for California crude oil were amended to spread the burden of offsetting the increased costs associated with the entitlement benefits for California crude oil among all participants in the enti-

[1] Editorial Note: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

CENTRO DE INMIGRACION

GEORGETOWN UNIVERSITY LAW CENTER
600 NEW JERSEY AVENUE, N.W.
WASHINGTON, D.C. 20001
202-624-8374

January 31, 1978

Dear Friends:

Enclosed is a copy of the January 1978 Monitoring Report. As in prior reports, this issue includes sections on legislation, court and Board of Immigration Appeals decisions, state employment sanction bills, and administrative regulations. Also included is an update of the Centro poll surveying specific Congressional and Senate member positions on the Carter proposal.

The Centro is monitoring on a daily basis any announcement or scheduling of Congressional hearings on the Carter proposal. No dates have been set, but we expect an announcement any day soon. It is imperative that everyone prepare concrete testimony to present to the Congress either through oral presentation or written submission so that the record well reflects the sentiment of the entire community. The only way that the bill can be stopped is through concerted effort aimed at exposing the precise effect that the legislation will have and the actual interests that it serves.

We would also like to announce that the date for the National Consultation on Unocumented Migrants and Public Policy, being co-sponsored by the Centro and the Center for Migration Studies of New York, will be set as soon as the Congressional hearings on the Carter proposal are announced.

We look forward to hearing from you, particularly about any work that you may be preparing regarding testimony for the Congressional hearings on the Carter proposal. Let us know if we can help facilitate your work on this issue.

Sincerely,

Jose A. Medina
Director

STAFF:
Jose Acosta
Joseph Billings
Oscar Fuentes
Clara Garcia
Judy Hererra
Adrian Martinez
Isaias Torres

CONGRESSIONAL BILLS ON
IMMIGRATION

95th Congress

Bill Number	Sponsor	Description	Status
S.68	Cranston (D-Cal.)	To increase Western Hemisphere quota to 130,000.	Referred to Judiciary Committee Jul. 10, 1977 Immigration Subcommittee Apr. 1, 1977.
S.158	Cranston (D-Cal.)	To allow aliens with no more than one violation for marijuana to be admissible to the U.S.	Immigration Subcommittee Apr. 1, 1977.
S. 993	Packwood (R-Ore.)	Penalties for employment of undocumentaed workers. Criminal penalties for first offense. Establishes procedures for the prevention of undocumented worker acces to social security cards.	Judiciary Committee: Mar. 14, 1977. Immigration Subcommittee: Apr. 7, 1977.
S.987	Anderson (D-Minn.)	To deny a petition for citizenship to immigrants seeking preference status by reason of marriage determined by the Attorney General to have been entered into for the purpose of evading immigration law.	Judiciary Committee: Mar. 14, 1977. Referred to Immingration Sub-committee: April 7, 1977.
S.1604	McClure (R-Ida)	To provide that the availability of citizens for agricultural employment as a prerequisite for the certfication of temporary alien workers shall be determined by the Governor of each respective state.	Referred to Judiciary Committee: May 25,1977. Referred to Immingration Sub-committee: May 28, 1977. No action.
S.1601	Schweiker (R-Pa.)	To penalize employers who knowingly hire undocumented worders. Penalties would be civil. ($500 to $1000 for each undocumented worder-double for repeated offenses)	Referred to Judiciary Committee: May 25,1977. Referred to Immigration Sub-committee: May 26, 1977. No action.

Bill Number	Sponsor	Description	Status
S.1995	Abourezk (D-S.Dak.)	To grant admission to the United States nationals of Chile and their spouses, children, and parents of such nationals who if not in Chile would be in danger of persecution on account of political poinions upon return to Chile.	Referred to Judiciary Committee: Aug. 3, 1977. Referred to Immigration Sub-committee: Aug. 5, 1977. No Action.
S.133	Inouye Matsunaga (D-Hawaii)	To assure delivery of health services to recently arrived immigrants.	Referred to Human Resorses: Jan. 10, 1977. Currently pending in Health and Scientific Research Sub-committee.
S.1048	Chiles, Stone (D-Fla.)	Delete five year residency requirement for participation in Medicare and extends program to to refugees.	Pending in Immigration Sub-committee.
H.R. 197	Bigham (D-N.Y.)	To penalize employers who knowingly hire undocumented workers. Civil penalties for first violation, increasing to criminal. Contains provisions for HEW discolsure to INS of aliens receiving Social Security benefits unlawfully.	No action.
H.R.6560	Lehman (D-Fla.)	Employer sanctions.	Referred to Immigration Sub-committee: Apr. 29, 1977.
H.R. 6963	Ducan (R-Tenn.)	Employer Sanctions	Immigration Sub-committee: June 16, 1977
H.R. 1663	Eilberg (D-Pa.)	Employer Sanctions. Criminal After third violation	No Action
H.R. 2753	Wylie (R-Ohio)	Employer Sanctions.	Judiciary Committee: Jan. 31, 1977. Immigration Sub-committee: Feb. 9, 1977.

Bill Number	Sponsor	Description	Status
H.R. 6785	Minish (D-N.J.)	Employer Sanctions	Judiciary Committee: Jan. 31, 1977. Immigration Sub-committee: MAY 10, 1977
H.R.3105	Danielson (D-Cal.)	Employer Sanctions. Criminal.	No Action.
H.R. 3395	Young (D-Tx.)	Employer Sanctions.	Judiciary Committee: Feb. 9, 1977. Immigration Sub-committee: Feb. 25, 1977.
H.R. 3671	Lott (R-Miss.)	Employer Sanctions	No Action
H.R. 4449	Lott (R-Miss.)	Identical to H.R. 3671 with Co-sponsors: Simon, Thone, Beville, Devine, Daniel, Ginn, Whithurst, Milford, Gilman, Cochran, Abnor, Conte, Neal, Cleveland, Jenrette, Moakley, Edwards of Okl.	Judiciary Committee: Mar. 3, 1977. Immigratiion Sub-committee: Mar. 16, 1977.
H.R. 6651	Eilberg (D-Pa.)	To establish a Select Commission on Immigration and Refugee Policy	Judiciary Committee: Apr. 26, 1977. Immigration Sub-committee: May 5, 1977. Reports requested: Justice and Labor, and State May 18, 1977.
H.R. 6093	Roybal (D-Cal.)	Provides for amnesty through documentation by extending adjust ment of status to those individuals entering the U.S. on or before Jan. 1, 1977. Provides for collection from employers of wages owed to undocumented workers. Establishes an increase in Western Hemisphere quotas to 170,000 and repeal 20,000 per-cpuntry limitation from Western Hemisphere. Hearings before volun-tary departure pending deportaion.	No Action

Bill Number	Sponsor	Description	Status
H.R. 363	Eilberg (D-Pa.)	To establish a Select Commission on Territorial Immigration Policy.	Judiciary Committee: Jan. 4, 1977/ Immigration Subcommittee: Feb. 9, 1977. Reports Requested: Mar. 1, 1977.
H.R. 324	de la Garza (D-Tx.)	To prohibit the relocation of the Border Patrol Academy maintained by the INS at Los Fresnos, Tex. to Ginco, Georgia.	No Action.
H. R. 368	Frenzel (R-Minn.)	To permit more than two petitions to be approved for the adoption of alien children. The following are similar bills all of which are before the subcommittee on Immigration. H.R. 3324 D.H. Clausen, H.R. 4636 Oberstar, HR.5804 Sisk, H.R. 6441 Sisk, H.R.871 Fenwick, H.R. 3704 Vander Jagt,H.R. 6488 Harris.	Judiciary Committee: Jan. 4, 1977. Immigration subcommittee: Feb. 9, 1977.
H.R, 4790	Collins (D-Ill.)	To require that an alien who has been detained for further inquiry or who has been temporarily excluded from the U.S. shall have the right to be represented by counsel.	Judiciary Committee: Mar. 9, 1977. Immigration Subcommittee: Mar. 25, 1977. Reports Requested: Justice, State, Mar. 8, 1977.
H.R. 1474	Delaney (DRC-N.Y.)	To make any alien who becomes a public charge within 24 months of arrival in the U.S.subject to deportation.	Judiciary Committee: Jan. 6, 1977. Immigration Subcommittee: Feb. 9, 1977.
H.R.2388	Broomfield (R-Mich.)	Makes a deportable offense for an alien to obtain unemployment , welfare or other federally provided benefits.	No Action.

Bill Number	Sponsor	Description	Status
H.R. 7667	Holtzman (D-N.Y.)	To provide that under certain circumstances aliens convicted of marijuana offenses shall not be denied admission to, or deported from the U.S.	Judiciary Committee: June 8, 1977. Immigration Sub-committee: Feb. 9, 1977. Reports requested: Justice, Received May 16, 1977.
H.R. 1956	Edwards (Cal.)	To eliminate the legal custody requirement of residence and physical presence in the U.S. for the naturalization of children adopted by U.S. citizens.	Judiciary Committee: Jan. 17, 1977. Immigration Sub-committee: Feb . 9, 1977. Reports requested: Justice, May 11, 1977. Received May 16, 1977.
		President's Newly Proposed Bill	
S. 2252	Kennedy, (D-Mass.) Eastland (D-Miss.) DeConcini (D-Ariz.) Bentsen (D-Tx.)	Civil Sanctions for hiring undocumented workers. Increased enforcement of the Borders. Temporary worker provisions. Limited amnesty(for individuals in the the U.S. by Jan. 1, 1970). Sanctions against smugglers of aliens.	Judiciary Committee: Oct. 28, 1977. Immigration Sub-committee Oct. 31, 1977.
H.R. 9531	Rodino (D-N.J.)	House version of President's proposal indicated above.	Judiciary Committee: Oct. 12, 1977. Immigration Sub-committee: Oct. 21, 1977.

STATE AND LOCAL ACTIVITY

I. Introduction

The massive flow of Rodino-type legislation in state and local jurisdictions has maintained its momentum. The hysteria, geared to draw attention from the root problems of unemployment and an ill economy, has become so pervasive that even the District of Columbia City Council has an employment sanctions bill pending before it. The D.C. community has responded by forming a broad-based coalition that includes Latinos, Asians, Africans, Caribeans, Blacks and Whites to oppose the bill and generate a greater public awareness of the issue. Since the bill was introduced as a means "of curtailing Black unemployment," the coalition is sponsoring two Teach-ins, including one in the Black community, to discuss the meaning and effect of the bill and why it does nothing to solve the problem of unemployment. Coalition members have also met with labor and city officials to discuss the bill. Bill 2-224 is scheduled for hearings early in March.

This month's Monitoring Report lists the state and local bills under the headings of bills enacted, bills pending, and bills defeated.

II. Surveyed Laws

A. Bills Enacted

1. FLORIDA
   a. Chapter 77, Section 250
   b. Status-- enacted June 16, 1977.
2. KANSAS
   a. Public Law No. 275
   b. Status-- enacted May 10, 1972.
3. MASSACHUSETTS
   a. Massachusetts General Law, Chapter 149, Section 19c
   b. Status-- effective January 18, 1977.
4. NEW JERSEY
   a. Assembly Bill No. A920
   b. Status-- effective May 23, 1977.
5. CITY ORDINANCE OF LAS VEGAS, NEVADA
   a. Chapter 13 , Section 6-13-2
   b. Status-- enacted, 1976.
6. VERMONT
   a. House Bill 472
   b. Status-- enacted May 1, 1977.
7. VIRGINIA
   a. Assembly Bill 1857; adding 401-11.1 to Chapter 438
   b. Status-- enacted March 27, 1977; effective July 1,1977.

B. Bills Pending

1. CALIFORNIA
   a. Labor Code, Section 2805
   b. Status-- enacted 1971; defendants' injntion has kept the law from being enforced; state's decision on state-federal conflict still pending.

2. DISTRICT OF COLUMBIA
   a. Bill No. 2-224 (Wilhelmina J. Rolark)
   b. Status-- referred to Committee on Economic and Employment Development; hearings set for early March,1978.
3. INDIANA
   a. House Bill 1162 (Paul E. Berkely)
   b. Status-- passed 2nd reading January 24, 1977; pending 3rd reading.
4. NEBRASKA
   a. Labor Bill 507
   b. Status-- held over in committee until next session.
5. MICHIGAN
   a. House Bill 4450
   B. Status-- in House Committee on the Judiciary as of January 31, 1978.
6. OHIO
   a. House Bill 359
   b. Status-- in Committee on Economic Affairs and Federal Regulations.
7. RHODE ISLAND
   a. Senate Bill 77-S-4
   b. Status-- as of January 31, 1978, the bill was still being considered by the House.
8. WISCONSIN
   a. Assembly Bill 535
   b. Status-- IN committee on Labor.

C. Bills Defeated
1. COLORADO
   a. House Bill 1222
   b. Status-- died in committee.
2. ILLINOIS
   a. House Bill 230
   b. Status-- failed on 3rd reading.
3. NEVADA
   a. Senate Bill 278
   b. Status-- died in committee, August, 1977.
4. TEXAS
   a. House Bill 816
   b. Status-- died in committee, March, 1977.

RECENT BOARD OF IMMIGRATION APPEALS DECISIONS

Matter of Toro, ID#____(BIA, January 19, 1978)

The respondent sought relief from deportation under 8 U.S.C. 1182(c) waiver of inadmisibility . The Board found that respondent met the seven year statutory requirement. However, the Board found that the respondent failed to establish that his application for a waiver of inadmisibility merited favorable consideration. The Board held that respondent's extensive convictions of drug violations were not overcomed by respondent's established equities.

Matter of Too, ID#____(BIA, January 17, 1978)

The permanent resident alien petioner applied for preference status for the beneficiaries as his unmarried daughters. The District Director denied the petition on the basis that the beneficiaries were not the legitimate or legitimated daughters of the petitioner. The petitioner is a native and citizen of the People's Republic of China. The Board ruled that since China's law makes all children legitimate. See, Lau v. Kiley, 563 F.2d 543 (2d Cir. 1977), there is no need to consider whether there is a procedure for "legitimating" for purposes of 8 USC 1101 (b)(1). The Board, however, remanded to the District Director to determine if the petitioner is the natural parent of the beneficiaries.

Matter of Chan, ID#____(BIA, January 18, 1978)

This is an appeal from the District Director's denial of a second preference visa petition filed to accord the beneficiary the status of child of a permanent resident alien. At issue is whether the law of Hong Kong legitimized the birth of the beneficiary. The Board,after discussing the Hong Kong law, remanded since much of the evidence dealing with the law of Hong Kong was submitted for the first time on appeal.

Matter of Garcia, ID #2630 (BIA, January 13, 1978)

The petitioner applied for immediate relative status for the beneficiary as her adopted daughter. The District Director denied the petition on the basis that the adoption was not lawful under the laws of Tamaulipas, Mexico. The Board upheld the District Director's decision and ruled that the adoption statute of Tamaulipas, Mexico did not confer lawful adoption of the beneficiary.

Matter of Lok, ID# 2631 (BIA, January 13, 1978)

The Board remanded for an administrative determination of whether respondent's "domicile" prior to his admission as a permanent resident was lawful for purpose of 8 USC 1182(c)waiver of inadmisibility. The U.S. Court of Appeals for the Second Circuit had overruled an earlier conclusion by the Board(in this case) that a respondent is statutorily ineligible for 8 USC 1182(c) relief if he/she does not have a lawful unrelinquished domicile of seven consecutive years following a lawful admission of permanent residence. The Court of Appeals held that it was possible for an alien to possess a "lawful domicile" without having been admitted for permanent

residence. See, Lok v. INS, 548 F.2d 37 (2d Cir. 1977). The Board pointed out that it has refused to adopt this holding of the second circuit in cases arising outside of the second circuit.

Matter of Opena, ID#____(BIA, January 6, 1978)

The respondent was charged with being deportable under 8 USC 1251(a)(2) as an overstayed H-1 nonimmigrant worker. The respondent argued that she should be considered to have had permission to remain in this country beyond the date fixed for her departure because the District Director had "arbitarily and improvidently" denied her application for an extension of her temporary stay. The respondent attempted to introduce evidence of the circumstances surrounding the District Director's denial . The immigration judge refused to admit this evidence because of lack of jurisdiction. The Board upheld the immigration judge's exercise of discretion to refuse admission of the evidence since the judge ruled that the evidence offered by respondent regarding the District Director's denial of extension was not material.

RECENT REGULATIONS OF THE IMMIGRATION AND NATURALIZATION

1. Deportation Proceedings — 42 Fed. Reg. 63426(12-16-77)
Setting of Hearing Dates

INS has proposed to amend the regulations pertaining to the setting hearing dates in deportation proceedings. The existing regulations specifies the time and place of the hearing when the order to show cause is issued. The proposed regulation will provide that the time and place of the hearing shall be given not less than seven days before the hearing date, except under certain circumstances. The proposed change was filed on December 12, 1977. The notice of the time and date of hearing may be issued separate from the order depending on various factors, such as the workload of officers, the need to investigate further and changing of other hearings that may cause delays.

2. Deportation Proceedings — 42 Fed. Reg. 63427(12-16-77)
Authorization of Time To Depart
Volunatarily Following Reopening of
the Proceedings

Presently under 8 CFR 244.1 an immigration judge may specify the period within which an alien may depart voluntarily from the U.S. when first authorizing voluntary departure. An immigration judge is also empowered to grant an alien voluntary departure following reopening of a proceeding.

The proposed regulation would authorize the immigration judge to specify the period of voluntary departure time following the reopening of deportation proceedings . Under existing regulations the district director could only authorize such at the reopening of proceedings. INS states that the alien should have the same rights at both stages. The proposed change was file on December 15, 1977.

3. Federal Advisory Committee On — 42 Fed. Reg. 65301(12-30-77)
Immigration and Naturalization
(Formerly The Hispanic Advisory
Committee On Immigration
and Naturalization)
Renewal of Committee and
Expansion of Membership and
Functions

This Committee will serve as a channel of communication between the nationality, ethnic and racial communities and the INS on problems and opportunities of INS and these public groups.

The Committee will be limited to the role of an advisory body. It will consist of not less than 21 or more than 25 members appointed by the Commissioner of INS. The membership should consist in proportionate numbers of those aforementioned groups which come into most frequent contact with INS. This Committee will meet at least four times a year and report and be responsible to the Commissioner of INS.

The Charter for the Committee will be filed under the Federal Advisory Act, by January 16, 1978. This notice was filed on December 29, 1977.

FEDERAL COURT DECISIONS

Wong Chung Che v. Immigration and Naturalization Service, 565 F.2d 166 (1st Cir. 1977)

Alien crewmen appeal the decision of the Board of Immigration Appeals ruling upholding their deportation. The crewmen assert that the INS investigators enter a restaurant, handcuffed them and took them to their apartment. INS entered without their consent and without a warrant. They assert that certain entry forms may have been taken from them at the apartment.

The U.S. Court of Appeals held that any challenge to either the arrest or search of one of the crewmen was irrelevant. There was no indication that any evidence used against him was tainted by any illegality. However, the court remanded to the Board for an evidentiary hearing, the legality of the search made of the premise. It said that if the evidence was obtained through an illegal search, its admission into evidence infected the deportaion proceedings.

Lopez-Telles v. Immigration and Naturalization Service, 564 F.2d 1302 (9th Cir. 1977)

Alien appeals a decision of the Board of Immigration Appeals upholding an immigration judge's order of deportation. The error on appeal is presented as being whether an immigration judge has statutory power to terminate deportation proceedings for humanitarian reasons.

The U.S. Court of Appeals held that immigration judges were creature of statute and could not terminate deportation proceedings even where the petioner was a victim of an earthquake. Absent a prima facie showing of eligibility for naturalization, the immigration judges did not have the power to award the discretionary relief sought here.

Castaneda-Gonzalez v. Immigration and Naturalization Service, 564 F.2d 417 (D.C. Cir. 1977)

Alien appeals the decision of the Board of Immigration Appeals finding him deportable because the labor certificate upon which he relied for entry was based upon a material misrepresentation.

The U.S. Court of Appeals held that the immigration laws do not permit the deportation of an alien whose labor certificate is based on incorrect facts unless it is shown that the misrepresentation was material and willful.

Koden V. U.S. Dept. of Justice, 564 F.2d 228 (7th Cir. 1977).

The issue presented on appeal is whether an administrartive agency, such as the Immigration and Naturalization Service has the power to bar or suspend practitioners appearing before it.

The U.S. Court of Appeals held that the Immigration and

Service and the Board of Immigration Appeals had statutory and regulatory power to enter a disciplinary order. Here, there was evidence that the attorney employed runners to solicit clients and evidence of his taking funds without performing services. Therefore the court would not disturb the attorney's suspension for one year of practice before this agency.

Chang-Salazar v. Immigration and Naturalization Service, 564 F. 2d 302 (9th Cir. 1977)

Petitioner requested review of a decision of the Board of Immigration Appeals upholding the denial of voluntary departure.

The U.S. Court of Appeals held that the alien's conviction of intentionally using the telephone to facilitate a conspiracy to import a quantity of cocaine from Peru was a conviction of a drug offense and made him statutorily ineligible for voluntary departure.

Carrasco-Favela v. Immigration and Naturalization Service, 563 F.2d 1220 (5th Cir. 1977)

Petitioner, a permanent resident, was ordered deported on the basis of a conviction for a narcotics offense. He requested discretionary relief under § 212 (c) which allows relief to certain deportable aliens by granting advance permission to remain in the United States. This section allowing the discretionary relief requires that the permanent resident have retained an unrelinquished domicile of seven consecutive years in the United States.

The Board of Immigration Appeals reversed the immigration judge's ruling that the narcotics conviction made him ineligible for relief under § 212 (c), but found the petitioner deportable because he had relinquished his United States' domicile by living in Mexico and commuting to the United States from 1970 to 1974.

The U.S. Court of Appeals affirmed finding the record established the petitioner's intent to reside indefinitely in Mexico with his wife, a Mexican national.

Rogers v. Larson, 563 F.2d 617 (3rd Cir. 1977).

Nonimmigrant aliens filed suit to seek injunctive and declaratory relief in preventing the application of territorial laws which provided that there be a replacement of alien nonimmigrant workers in the Virgin Islands with United States' citizens or permanent resident aliens.

The District Court denied the injunction and dismissed the complaint. The U.S. Court of Appeals held the Virgin Islands statutes requiring the termination and replacement of nonresident workers with resident workers stood as an

obstacle to the accomplishment and execution of the purpose and the objective of the Immigration and Nationality Act. It explained that one of the purposes of the Act was to provide employers with a reasonable expectation that there would not be a frequent and disruptive turnover in the work force due to government action. Moreover, it was to provide an incentive to aliens in coming to the United States. Therefore, the territorial act was invalid under the Supremacy clause of the U.S. Constitution.

Pearson v. Furnco Const. Co., 563 F.2d 815 (7th Cir. 1977)

Eight black bricklayers brought an action alleging that a mason contractor, the Secretary of Labor and the international bricklayer's union had intentionally engaged in unlawful employment practices.

In the summer of 1973 Furnco employed 17 white Canadians as bricklayers after obtaining permission for them to enter the United States as nonimmigrants for temporary work. Furnco had told the Secretary of Labor that it had been unable to find any qualified bricklayers to perform the job in Illinois.

The District Court found that the plaintiff's inability to show that they had applied for employment with Furnco established that they had suffered no actual injury and had no standing to complain.

The U.S. Court of Appeals held they had standing to appeal, but in view of the information which the Department of Labor acted upon, in which the contractor certified he had contacted 23 different union business agents and its own inquiry of union and state employment agencies which found no identifiable bricklayers available, the certification granted by the Department of Labor was not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the statutes or regulations.

Lau v. Kiley, 563 F.2d 543 (2d Cir. 1977).

Permanent resident alien sought visa preference for his son from a woman whom he had never married. The District Court granted relief and the Immigration and Naturalization Service appealed.

The U.S. Court of Appeals held that legitimacy or illegitimacy was to be determined by the time and the place of the child's birth for the purpose of visa preference. Since under the law of the Peoples Republic of China all children are legitimate at birth, then if the person for whom the preference is sought is proven to be the natural child of the petitioner, the child is entitled to the preference.

Mendez v. Immigration and Naturalization Service, 563 F.2d 956 (9th Cir. 1977).

Appellant seeks review of Board of Immigration Appeals denial of motion for reconsideration of his deportation order based upon a vacated sentence.

Appellant, a permanent resident, was convicted of burglary and sentenced to one year in prison. Two months later, the court vacated his sentence and reimposed a nine month sentence. However, the Immigration and Naturalization Service gave the appellant notice to appear for deportation based upon his one year sentence of a crime of moral turpitude and without notice to his counsel and before he could contact counsel, deported him.

The U.S. Court of Appeals held that the statute whiich provided that an order of deportation should not be reviewed if an alien had departed the United States did not apply where the alien had departed in contravention of procedual due process. The court ordered the alien readmitted with the same status which he held prior to deportation in order to pursue any administrative and judicial remedies.

Navarro v. Immigration and Naturalization Service, 562 F.2d 1024, (7th Cir. 1977).

Petitioner appeals ruling of the District Court which held no case or controversy presented where revocation of a third preference status had been issued but no order of deportation.

The U.S. Court of Appeals held that federal question jurisdiction existed because petitioner held a valid, effective and unrevocable third preference status. The Court said that the District Director could not remove the third preference status merely because the petitioner had failed to pass the nursing state board. Particularly in light of the fact that the petitioner intended to continue to seek to pass the board examination. Moreover, the Court held that it was not necessary for the petitioner to await a deportation order.

Katris v. Immigration and Naturalization Service, 562 F.2d 866 (2d Cir. 1977).

Appellant sought review of deportation order on the basis that his initial arrest had been illegal and that all further evidence obtained, including statements made at the deportation hearing were the "fruit of the poisonous tree".

The U.S. Court of Appeals held that even if the arrest had been illegal, it would not void a deportation order nor the deportation proceedings.

United States v. McMahon, 562 F.2d 1192 (10th Cir. 1977).

Appellant was convicted of the transportation of aliens along with conspiracy to transport. Appellant claims the evidence against him was insufficient to submit it to the jury.

The Court of Appeals found that even when the evidence was considered in the most favorable light for the government the facts in this case raised at most a suspicion and found the evidence insufficient to sustain either conviction.

Salgado v. Scannel, 561 F.2d 1211 (5th Cir. 1977).

Appellant appeals an order of deportation on the basis of an illegal arrest, and asks for suppression of evidence resulting from the illegal arrest.

The U.S. Court of Appeals found the warrantless arrest legal under 8 U.S.C. § 1357(a)(1) and (2). Moreover, the court held there was no denial of due process in the denial of the grant of voluntary departure.

Whetstone v. Immigration and Naturalization Service, 561 F.2d 1303 (9th Cir. 1977).

Alien appeals the denial of an application for change of status to permanent resident based upon marriage to a United States citizen. Appellant a 26 year old woman entered the United States as a nonimmigrant fiancee of a 52 year old american citizen. After a month of living with her husband, she left him and moved west.

The U.S. Court of Appeals held that the evidence was insufficient to show that there had never been a bona fide marriage and that there was no requirement that a bona fide and lasting marital relationship exist at the time of application for permanent resident, where there had been a showing that the marriage had been entered into in good faith.

United States v. Moreno, 561 F.2d 1321 (9th Cir. 1977).

Appelant was convicted of transporting undocumented aliens. He was employed as a foreman and was required to transport workers from one job site to the other. During one of these trips, he was stopped and several crewmen were found to be undocumented. The Appellant knew these workers to be undocumented.

The U.S. Court of Appeals held that the mere transportation of a person known to be undocumented is not sufficient to constitute a violation of § 1324(a)(2). The transportation must be in furtherance of such violation of the law. It was found to be part of the ordinary and required course of his employment and too attenuated to come within the boundries of § 1324(a)(2).

Vasquez-Mondragon v. Immigration and Naturalization Service, 560 F.2d 1225 (5th Cir. 1977).

Appellant appeals deportation order of the Board of Immigration Appeals for marriage fraud and the misrepresentation of material facts in the visa application. Appellant argues that the government failed to prove the existance of a fraudulent marriage.

The U.S. Court of Appeals held that under 8 U.S.C.A. § 1251(c)(1), a prima facie case of deportability is established if an alien seeks entry into the United States on the basis of a marriage which is terminated within two years of the time of entry. The appellant had the burden to prove the marriage was not for the purpose of evading immigration laws.

CENTRO DE INMIGRACION

GEORGETOWN UNIVERSITY LAW CENTER

CONGRESSIONAL OPIINION
POLL

Senate Judiciary Committee

Senators	Amnesty	Employer Sanctions	Increased Enforcement	Quota Raises
Abourezk (D-S.Dak.)	Yes	?	Yes	Yes
Allen (D-Ala.)	No	Yes	Yes	No
Bayh (D-Ind.)	?	?	?	?
Bidden (D-Del)	Yes	Yes	Yes	?
Culver (D-Iowa)	?	?	?	?
DeConcini (D-Ariz.)*	Co-sponsor of President Carter's Proposal			
Eastland (D-Miss.) *	Co-sponsor of President Carter's Proposal			
Hatch (R-Utah)	No	Yes	Yes	?
Kennedy (D-Mass.)*	Co-sponsor of President Carter's Proposal			
Laxalt (R-Nev.)	?	?	?	?
Mathias (R-Md.)	No Position on the Current Bill			
McClellan (D-Ark.)	?	Yes	Yes	No
Metzenbaum (D-Ohio)	?	Yes	Yes	?
Scott (R-Vir.)**	No	Yes	Yes	No
Thurmond (R-S.C.)	?	?	?	?
Wallop (R-Wyo.)	Yes	Yes	Yes	Yes

House Judiciary Committee

Representatives				
Ashbrook (R-Ohio)	No	Yes	Yes	No
Beilson (D-Cal.)	supports Carter's proposal			
Brooks (D-Tex.)	?	?	?	?
Butler (R-Vir.)	?	Yes	Yes	No
Cohen (R-Me.)	No	Yes	Yes	No
Conyers (D-Mich.)	Undecided	undecided	Yes	?
Danielson (D-Cal.)**	?	~~Yes~~	?	?
Drinan (D-Mass.)	Yes	Yes	?	Yes
Edwards (D-Cal.)	?	No	?	Yes
Eilberg (D-Pa.)	?	?	?	?
Ertel (D-Pa.)	?	?	Yes	No
Evans (D-Ga.)	Leaning Towards Favoring President Carter's Proposal			
Fish (R-N.Y.)	?	Yes	Yes	N0
Flowers (D-Ala.)	No	Yes	Yes	No
Gudger (D-N.C.)	NO	Yes	Yes	No
Hall (D-Tex.)	----------Undecided----------			
Harris (D-Vir.)	No	Yes	Yes	No

(Continued on next page)

CONGRESSIONAL OPINION
POLL
(continued)

Representatives	Amnesty	Employer Sanctions	Increased Enforcement	Quota Raises
Holtzman (D-N.Y.)	?	?	?	?
Hughs (D-N.J.)	Yes	?	Yes	No
Hyde (R-Ill.)	?	?	?	?
Jordan (D-Tex.)**	?	Yes	Yes	?
Kastemeir (D-Wisc.)	Yes	Yes	Yes	Yes
Kindress (R-Ohio)	No	Yes	Yes	No
Mann (D-S.C.)	Yes	Yes	Yes	?
Mazoli (D-Ky.)	No	?	Yes	?
McClory (R-Ill.)	No	?	Yes	?
Morrhead (R-Cal.)	?	?	Yes	?
Railsback (R-Ill.)	No	?	Yes	No
Rodino (D-N.J.)*	Sponsor of President Carter's Proposal			
Santini (D-Nev.)	Yes	?	Yes	No
Sawyer (R-Mich.)	undecided	Yes	Yes	No
Seiberling (D-Ohio)	?	?	?	No
Volkmer (D-Mo.)	?	?	?	?
Wiggins (R-Cal.)	?	?	Yes	?

* Generally in favor of President Carter's proposal.
** Favor Criminal Penalties instead of civil penalties.

RESEARCH

GEORGETOWN UNIVERSITY
LAW CENTER IMMIGRATION
MONITORING REPORT

FALL 1982

SOURCE: CENTRO DE INMIGRACION
GEO. UNIV. LAW CENTER
WASHINGTON D.C.

STATE AND LOCAL ACTIVITY

I. Introduction

The massive flow of Rodino-type legislation in state and local jurisdictions has maintained its momentum. The hysteria, geared to draw attention from the root problems of unemployment and an ill economy, has become so pervasive that even the District of Columbia City Council has an employment sanctions bill pending before it. The D.C. community has responded by forming a broad-based coalition that includes Latinos, Asians, Africans, Caribeans, Blacks and Whites to oppose the bill and generate a greater public awareness of the issue. Since the bill was introduced as a means "of curtailing Black unemployment," the coalition is sponsoring two Teach-ins, including one in the Black community, to discuss the meaning and effect of the bill and why it does nothing to solve the problem of unemployment. Coalition members have also met with labor and city officials to discuss the bill. Bill 2-224 is scheduled for hearings early in March.

This month's Monitoring Report lists the state and local bills under the headings of bills enacted, bills pending, and bills defeated.

II. Surveyed Laws

A. Bills Enacted

1. FLORIDA
   a. Chapter 77, Section 250
   b. Status-- enacted June 16, 1977..
2. KANSAS
   a. Public Law No. 275
   b. Status-- enacted May 10, 1972.
3. MASSACHUSETTS
   a. Massachusetts General Law, Chapter 149, Section 19c
   b. Status-- effective January 18, 1977.
4. NEW JERSEY
   a. Assembly Bill No. A920
   b. Status-- effective May 23, 1977.
5. CITY ORDINANCE OF LAS VEGAS, NEVADA
   a. Chapter 13 , Section 6-13-2
   b. Status-- enacted, 1976.
6. VERMONT
   a. House Bill 472
   b. Status-- enacted May 1, 1977.
7. VIRGINIA
   a. Assembly Bill 1857; adding 401-11.1 to Chapter 438
   b. Status-- enacted March 27, 1977; effective July 1,1977.

B. Bills Pending

1. CALIFORNIA
   a. Labor Code, Section 2805
   b. Status-- enacted 1971; defendants' injntion has kept the law from being enforced; state's decision on state-federal conflict still pending.

2. DISTRICT OF COLUMBIA
   a. Bill No. 2-224 (Wilhelmina J. Rolark)
   b. Status-- referred to Committee on Economic and Employment Development; hearings set for early March,1978.
3. INDIANA
   a. House Bill 1162 (Paul E. Berkely)
   b. Status-- passed 2nd reading January 24, 1977; pending 3rd reading.
4. NEBRASKA
   a. Labor Bill 507
   b. Status-- held over in committee until next session.
5. MICHIGAN
   a. House Bill 4450
   B. Status-- in House Committee on the Judiciary as of January 31, 1978.
6. OHIO
   a. House Bill 359
   b. Status-- in Committee on Economic Affairs and Federal Regulations.
7. RHODE ISLAND
   a. Senate Bill 77-S-4
   b. Status-- as of January 31, 1978, the bill was still being considered by the House.
8. WISCONSIN
   a. Assembly Bill 535
   b. Status-- IN committee on Labor.

C. Bills Defeated
1. COLORADO
   a. House Bill 1222
   b. Status-- died in committee.
2. ILLINOIS
   a. House Bill 230
   b. Status-- failed on 3rd reading.
3. NEVADA
   a. Senate Bill 278
   b. Status-- died in committee, August, 1977.
4. TEXAS
   a. House Bill 816
   b. Status-- died in committee, March, 1977.

RECENT BOARD OF IMMIGRATION APPEALS DECISIONS

Matter of Toro, ID#____(BIA, January 19, 1978)

The respondent sought relief from deportation under 8 U.S.C. 1182(c) waiver of inadmisibility . The Board found that respondent met the seven year statutory requirement. However, the Board found that the respondent failed to establish that his application for a waiver of inadmisibility merited favorable consideration. The Board held that respondent's extensive convictions of drug violations were not overcomed by respondent's established equities.

Matter of Too, ID#____(BIA, January 17, 1978)

The permanent resident alien petioner applied for preference status for the beneficiaries as his unmarried daughters. The District Director denied the petition on the basis that the beneficiaries were not the legitimate or legitimated daughters of the petitioner. The petitioner is a native and citizen of the People's Republic of China. The Board ruled that since China's law makes all children legitimate. See, Lau v. Kiley, 563 F.2d 543 (2d Cir. 1977), there is no need to consider whether there is a procedure for "legitimating" for purposes of 8 USC 1101 (b)(1). The Board, however, remanded to the District Director to determine if the petitioner is the natural parent of the beneficiaries.

Matter of Chan, ID#___(BIA, January 18, 1978)

This is an appeal from the District Director's denial of a second preference visa petition filed to accord the beneficiary the status of child of a permanent resident alien. At issue is whether the law of Hong Kong legitimized the birth of the beneficiary. The Board,after discussing the Hong Kong law, remanded since much of the evidence dealing with the law of Hong Kong was submitted for the first time on appeal.

Matter of Garcia, ID #2630 (BIA, January 13, 1978)

The petitioner applied for immediate relative status for the beneficiary as her adopted daughter. The District Director denied the petition on the basis that the adoption was not lawful under the laws of Tamaulipas, Mexico. The Board upheld the District Director's decision and ruled that the adoption statute of Tamaulipas, Mexico did not confer lawful adoption of the beneficiary.

Matter of Lok, ID# 2631 (BIA, January 13, 1978)

The Board remanded for an administrative determination of whether respondent's "domicile" prior to his admission as a permanent resident was lawful for purpose of 8 USC 1182(c)waiver of inadmisibility. The U.S. Court of Appeals for the Second Circuit had overruled an earlier conclusion by the Board(in this case) that a respondent is statutorily ineligible for 8 USC 1182(c) relief if he/she does not have a lawful unrelinquished domicile of seven consecutive years following a lawful admission of permanent residence. The Court of Appeals held that it was possible for an alien to possess a "lawful domicile" without having been admitted for permanent

residence. See, Lok v. INS, 548 F.2d 37 (2d Cir. 1977). The Board pointed out that it has refused to adopt this holding of the second circuit in cases arising outside of the second circuit.

Matter of Opena, ID#_____(BIA, January 6, 1978)

The respondent was charged with being deportable under 8 USC 1251(a)(2) as an overstayed H-1 nonimmigrant worker. The respondent argued that she should be considered to have had permission to remain in this country beyond the date fixed for her departure because the District Director had "arbitarily and improvidently" denied her application for an extension of her temporary stay. The respondent attempted to introduce evidence of the circumstances surrounding the District Director's denial . The immigration judge refused to admit this evidence because of lack of jurisdiction. The Board upheld the immigration judge's exercise of discretion to refuse admission of the evidence since the judge ruled that the evidence offered by respondent regarding the District Director's denial of extension was not material.

RECENT REGULATIONS OF THE IMMIGRATION AND NATURALIZATION

1. Deportation Proceedings — 42 Fed. Reg. 63426(12-16-77)
Setting of Hearing Dates

INS has proposed to amend the regulations pertaining to the setting hearing dates in deportation proceedings. The existing regulations specifies the time and place of the hearing when the order to show cause is issued. The proposed regulation will provide that the time and place of the hearing shall be given not less than seven days before the hearing date, except under certain circumstances. The proposed change was filed on December 12, 1977. The notice of the time and date of hearing may be issued separate from the order depending on various factors, such as the workload of officers, the need to investigate further and changing of other hearings that may cause delays.

2. Deportation Proceedings — 42 Fed. Reg. 63427(12-16-77)
Authorization of Time To Depart Volunatarily Following Reopening of the Proceedings

Presently under 8 CFR 244.1 an immigration judge may specify the period within which an alien may depart voluntarily from the U.S. when first authorizing voluntary departure. An immigration judge is also empowered to grant an alien voluntary departure following reopening of a proceeding.

The proposed regulation would authorize the immigration judge to specify the period of voluntary departure time following the reopening of deportation proceedings . Under existing regulations the district director could only authorize such at the reopening of proceedings. INS states that the alien should have the same rights at both stages. The proposed change was file on December 15, 1977.

3. Federal Advisory Committee On Immigration and Naturalization (Formerly The Hispanic Advisory Committee On Immigration and Naturalization) Renewal of Committee and Expansion of Membership and Functions — 42 Fed. Reg. 65301(12-30-77)

This Committee will serve as a channel of communication between the nationality, ethnic and racial communities and the INS on problems and opportunities of INS and these public groups.

The Committee will be limited to the role of an advisory body. It will consist of not less than 21 or more than 25 members appointed by the Commissioner of INS. The membership should consist in proportionate numbers of those aforementioned groups which come into most frequent contact with INS. This Committee will meet at least four times a year and report and be responsible to the Commissioner of INS.

The Charter for the Committee will be filed under the Federal Advisory Act, by January 16, 1978. This notice was filed on December 29, 1977.

FEDERAL COURT DECISIONS

Wong Chung Che v. Immigration and Naturalization Service, 565 F.2d 166 (1st Cir. 1977)

Alien crewmen appeal the decision of the Board of Immigration Appeals ruling upholding their deportation. The crewmen assert that the INS investigators enter a restaurant, handcuffed them and took them to their apartment. INS entered without their consent and without a warrant. They assert that certain entry forms may have been taken from them at the apartment.

The U.S. Court of Appeals held that any challenge to either the arrest or search of one of the crewmen was irrelevant. There was no indication that any evidence used against him was tainted by any illegality. However, the court remanded to the Board for an evidentiary hearing, the legality of the search made of the premise. It said that if the evidence was obtained through an illegal search, its admission into evidence infected the deportaion proceedings.

Lopez-Telles v. Immigration and Naturalization Service, 564 F.2d 1302 (9th Cir. 1977)

Alien appeals a decision of the Board of Immigration Appeals upholding an immigration judge's order of deportation. The error on appeal is presented as being whether an immigration judge has statutory power to terminate deportation proceedings for humanitarian reasons.

The U.S. Court of Appeals held that immigration judges were creature of statute and could not terminate deportation proceedings even where the petioner was a victim of an earthquake. Absent a prima facie showing of eligibility for naturalization, the immigration judges did not have the power to award the discretionary relief sought here.

Castaneda-Gonzalez v. Immigration and Naturalization Service, 564 F.2d 417 (D.C. Cir. 1977)

Alien appeals the decision of the Board of Immigration Appeals finding him deportable because the labor certificate upon which he relied for entry was based upon a material misrepresentation.

The U.S. Court of Appeals held that the immigration laws do not permit the deportation of an alien whose labor certificate is based on incorrect facts unless it is shown that the misrepresentation was material and willful.

Koden V. U.S. Dept. of Justice, 564 F.2d 228 (7th Cir. 1977).

The issue presented on appeal is whether an administrartive agency, such as the Immigration and Naturalization Service has the power to bar or suspend practitioners appearing before it.

The U.S. Court of Appeals held that the Immigration and

Service and the Board of Immigration Appeals had statutory and regulatory power to enter a disciplinary order. Here, there was evidence that the attorney emplyed runners to solicit clients and evidence of his taking funds without performing services. Therefore the court would not disturb the attorney's suspension for one year of practice before this agency.

Chang-Salazar v. Immigration and Naturalization Service, 564 F. 2d 302 (9th Cir. 1977)

Petitioner requested review of a decision of the Board of Immigration Appeals upholding the denial of voluntary departure.

The U.S. Court of Appeals held that the alien's conviction of intentionally using the telephone to facilitate a conspiracy to import a quantity of cocaine from Peru was a conviction of a drug offense and made him statutorily ineligible for voluntary departure.

Carrasco-Favela v. Immigration and Naturalization Service, 563 F.2d 1220 (5th Cir. 1977)

Petitioner, a permanent resident, was ordered deported on the basis of a conviction for a narcotics offense. He requested discretionary relief under § 212 (c) which allows relief to certain deportable aliens by granting advance permission to remain in the United States. This section allowing the discretionary relief requires that the permanent resident have retained an unrelinquished domicile of seven consecutive years in the United States.

The Board of Immigration Appeals reversed the immigration judge's ruling that the narcotics conviction made him ineligible for relief under § 212 (c), but found the petitioner deportable because he had relinquished his United States' domicile by living in Mexico and commuting to the United States from 1970 to 1974.

The U.S. Court of Appeals affirmed finding the record established the petitioner's intent to reside indefinitely in Mexico with his wife, a Mexican national.

Rogers v. Larson, 563 F.2d 617 (3rd Cir. 1977).

Nonimmigrant aliens filed suit to seek injunctive and declaratory relief in preventing the application of territorial laws which provided that there be a replacement of alien nonimmigrant workers in the Virgin Islands with United States' citizens or permanent resident aliens.

The District Court denied the injunction and dismissed the complaint. The U.S. Court of Appeals held the Virgin Islands statutes requiring the termination and replacement of nonresident workers with resident workers stood as an

obstacle to the accomplishment and execution of the purpose and the objective of the Immigration and Nationality Act. It explained that one of the purposes of the Act was to provide employers with a reasonable expectation that there would not be a frequent and disruptive turnover in the work force due to government action. Moreover, it was to provide an incentive to aliens in coming to the United States. Therefore, the territorial act was invalid under the Supremacy clause of the U.S. Constitution.

Pearson v. Furnco Const. Co., 563 F.2d 815 (7th Cir. 1977)

Eight black bricklayers brought an action alleging that a mason contractor, the Secretary of Labor and the international bricklayer's union had intentionally engaged in unlawful employment practices.

In the summer of 1973 Furnco employed 17 white Canadians as bricklayers after obtaining permission for them to enter the United States as nonimmigrants for temporary work. Furnco had told the Secretary of Labor that it had been unable to find any qualified bricklayers to perform the job in Illinois.

The District Court found that the plaintiff's inability to show that they had applied for employment with Furnco established that they had suffered no actual injury and had no standing to complain.

The U.S. Court of Appeals held they had standing to appeal, but in view of the information which the Department of Labor acted upon, in which the contractor certified he had contacted 23 different union business agents and its own inquiry of union and state employment agencies which found no identifiable bricklayers available, the certification granted by the Department of Labor was not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the statutes or regulations.

Lau v. Kiley, 563 F.2d 543 (2d Cir. 1977).

Permanent resident alien sought visa preference for his son from a woman whom he had never married. The District Court granted relief and the Immigration and Naturalization Service appealed.

The U.S. Court of Appeals held that legitimacy or illegitimacy was to be determined by the time and the place of the child's birth for the purpose of visa preference. Since under the law of the Peoples Republic of China all children are legitimate at birth, then if the person for whom the preference is sought is proven to be the natural child of the petitioner, the child is entitled to the preference.

Mendez v. Immigration and Naturalization Service, 563 F.2d 956 (9th Cir. 1977).

Appellant seeks review of Board of Immigration Appeals denial of motion for reconsideration of his deportation order based upon a vacated sentence.

Appellant, a permanent resident, was convicted of burglary and sentenced to one year in prison. Two months later, the court vacated his sentence and reimposed a nine month sentence. However, the Immigration and Naturalization Service gave the appellant notice to appear for deportation based upon his one year sentence of a crime of moral turpitude and without notice to his counsel and before he could contact counsel, deported him.

The U.S. Court of Appeals held that the statute whiich provided that an order of deportation should not be reviewed if an alien had departed the United States did not apply where the alien had departed in contravention of procedual due process. The court ordered the alien readmitted with the same status which he held prior to deportation in order to pursue any administrative and judicial remedies.

Navarro v. Immigration and Naturalization Service, 562 F.2d 1024, (7th Cir. 1977).

Petitioner appeals ruling of the District Court which held no case or controversy presented where revocation of a third preference status had been issued but no order of deportation.

The U.S. Court of Appeals held that federal question jurisdiction existed because petitioner held a valid, effective and unrevocable third preference status. The Court said that the District Director could not remove the third preference status merely because the petitioner had failed to pass the nursing state board. Particularly in light of the fact that the petitioner intended to continue to seek to pass the board examination. Moreover, the Court held that it was not necessary for the petitioner to await a deportation order.

Katris v. Immigration and Naturalization Service, 562 F.2d 866 (2d Cir. 1977).

Appellant sought review of deportation order on the basis that his initial arrest had been illegal and that all further evidence obtained, including statements made at the deportation hearing were the "fruit of the poisonous tree".

The U.S. Court of Appeals held that even if the arrest had been illegal, it would not void a deportation order nor the deportation proceedings.

United States v. McMahon, 562 F.2d 1192 (10th Cir. 1977).

Appellant was convicted of the transportation of aliens along with conspiracy to transport. Appellant claims the evidence against him was insufficient to submit it to the jury.

The Court of Appeals found that even when the evidence was considered in the most favorable light for the government the facts in this case raised at most a suspicion and found the evidence insufficient to sustain either conviction.

Salgado v. Scannel, 561 F.2d 1211 (5th Cir. 1977).

Appellant appeals an order of deportation on the basis of an illegal arrest, and asks for suppression of evidence resulting from the illegal arrest.

The U.S. Court of Appeals found the warrantless arrest legal under 8 U.S.C. § 1357(a)(1) and (2). Moreover, the court held there was no denial of due process in the denial of the grant of voluntary departure.

Whetstone v. Immigration and Naturalization Service, 561 F.2d 1303 (9th Cir. 1977).

Alien appeals the denial of an application for change of status to permanent resident based upon marriage to a United States citizen. Appellant a 26 year old woman entered the United States as a nonimmigrant fiancee of a 52 year old american citizen. After a month of living with her husband, she left him and moved west.

The U.S. Court of Appeals held that the evidence was insufficient to show that there had never been a bona fide marriage and that there was no requirement that a bona fide and lasting marital relationship exist at the time of application for permanent resident, where there had been a showing that the marriage had been entered into in good faith.

United States v. Moreno, 561 F.2d 1321 (9th Cir. 1977).

Appelant was convicted of transporting undocumented aliens. He was employed as a foreman and was required to transport workers from one job site to the other. During one of these trips, he was stopped and several crewmen were found to be undocumented. The Appellant knew these workers to be undocumented.

The U.S. Court of Appeals held that the mere transportation of a person known to be undocumented is not sufficient to constitute a violation of § 1324(a)(2). The transportation must be in furtherance of such violation of the law. It was found to be part of the ordinary and required course of his employment and too attenuated to come within the boundries of § 1324(a)(2).

Vasquez-Mondragon v. Immigration and Naturalization Service, 560 F.2d 1225 (5th Cir. 1977).

Appellant appeals deportation order of the Board of Immigration Appeals for marriage fraud and the misrepresentation of material facts in the visa application. Appellant argues that the government failed to prove the existance of a fraudulent marriage.

The U.S. Court of Appeals held that under 8 U.S.C.A. § 1251(c)(1), a prima facie case of deportability is established if an alien seeks entry into the United States on the basis of a marriage which is terminated within two years of the time of entry. The appellant had the burden to prove the marriage was not for the purpose of evading immigration laws.

CONGRESSIONAL BILLS ON
IMMIGRATION

95th Congress

Bill Number	Sponsor	Description	Status
S.68	Cranston (D-Cal.)	To increase Western Hemisphere quota to 130,000.	Referred to Judiciary Committee Jul. 10, 1977 Immigration Subcommittee Apr. 1, 1977.
S.158	Cranston (D-Cal.)	To allow aliens with no more than one violation for marijuana to be admissible to the U.S.	Immigration Subcommittee Apr. 1, 1977.
S. 993	Packwood (R-Ore.)	Penalties for employment of undocumentaed workers. Criminal penalties for first offense. Establishes procedures for the prevention of undocumented worker acces to social security cards.	Judiciary Committee: Mar. 14, 1977. Immigration Subcommittee: Apr. 7, 1977.
S.987	Anderson (D-Minn.)	To deny a petition for citizenship to immigrants seeking preference status by reason of marriage determined by the Attorney General to have been entered into for the purpose of evading immigration law.	Judiciary Committee: Mar. 14, 1977. Referred to Immingration Sub-committee: April 7, 1977.
S.1604	McClure (R-Ida)	To provide that the availability of citizens for agricultural employment as a prerequisite for the certfication of temporary alien workers shall be determined by the Governor of each respective state.	Referred to Judiciary Committee: May 25,1977. Referred to Immingration Sub-committee: May 28, 1977. No action.
S.1601	Schweiker (R-Pa.)	To penalize employers who knowingly hire undocumented worders. Penalties would be civil. ($500 to $1000 for each undocumented worder-double for repeated offenses)	Referred to Judiciary Committee: May 25,1977. Referred to Immigration Sub-committee: May 26, 1977. No action.

Bill Number	Sponsor	Description	Status
S.1995	Abourezk (D-S.Dak.)	To grant admission to the United States nationals of Chile and their spouses, children, and parents of such nationals who if not in Chile would be in danger of persecution on account of political poinions upon return to Chile.	Referred to Judiciary Committee: Aug. 3, 1977. Referred to Immigration Sub-committee: Aug. 5, 1977. No Action.
S.133	Inouye Matsunaga (D-Hawaii)	To assure delivery of health services to recently arrived immigrants.	Referred to Human Resorses: Jan. 10, 1977. Currently pending in Health and Scientific Research Sub-committee.
S.1048	Chiles, Stone (D-Fla.)	Delete five year residency requirement for participation in Medicare and extends program to to refugees.	Pending in Immigration Sub-committee.
H.R. 197	Bigham (D-N.Y.)	To penalize employers who knowingly hire undocumented workers. Civil penalties for first violation, increasing to criminal. Contains provisions for HEW discolsure to INS of aliens receiving Social Security benefits unlawfully.	No action.
H.R.6560	Lehman (D-Fla.)	Employer sanctions.	Referred to Immigration Sub-committee: Apr. 29, 1977.
H.R. 6963	Ducan (R-Tenn.)	Employer Sanctions	Immigration Sub-committee: June 16, 1977
H.R. 1663	Eilberg (D-Pa.)	Employer Sanctions. Criminal After third violation	No Action
H.R. 2753	Wylie (R-Ohio)	Employer Sanctions.	Judiciary Committee: Jan. 31, 1977. Immigration Sub-committee: Feb. 9, 1977.

Bill Number	Sponsor	Description	Status
H.R. 6785	Minish (D-N.J.)	Employer Sanctions	Judiciary Committee: Jan. 31, 1977. Immigration Sub-committee: MAY 10, 1977
H.R.3105	Danielson (D-Cal.)	Employer Sanctions. Criminal.	No Action.
H.R. 3395	Young (D-Tx.)	Employer Sanctions.	Judiciary Committee: Feb. 9, 1977. Immigration Sub-committee: Feb. 25, 1977.
H.R. 3671	Lott (R-Miss.)	Employer Sanctions	No Action
H.R. 4449	Lott (R-Miss.)	Identical to H.R. 3671 with Co-sponsors: Simon, Thone, Beville, Devine, Daniel, Ginn, Whithurst, Milford, Gilman, Cochran, Abnor, Conte, Neal, Cleveland, Jenrette, Moakley, Edwards of Okl.	Judiciary Committee: Mar. 3, 1977. Immigratiion Sub-committee: Mar. 16, 1977.
H.R. 6651	Eilberg (D-Pa.)	To establish a Select Commission on Immigration and Refugee Policy	Judiciary Committee: Apr. 26, 1977. Immigration Sub-committee: May 5, 1977. Reports requested: Justice and Labor, and State May 18, 1977.
H.R. 6093	Roybal (D-Cal.)	Provides for amnesty through documentation by extending adjust ment of status to those individuals entering the U.S. on or before Jan. 1, 1977. Provides for collection from employers of wages owed to undocumented workers. Establishes an increase in Western Hemisphere quotas to 170,000 and repeal 20,000 per-cpuntry limitation from Western Hemisphere. Hearings before voluntary departure pending deportaion.	No Action

Bill Number	Sponsor	Description	Status
H.R. 363	Eilberg (D-Pa.)	To establish a Select Commission on Territorial Immigration Policy.	Judiciary Committee: Jan. 4, 1977/ Immigration Subcommittee: Feb. 9, 1977. Reports Requested: Mar. 1, 1977.
H.R. 324	de la Garza (D-Tx.)	To prohibit the relocation of the Border Patrol Academy maintained by the INS at Los Fresnos, Tex. to Ginco, Georgia.	No Action.
H. R. 368	Frenzel (R-Minn.)	To permit more than two petitions to be approved for the adoption of alien children. The following are similar bills all of which are before the subcommittee on Immigration. H.R. 3324 D.H. Clausen, H.R. 4636 Oberstar, HR.5804 Sisk, H.R. 6441 Sisk, H.R.871 Fenwick, H.R. 3704 Vander Jagt,H.R. 6488 Harris.	Judiciary Committee: Jan. 4, 1977. Immigration subcommittee: Feb. 9, 1977.
H.R, 4790	Collins (D-Ill.)	To require that an alien who has been detained for further inquiry or who has been temporarily excluded from the U.S. shall have the right to be represented by counsel.	Judiciary Committee: Mar. 9, 1977. Immigration Subcommittee: Mar. 25, 1977. Reports Requested: Justice, State, Mar. 8, 1977.
H.R. 1474	Delaney (DRC-N.Y.)	To make any alien who becomes a public charge within 24 months of arrival in the U.S.subject to deportation.	Judiciary Committee: Jan. 6, 1977. Immigration Subcommittee: Feb. 9, 1977.
H.R.2388	Broomfield (R-Mich.)	Makes a deportable offense for an alien to obtain unemployment , welfare or other federally provided benefits.	No Action.

Bill Number	Sponsor	Description	Status
H.R. 7667	Holtzman (D-N.Y.)	To provide that under certain circumstances aliens convicted of marijuana offenses shall not be denied admission to, or deported from the U.S.	Judiciary Committee: June 8, 1977. Immigration Sub-committee: Feb. 9, 1977. Reports requested: Justice, Received May 16, 1977.
H.R. 1956	Edwards (Cal.)	To eliminate the legal custody requirement of residence and physical presence in the U.S. for the naturalization of children adopted by U.S. citizens.	Judiciary Committee: Jan. 17, 1977. Immigration Sub-committee: Feb . 9, 1977. Reports requested: Justice, May 11, 1977. Received May 16, 1977.
		President's Newly Proposed Bill	
S. 2252	Kennedy, (D-Mass.) Eastland (D-Miss.) DeConcini (D-Ariz.) Bentsen (D-Tx.)	Civil Sanctions for hiring undocumented workers. Increased enforcement of the Borders. Temporary worker provisions. Limited amnesty(for individuals in the the U.S. by Jan. 1, 1970). Sanctions against smugglers of aliens.	Judiciary Committee: Oct. 28, 1977. Immigration Sub-committee Oct. 31, 1977.
H.R. 9531	Rodino (D-N.J.)	House version of President's proposal indicated above.	Judiciary Committee: Oct. 12, 1977. Immigration Sub-committee: Oct. 21, 1977.

CENTRO DE INMIGRACION

GEORGETOWN UNIVERSITY LAW CENTER

CONGRESSIONAL OPIINION POLL

Senate Judiciary Committee

Senators	Amnesty	Employer Sanctions	Increased Enforcement	Quota Raises
Abourezk (D-S.Dak.)	Yes	?	Yes	Yes
Allen (D-Ala.)	No	Yes	Yes	No
Bayh (D-Ind.)	?	?	?	?
Bidden (D-Del)	Yes	Yes	Yes	?
Culver (D-Iowa)	?	?	?	?
DeConcini (D-Ariz.)*	Co-sponsor of President Carter's Proposal			
Eastland (D-Miss.) *	Co-sponsor of President Carter's Proposal			
Hatch (R-Utah)	No	Yes	Yes	?
Kennedy (D-Mass.)*	Co-sponsor of President Carter's Proposal			
Laxalt (R-Nev.)	?	?	?	?
Mathias (R-Md.)	No Position on the Current Bill			
McClellan (D-Ark.)	?	Yes	Yes	No
Metzenbaum (D-Ohio)	?	Yes	Yes	?
Scott (R-Vir.)**	No	Yes	Yes	No
Thurmond (R-S.C.)	?	?	?	?
Wallop (R-Wyo.)	Yes	Yes	Yes	Yes

House Judiciary Committee

Representatives				
Ashbrook (R-Ohio)	No	Yes	Yes	No
Beilson (D-Cal.)	supports Carter's proposal			
Brooks (D-Tex.)	?	?	?	?
Butler (R-Vir.)	?	Yes	Yes	No
Cohen (R-Me.)	No	Yes	Yes	No
Conyers (D-Mich.)	Undecided	undecided	Yes	?
Danielson (D-Cal.)**	?	Yes	?	?
Drinan (D-Mass.)	Yes	Yes	?	Yes
Edwards (D-Cal.)	?	No	?	Yes
Eilberg (D-Pa.)	?	?	?	?
Ertel (D-Pa.)	?	?	Yes	No
Evans (D-Ga.)	Leaning Towards Favoring President Carter's Proposal			
Fish (R-N.Y.)	?	Yes	Yes	N0
Flowers (D-Ala.)	No	Yes	Yes	No
Gudger (D-N.C.)	NO	Yes	Yes	No
Hall (D-Tex.)	----------Undecided----------			
Harris (D-Vir.)	No	Yes	Yes	No

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CONGRESSIONAL OPINION
POLL
(continued)

Representatives	Amnesty	Employer Sanctions	Increased Enforcement	Quota Raises
Holtzman (D-N.Y.)	?	?	?	?
Hughs (D-N.J.)	Yes	?	Yes	No
Hyde (R-Ill.)	?	?	?	?
Jordan (D-Tex.)**	?	Yes	Yes	?
Kastemeir (D-Wisc.)	Yes	Yes	Yes	Yes
Kindress (R-Ohio)	No	Yes	Yes	No
Mann (D-S.C.)	Yes	Yes	Yes	?
Mazoli (D-Ky.)	No	?	Yes	?
McClory (R-Ill.)	No	?	Yes	?
Morrhead (R-Cal.)	?	?	Yes	?
Railsback (R-Ill.)	No	?	Yes	No
Rodino (D-N.J.)*	Sponsor of President Carter's Proposal			
Santini (D-Nev.)	Yes	?	Yes	No
Sawyer (R-Mich.)	undecided	Yes	Yes	No
Seiberling (D-Ohio)	?	?	?	No
Volkmer (D-Mo.)	?	?	?	?
Wiggins (R-Cal.)	?	?	Yes	?

* Generally in favor of President Carter's proposal.
** Favor Criminal Penalties instead of civil penalties.

GEORGETOWN UNIVERSITY LAW CENTER
IMMIGRATION MONITORING REPORT

FALL 1982

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The Immigration Monitoring Report is a forum for analysis of legal and policy issues in immigration law. *The Report* is an official publication of Centro de Inmigracion, Georgetown University Law Center.

GEORGETOWN UNIVERSITY LAW CENTER
IMMIGRATION MONITORING REPORT

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The Georgetown University Law Center Immigration Monitoring Report (G.I.M.R.) is a publication of the Centro de Inmigracion. It contains reports of judicial, legislative, and executive branch developments in immigration law. The Centro de Inmigracion also publishes an annual scholarly journal: The Georgetown Immigration Law Review. We welcome the submission of articles and comments. The Board of Editors, however, reserves the right to accept or reject any articles and to condition acceptance upon revision of material to conform to its criteria. Copyright 1982 by the Centro de Inmigracion.

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A LETTER FROM THE EDITORS:

Dear Reader:

The editorial staff of the Centro de Inmigracion appreciates the opportunity to be of service to you in the form of the Georgetown University Law Center Immigration Monitoring Report. We believe that such a forum for news and analysis of immigration and refugee issues can only increase in its import over the years to come.

In order to continue to provide you with the Immigration Monitoring Report, we are appealing to you for your financial support. We currently face significant budget difficulties due to a sharp increase in production costs.

Your contributions should be made payable to Georgetown University Law Center/Centro de Inmigracion, and sent to: Centro de Inmigracion, Georgetown University Law Center, 600 New Jersey Ave., N.W., Washington, D.C. 20001. Any donation, no matter how small, will be greatly appreciated.

The Editors.

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Presidential Determination No. 83-2 of October 11, 1982
Fiscal Year 1983 Refugee Ceilings

In a memorandum for the United States Coordinator for Refugee Affairs, President Reagan determined that the admission of up to 90,000 refugees to the U.S. during FY 1983 is justified by humanitarian concerns or is otherwise in the national interest. This determination was made pursuant to § 207(a) and 207.1(a)(3) and in accordance with § 209(b) if the Immigration and Nationality Act. The allocation of the ceiling will be 64,000 for East Asia, 15,000 for the Soviet Union/Eastern Europe, 6,000 for the Near East/South Asia, 3,000 for Africa and 2,000 for Latin America/Caribbean. The President also determined that an additional 5,000 refugee admission numbers would be made available for the adjustment to permanent residence status of aliens who have been granted asylum in the U.S.

President Reagan further specified pursuant to § 101(a)(42)(B) of the I.N.A. that the following persons may be considered refugees of special humanitarian concern to the U.S.: persons in Vietnam with past or present ties to the U.S.; present and former political prisoners and persons in imminent danger or loss of life in Latin American and Carribean countries; and the families of those in prison or in danger.

ALIENS AND NATIONALITY

Stiffer Standards for H-1 Immigrants
8 C.F.R. § 214
Final Rule-effective date November 11, 1982

This rule stiffens the admission requirements for aliens whose purpose in entering the U.S. is to accompany nonimmigrant entertainers. Admission as an H-1 immigrant will be granted only when the alien's service to the

entertainer is necessary for the entertainer's successful performance. Examples cited are managers and trainees of a famous boxer, a musical accompanist to a celebrated soloists, and assistants to a renowned theatrical magician.

Immigration and Nationality Act Amendments of 1981
8 C.F.R. §§ 204, 212, 214, 223, 237, 242, 245, 248, 249 and 265
Final Rule-effective date November 8, 1982

In an interim rule promulgated March 22, 1982, the I.N.S. implemented the 1981 Amendments to the I.N.A. (For an outline of section-by-section changes, see G.I.M.R., Feb.-March 1982 at 4-6.) The purpose of these rule changes is to improve the efficiency of the I.N.S. by simplifying specific procedures, eliminating unnecessary paperwork and making technical changes in existing regulations. The final rule incorporates the changes set forth in the interim rule with the following significant revisions:

--8 C.F.R. §§ 212.2(a)-(g): revised to eliminate the requirement that an alien obtain consent before applying for a visa admission or change of status if the alien remained outside the U.S. for over five years since the date of his deportation.

--8 C.F.R. § 249.1: amended to permit an eligible alien to request a waiver of the grounds of excludability set forth in § 212(a)(23) only if he has been convicted once for simple possesion of 30 grams or less of marijuana under § 212(h).

--8 C.F.R. § 265.1: revised to remove the requirement that permanent residents and nonimmigrants register on an annual and quarterly basis. They must, however, report new addresses by using Form AR-11.

Revision of Arrival-Departure I-94 Card
8 C.F.R. § 103
Notice of Form Revision-effective date January 1, 1983

This rule requires that all carriers of passengers who desire admission into the U.S. and who now use the I-94 manifest procedure must use only the revised edition of the Arrival-Departure Record, Form I-94. December 31, 1982 is the last day that Form I-94 (6-1-79) will be accepted at any U.S. entry inspection facility.

Proposed Procedures for Obtaining Transcripts for B.I.A. Use
8 C.F.R. § 3
Proposed Rule-comment period expired September 27, 1982

This proposed rule would replace the cost of obtaining the transcripts of proceedings before an immigration judge on

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the party appealing the decision. The party taking the appeal to the Board would also have to arrange for the transcription of such proceedings with a transcribing company approved by the I.N.S. and furnish the immigration judge and the opposing party with a transcript within 30 days of the end of the hearing.

If the party seeking an appeal is an indigent alien, the costs of transcription could be waived by submitting an affidavit to an immigration judge setting forth the need for a transcript and the reasons for the alien's inability to pay.

Proposed Revisions to Service Fee Schedule
8 C.F.R. § 103
Proposed Rule- comment period expired September 27, 1982

The I.N.S. has proposed an increase in the fees and costs of its services to the public amounting to a minimum 50% hike. The I.N.S. bases these increases on the principle of user charges prescribed by Congress in 31 U.S.C. 483(a) and guidelines of the Office of Management and Budget. An itemization of specific increases in I.N.S. fees and costs can be found at 47 Fed.Reg. 37,556(1982).

Detention and Parole of Inadmissible Aliens
8 C.F.R. §§ 212 and 235
Final Rule-effective date November 18, 1982

This rule finalizes the interim rule published on July 9, 1982 releasing the Haitians who were detained in Miami as of June 29, 1982. This rule was promulgated in compliance with an order of the District Court for the Southern District of Florida. That court ruled that the I.N.S. policy of detaining illegal aliens was invalid because it did not conform to the provisions of the Administrative Procedure Act. Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. June 18, 1982). The I.N.S. is seeking judicial review of the court order.

The rule implements the statutory policy of the I.N.A.; I.N.S. authority to detain illegal aliens is derived from I.N.A. § 235(b), 8 U.S.C. 1225(b), but parole from detention may be granted through the discretion of the Attorney General for "emergent reasons" or for reasons "strictly in the public interest."

Section 212.5 is revised to set forth factors the district director should consider in determining whether such standards are met, thus allowing aliens detained in accordance with § 235.3(b) or (c) to be paroled. Parole of an alien suffering from a "serious medical problem may be justified by the "emergent reasons" standard. Aliens whose parole may come within the "strictly in the public interest" standard would be pregnant women, certain juveniles, and

aliens with close family relations in the U.S. The rule construes the statutory parole provision narrowly and upholds its use only under exceptional circumstances.

Section 235.3 is revised to provide that all aliens entering the U.S. shall be detained until admitted or otherwise permitted to land by an officer of the Service in accordance with the following guidelines:

1) Section 235.3(b) provides that those aliens entering with no documents or false or altered documentation (including documents relating to another person) shall be detained and their parole will be considered in accordance with § 212.5(a).

2) Section 235.3(c) allows for an alien who appears to be inadmissable but does not fall within § 235.3(b) to be detained, paroled, or paroled for deferred inspection by the inspecting officer. In making this determination, the officer shall consider the likelihood that the alien will abscond or pose a security risk.

3) Section 235.3(d) provides that any alien subject to detention under § 235.3(b) or (c) may be placed in the custody of the carrier if the carrier has a contract with the Attorney General under I.N.A. § 238.

Proposed Denial of Appeal for Change of Nonimmigrant Status
8 C.F.R. §§ 103 and 248
Proposed Rule-comment period expired August 30, 1982

The I.N.S. proposes to amend 8 C.F.R. § 103.1(m)(15) and 248.3(d) by removing an alien's right to appeal the denial of an application for change of non-immigrant status. The Service feels that, since the alien has the opportunity to file a motion to reopen or reconsider his or her case, a separate right to appeal creates delays in adjudicating the application.

Proposed Revision in Regulation of Orphan Petitions
8 C.F.R. § 204
Proposed Rule-comment period expired September 13, 1982

The I.N.S. has proposed standards for authorization of social workers who conduct home studies for the agency to use in the adjudication of orphan petitions. The standards are intended to ensure that social workers recommending these home studies are qualified to determine the suitability of the petitioner to rear and educate a child properly. Favorable home studies are required before an orphan petition is granted. The rule is also intended to maintain uniformity in the adjudication of orphan petitions.

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B.I.A. INTERIM DECISIONS

DEPORTATION PROCEEDINGS

Matter of Victorino, Interim Decision 2909 (Decided June 30, 1982)

HOLDING

1) The Board may adjudicate an interlocutory appeal only if a material jurisdictional issue is raised.

2) A District Director has jurisdiction over a motion for a change of venue prior to the commencement of deportation hearings. Under 8 C.F.R. § 242.1(a), deportation hearings commence when the District Director issues an Order to Show Cause and such order is served by the I.N.S. Thereafter, the immigration judge has jurisdiction over a change of venue, whether or not a hearing has begun.

DISCUSSION

On September 21, 1981, the respondent was served with an Order to Show Cause and ordered to appear at a November 17, 1981 deportation hearing. A motion for a change of venue was filed on the respondent's behalf prior to the hearing, but was denied by the District Director on November 24, 1981. In addition, the District Director rescheduled the hearing for February 4, 1982. On December 10, 1981, the respondent's counsel filed a motion for a change of venue with the immigration judge, arguing that the District Director did not have jurisdiction to deny the motion after having issued the Order to Show Cause.

On January 15, 1982, the immigration judge denied the motion on the grounds that he lacked jurisdiction over the motion since the deportation hearing had not actually commenced. The immigration judge based his decision on Matter of Seren, 15 I.&N. Dec. 590 (BIA 1976). The respondent appealed the immigration judge's decision.

Before reaching the merits of the appeal, the Board noted that interlocutory appeals are not generally entertained. See Matter of Ruiz-Campuzano, 17 I.&N. Dec. 108 (BIA 1979); Matter of Ku, 15 I.&N. Dec. 712 (BIA 1976); Matter of Sacco, 15 I.&N. Dec. 109 (BIA 1974). The Board did, however, note that it is authorized to adjudicate material jurisdictional issues concerning the powers of District Directors and immigration judges. See Matter of Alphonse, Interim Decision 2892 (BIA 1981); Matter of Wadas, 17 I.&N. Dec. 346 (BIA 1980); Matter of Seren, 15 I.&N. 590 (BIA 1976); Matter of Fong, 14 I.&N. Dec. 670 (BIA 1974). Since the instant case raised such an issue, the Board decided to review the

interlocutory appeal.

On review, the Board reversed the decision, noting that the immigration judge misinterpreted its ruling in Matter of Seren, supra. In Matter of Seren, the board held that a District Director may rule on a motion for a change of venue prior to the commencement of deportation hearings. The Board noted that once jurisdiction vests in the immigration judge, venue cannot be changed by a District Director. The Board further added that there was "no reason to require the respondent to appear at a hearing in order to request a venue change, since the time and expense involved may be unnecessary if the request is granted." Thus, the Board held the District Director's denial of the motion void for lack of jurisdiction and remanded the case back to the immigration judge for proper adjudication.

Matter of Frentescu, Interim Decision 2906 (Decided June 23, 1982)

HOLDING

A determination of deportability pursuant to I.N.A. § 243(h)(2)(B), wherein an alien convicted of a "particularly serious crime" is excludable despite the evidence underlying the alien's request for asylum, must be made on a case-by-case basis.

DISCUSSION

The applicant, a Romanian native and citizen, was paroled into the U.S. on April 9, 1980. On November 20, 1980 in the Circuit Court of Cook County, Illinois, he was convicted of burglary, sentenced to serve three months in prison, and placed on a probationary period of one year.

Shortly thereafter, the applicant admitted his conviction of burglary and was found excludable under I.N.A. § 212(a)(9). The applicant's request for asylum was denied by the immigration judge despite a State Department finding that the applicant would be persecuted if returned to Romania. The immigration judge contended that, since he was convicted of a crime involving moral turpitude, he was deportable. See Matter of De La Nues, Interim Decision 2885 (BIA 1981); Matter of Leyva, 16 I.&N. Dec. 118 (BIA 1977); Matter of Scarpulla, 15 I.&N. Dec. 139 (BIA 1974).

On appeal, the applicant argued that his conviction was not for a "particularly serious crime" and, even if it was, he did not pose a danger to the community. After a search for the meaning of a "particularly serious crime," the Board concluded that neither administrative nor case law decisions defined or interpreted the term and thus it could not set forth an exact definition of a "particularly serious crime" at this time.

The Board further noted that the seriousness of a crime will be determined by various factors:

the nature of the conviction, the circumstances and

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> underlying facts of the conviction, the type of sentence imposed, and, most importantly, whether the type and circumstances of the crime indicate that the alien will be a danger to the community. Crimes against persons are more likely to be categorized as 'particulary serious crime'. Nevertheless, we recognize that there may be instances where crimes (or a crime) against property will be considered as such crimes.

After analyzing the applicant's conviction, the Board found that he was not convicted of a "particularly serious crime" and thus should not be precluded from relief on these grounds. However, the Board remanded the case to the immigration judge to determine whether the applicant has a bona fide fear of persecution if returned to Romania.

Matter of Martin, Interim Decision 2902 (Decided by Board June 9, 1982)

HOLDING

Respondent is not deportable for conviction of a crime involving moral turpitude under I.N.A. § 241(a)(4) where her original twelve year sentence was voided and changed to a three month confinement pursuant to Colorado Rule of Criminal Procedure 35(a).

DISCUSSION

Respondent, a native and citizen of Great Britain, was convicted of aggravated robbery in the Colorado County District Court and was sentenced to twelve years in prison on November 21, 1980. On February 25, 1981, the respondent moved for a reconsideration of her sentence and was resentenced to a term of three months with a five-year probationary period.

Thereafter, an immigration judge found respondent deportable under I.N.A. § 241(a)(4) as an alien convicted of a crime involving moral turpitude and sentenced to confinement for a term of a year or more.

Respondent appealed the immigration judge's decision on the grounds that her reduced sentence was the only valid sentence imposed on her and that, pursuant to § 241(a)(4), this sentence did not meet the statutory deportability grounds of a sentence of confinement for a year or more. The Board reversed the immigration judge's finding of deportability. Although robbery is a crime involving moral turpitude, the Board concluded that, since respondent was not sentenced to confinement for a year or more, a finding of deportability was unwarranted.

MATTER OF REYES, Interim Decision 2907 (Decided June 30, 1982)

HOLDING

A repondent's motion to reopen may be denied by the Board if the respondent fails to establish prima facie eligibility for suspension of deportation. Even where such statutory elibigility is shown, the Board may still deny the motion as a matter of discretion.

DISCUSSION

On October 30, 1968, the respondent, a native and citizen of the Philippines, entered the U.S. as a nonimmigrant visitor for pleasure authorized to remain until June 1969. Three months after her entry, she accepted employment in violation of her status as a visitor. She also failed to leave once her nonimmigrant visa expired. In April 1970, the I.N.S. charged the respondent with deportability as an "overstayed" visitor pursuant to I.N.A. § 241(a)(2).

On July 23, 1979, the respondent surrendered to the I.N.S. and moved for a suspension of deportation. She claimed her deportation would adversely affect her elderly and ill parents who were dependent upon her for support. The respondent's motion was denied and she appealed the immigration judge's decision. The Board dismissed her appeal on two grounds. First, the respondent failed to establish extreme hardship and secondly, her illegal seven-year overstay made it unlikely that relief should be granted.

On review, the U.S. Court of Appeals for the Ninth Circuit reversed the Board's decision and remanded the case. Reyes v. I.N.S, 673 F.2d 225 (9th Cir. 1982). The Court of Appeals argued that the Board had prematurely rejected the truth of the respondent's hardship statements. In addition, the Board's request for evidence that would corroborate the respondent's statements "imposed a heavy burden of evidentiary support which [was] inconsistent with the limited screening function served by a motion to reopen."

On remand, the Board argued that in cases such as respondent's, it is reasonable to require evidentiary support of the factual background before granting a motion to reopen. The Board found that the respondent was unable to establish a prima facie showing of extreme hardship and thus denied the motion once again.

The Board noted that its previous decision was not based on a disbelief of the facts contained in the respondent's affidavits. Rather, the affidavits contained material omissions, namely evidence that the respondent was solely responsible for supporting her elderly parents. The Board concluded that the request for such corroboration was not unwarranted:

> ....the regulations regarding reopening are framed negatively and authorize reopening only when certain minimum conditions are satisfied. See, 8 C.F.R. 3.2 and 3.8. The Supreme Court stated that these regulations do not affirmatively require

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reopening under any particular conditions and they 'may be construed to provide the Board with discretion in determining under what circumstances a proceeding should be reopened.' I.N.S. v. Wang, S.Ct. 1027, 1030 n.5 (1981).

The B.I.A. held that even where statutory eligibility for the relief sought is present, it may still deny the motion to reopen as a matter of discretion, especially where "the record reflects either little likelihood of success on the merits or significant reasons for denying reopening based on the respondent's actions."

Matter of Roussis, Interim Decision 2908 (Decided June 30, 1982)

HOLDING

An immigration judge may not remand an application for adjustment of status to the District Director once an Order to Show Cause has been issued under 8 C.F.R. § 245.2(a)(1).

DISCUSSION

On October 27, 1972, the respondent, a native and citizen of Greece, entered the United States as a nonimmigrant student authorized to stay until October 26, 1976. On July 6, 1977, the respondent was found deportable as an "overstay" under § 241(a)(2).

Five years later, an immigration judge ordered the deportation proceedings reopened based upon an immediate relative petition filed by the respondent's U.S. citizen wife. Over the I.N.S. objection, the immigration judge remanded the case to the District Director for a final determination of the application for adjustment of status. The immigration judge contended that her order "promotes efficiency and the savings of resources for the District Director, the Immigration Court, the aliens and their representatives and, at the same time, does not contravene the applicable regulations." She then certified her decision to the Board for review.

On review, the B.I.A. found that the immigration judge erred in ordering the case remanded and reversed her decision. Section 245.2(a)(1) vests the immigration judge with jurisdiction over an adjustment application once the District Director issues an Order to Show Cause. Thus, the immigration judge cannot relinquish her jurisdictional authority to tht District Director for the sake of efficiency. To do so would impinge upon "the District Director's exclusive authority to control the prosecution of deportable aliens." Once the I.N.S. commences proceedings against an alien, the immigration judge is statutorily required to order deportation if sufficient evidence is presented by the I.N.S. The immigration judge cannot, under any circumstances, divest himself or herself of such jurisdiction. The Board said:

> Aside from 8 C.F.R. § 242.7, which authorizes the District Director, in certain specified instances, to cancel an Order to Show Cause and thereby terminate proceedings prior to their commencement or to request dismissal or remand of a case after proceedings have begun, there is no provision in the regulations which authorizes the termination, whether conditional or final, of deportation proceedings.

Accordingly, the B.I.A. reversed the immigration judge's decision to grant the remand since it contravened the jurisdictional powers set forth in § 245.

EXCLUSION PROCEEDINGS

Matter of Dea, Interim Decision 2912 (Decided by Board, July 14, 1982)

HOLDING

Where Form I-589, "Request for Asylum in the United States" is submitted after an alien is placed in exclusion proceedings, an immigration judge must adjudicate the application. A District Director has jurisdiction over such an application only when Form I-589 is filed prior to the commencement of exclusion proceedings.

DISCUSSION

The applicant, a Haitian citizen and native, entered the U.S. on July 27, 1981 without an immigrant visa. The I.N.S. held him in detention and on July 27, 1981 the applicant was served with a Form I-122 charging him with excludability under I.N.A. § 212(A)(20) as an immigrant not in possession of a valid immigrant visa. The exclusion hearing, set for September 9, 1981, was continued to allow the applicant an opportunity to submit a Form I-589, "Request for asylum." The request was forwarded to the Department of State, Bureau of Human Rights and Humanitarian Affairs for an advisory opinion on the asylum claim.

Upon receiving a response from the State Department, the exclusion hearing resumed. At the hearing, the applicant argued that the immigration judge could not adjudicate the asylum application until the District Director first considered it. The immigration judge ruled that, because the applicant had put the District Director on notice of a colorable claim of asylum, the District Director must first consider the application pursuant to 8 C.F.R. § 208.1. The immigration judge ordered the exclusion proceedings terminated for lack of jurisdiction.

On appeal, the Board reversed the order and noted that the only recognized means by which an alien can request asylum is by filing a Form I-589. The Board emphasized that

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the filing of a I-589 "provides a 'bright line' reference for determining when an asylum request is made. It also avoids the delays, inefficiencies, and practical difficulties involved in going behind the record to determine exactly what the alien may have told service officers, and in reviewing the subjective judgment of the District Director regarding what claims are 'colorable' and what statements suffice to constitute 'notice'." In addition, the Board asserted that jurisdiction over an asylum application does not affect the alien's substantive rights, but merely indicates how the application will be procedurally assessed.

The Board concluded that, because the applicant filed Form I-589 after having been placed in exclusion proceedings, jurisdiction over his asylum claim lies with the immigration judge. The case was remanded to the immigration judge for a determination of the applicant's asylum application and admissibility to the U.S.

Matter of Portales, Interim Decision 2905 (Decided May 14, 1982)

HOLDING

A grant of asylum or witholding of deportation from the U.S. is unwarranted where Cuban aliens who have already been granted asylum by Peru fail to establish the probability of political, racial or other persecution while living in Cuba or Peru.

DISCUSSION

The applicants, natives and citizens of Cuba, were granted refugee status by Peru in April 1980. After living in Lima for sixteen months, they arrived in Florida and sought admission into the U.S. as refugees. At the exclusion hearing, the applicants conceded excludability under I.N.A. § 212(A)(20) and admitted they were aliens without valid entry documents.

The applicants then filed applications for asylum and for witholding of deportation. The immigration judge denied the applications because the applicants were unable to establish individual persecution if returned to Cuba and because they were deemed to be firmly resettled in Peru.

On appeal, the Board upheld the decision of the immigration judge. The applicants did not establish a probability of persecution if returned to Cuba, and the mere assertion of persecution is not sufficient. Matter of Castellon, Interim Decision 2847 (BIA 1981). The Board noted that the applicants had not been arrested, imprisoned or otherwise persecuted in Cuba, nor had they been active in organizations considered hostile to the Cuban government.

The Board also argued that, even if persecution while in Cuba were shown, the applicants are ineligible for asylum since they were granted refugee status by Peru and thus deemed to be firmly resettled there. It rejected the

applicants' additional arguments that they were unable to find suitable employment in that country and that the two-year limitation on their Peruvian refugee documents evidenced that they were not firmly resettled. The Board concluded that the applicants' complaints were related to Peru's economy and not to a restriction of benefits by that country's authorities. In addition, the Board noted that a grant of asylum to the U.S. is limited to one year and may be terminated for such reasons as changed conditions in the asylee's country.

Matter of Ketema, Interim Decision 2911 (Decided July 2, 1982)

HOLDING

Matter of Le Floch, 13 I.&N. Dec. 251 (BIA 1969) is overruled insofar as it interpreted I.N.A. § 212(d)(4)(a) to authorize the board or an immigration judge to consider a nonimmigrant's application for waiver of the documentary evidence required by I.N.A. § 212 (a)(26). Thus, both the Board and an immigration judge are precluded from considering a nonimmigrant's application for relief that includes a request for a waiver of documentary evidence on the basis of an unforeseen emergency.

DISCUSSION

The applicant, an Ethiopian native and citizen, applied for admission to the U.S. on October 1, 1980 as a nonimmigrant visitor for pleasure with the stated purpose of attending his sister's wedding. The applicant was paroled into the U.S. on September 15, 1981, and shortly thereafter exclusion proceedings were commenced. At the hearing, the immigration judge determined that the applicant sought entry to the U.S. to attend college and thus was not a legitimate visitor for pleasure.

On appeal, respondent admitted that he was presently enrolled in a school in the U.S. Upon learning this, the Board upheld the decision that the applicant was not a bona fide visitor for pleasure. The Board noted that admissibility into the U.S. is determined on the basis of the facts existing at the time of consideration of the application. Since the respondent was an alien without proper travel and entry documents and not entitled to any immigrant status under I.N.A. § 101(a)(15), the Board found him excludable under I.N.A. § 212(a)(20).

The applicant argued that the B.I.A. could cure his lack of a student visa by waiving documentary requirements due to an unforeseen emergency under I.N.A. § 212(d)(4)(a). He claimed that the unforeseen emergency was his inability to obtain the needed high school documents to support his student visa application in time for his sister's wedding.

The Board rejected the applicant's request and noted that it did not have jurisdiction to entertain an application for

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a waiver under § 212 (d)(4)(A). The B.I.A. dismissed the applicant's appeal and concluded:

> The power the applicant would have us exercise has been expressly limited by the regulations which unambiguously give the District Director, acting with concurrence of the Director of the State Department Visa Office, sole discretion to grant or deny a section 212(d)(4) waiver. 8 C.F.R. § 212.1(f). Immigration judges and the Board do not have that authority. See Matter of Manneh, 16 I.&N. Dec. 272 (BIA 1977).

In accordance with its findings, the Board overruled its decision in Matter of Le Floch, supra, insofar as it allows an immigration judge and the Board to exercise jurisdiction over a waiver application under § 212(d)(4)(A).

Matter of Phelisna, Interim Decision 2913 (Decided June 8, 1982)

HOLDING

An applicant in exclusion proceedings has the burden of establishing that such proceedings are improper. Before he or she can establish impropriety, the applicant must establish "entry" into the U.S. An alien who merely disembarks a vessel without the requisite documents has failed to show that he or she intentionally and actually evaded inspection. Such an alien has not "entered" the U.S. and is, therefore, subject to exclusion proceedings.

DISCUSSION

The applicant, a Haitian citizen and native, arrived in Miami on July 5, 1981 and was placed in exclusion proceedings after being charged with excludability under I.N.A. § 212(a)(20). At the hearing, the applicant alleged that she entered the U.S. and should, therefore, be placed in deportation, not exclusion, proceedings. The applicant stated that she was apprehended by I.N.S. officials soon after disembarking the vessel that transported her and 200 other Haitians to Florida. The immigration judge disagreed and deemed the exclusion hearing proper since the applicant had not entered the U.S.

On appeal, the applicant argued that her physical presence in the U.S., evasion of I.N.S. inspectors, and freedom from restraint constituted an entry and was thus subject to deportation proceedings. The I.N.S. disagreed. It alleged that despite the applicant's physical presence in the U.S., she had not established intentional evasion of I.N.S. inspectors or freedom from restraint. Absent such a showing, the applicant may not assert that the exclusion hearing was improper. See I.N.A. § 2915; Matter of De La Nues, Interim Decision 2885 (BIA 1981).

In deciding whether the applicant "entered" the U.S. as defined in I.N.A. § 101(a)(13), the Board addressed the

issues of intentional evasion of inspection and freedom from restraint. The Board rejected the applicant's argument that she intentionally evaded inspection by attempting to enter the U.S. without documents. The Board noted that the mere fact that an alien comes to the U.S. without the necessary visa does not necessarily mean that he/she is evading I.N.S. officials; he/she may be lawfully seeking asylum. Furthermore, there was evidence that the applicant voluntarily presented herself for inspection with the intention of seeking asylum, and that she was detained in a camp for a month.

Based on the foregoing reasons, the Board concluded that the applicant had not satisfied the entry criteria set forth in § 101(a)(13) and, therefore, the finding of excludability by the immigration judge was proper.

FINE PROCEEDINGS

MATTER OF M/V "CORAL SPRINGS", Interim Decision 2903 (Decided June 2, 1982)

HOLDING

Fines under I.N.A. § 273 may not be imposed upon an owner of a vessel where susbstantial evidence shows he did not participate in bringing undocumented aliens to the U.S.

DISCUSSION

The District Director found the owner of the vessel, the "Coral Springs" liable for bringing 250 undocumented aliens into the U.S. The owner appealed this decision, arguing that he was totally unaware of the vessel's departure for Cuba. The owner also contended that he employed the captain to use the vessel for commercial fishing purposes only and that he did not know the captain intended to use the vessel to transport undocumented aliens to Florida. Upon learning of the trip, the owner alerted the Coast Guard, but was informed that they needed an arrest warrant to intervene. In addition, the owner fired the captain immediately upon his return. The owner argued that the administrative fines totalling $250,000 were unfair.

On appeal, the I.N.A. contended that the owner's lack of knowledge of the trip to Cuba and his subsequent efforts to stop the vessel were immaterial because I.N.S. § 273 imposes strict liability. Section 273 imposes fines regardless of a carrier's intentions and, therefore, the owner's allegations of innocence was not a valid defense. The I.N.S. alternately argued that where an employment relationship exists, general agency law principles apply, especially where an employer provides the instrumentality with which the violation was committed.

The Board rejected the arguments of the I.N.S. With respect to the argument of strict liability, the Board held

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that where it has been established that a vessel has been used in violation of §273, it will be presumed that the owner of the vessel participated in the violation, absent evidence to the contrary. In this case, the owner has rebutted the presumption of participation with the evidence showing that, once he learned of the trip, he made every possible attempt to prevent the vessel from reaching its destination. In response to the I.N.S. agency argument, the Board held that, since the employer's actions were outside the scope of his employment, the owner is not liable for fines under § 273.

Matter of M/V "Snail's Pace", Interim Decision 2904 (Decided June 2, 1982)

HOLDING

1) The owner of a vessel which has been used to bring undocumented aliens to the U.S. is not liable for fines under I.N.A. § 273 where he or she can establish that the vessel was chartaered pursuant to a legitimate bareboat charter and such charter was not entered into to avoid § 273 liability.

(2) Under I.N.A § 273, the term "carrier" is used as a matter of convenience to designate the party or parties actually charged with liability for fines under § 273(a).

DISCUSSION

On March 11, 1980, the owner of the vessel "Snail's Pace" chartered the vessel to a captain. The arrangement was made pursuant to a bona fide bareboat charter whereby the owner transferred his vessel to the captain for fishing purposes for a period of two to four weeks. At the end of the specified period, the captain failed to return the vessel, at which time the owner unsucessfully attempted to locate him. On April 22, 1980, the captain finally informed the owner that the vessel would be returned on April 28, 1980. The captain did not inform the owner of his intention to use the vessel to transport twelve Cuban nationals to the U.S. After use of the vessel for that purpose was discovered, the District Director found both the owner and the captain liable as the "carrier" and imposed fines totalling $35,000.

On appeal, the owner argued that a violation of § 273(a) requires active conduct by the owner; mere ownership of a vessel used to transport undocumented aliens is insufficient to impose liability. Furthermore, the owner contended that, since he chartered the vessel to the captain under a valid bareboat charter, an agency relationship did not exist between them. Therefore, the term "carrier" should not be applied to both himself and the captain.

The I.N.S. responded by asserting that strict liability is imposed whenever an owner's vessel is used to transport undocumented aliens. Accordingly, the question of active conduct by the owner is immaterial. Carrying this argument further, the I.N.A. argued that an owner would be liable even

in cases where no agency relationship existed or where the owner's vessel was stolen and then used to transport aliens.

The I.N.S. also contended that the term "carrier" encompassed "any person, including any transportation company, or the owner, master, commanding officer, agent, charterer or consignee of any vessel or aircraft. I.N.A. § 273(a). The I.N.S. alleged that the meaning of the term "carrier" could not be applied to find only one party liable for fines.

In deciding the merits of the appeal, the Board explained that the term "carrier" was not used to refer to a class of people who may be held liable under § 273. Rather, the term designates the party or parties actually charged with liability for fines under § 273(a).

The Board then noted that the term "bareboat charter" referred to an arrangement "tantamount to, though just short of an outright transfer of ownership." Guzman v. Pichirilo, 369 U.S. 698, 700 (1962). However, the Board emphasized the heavy burden upon the owner in showing that such a charter existed. Such a showing, if established, shields the shipowner from liability. The Board concluded that a legitimate bareboat charter existed in this case. The owner, therefore, did not participate in the § 273 violation and was not liable for fines.

BOND PROCEEDINGS

Matter of Chew, Interim Decision 2910 (Decided July 1, 1982)

HOLDING

1) A modification of the conditions of an alien's custody status may be considered by a District Director only after the immigration judge has been divested of jurisdiction over the matter. Matter of Vea, Interim Decision 2890 (BIA 1981), is amended insofar as it limits an alien's appeal from an immigration judge's decision.

2) In considering whether an nonemployment rider is a warranted condition of an alien's bond, the following factors must be considered: the current state of the labor market, the alien's prior immigration violations, the recency of the alien's arrival, and an alien's financial responsbilities to dependents.

DISCUSSION

The respondent, a native and citizen of Guatemala, illegally entered the U.S. in August 1979 to resume a job he had in 1976. The I.N.A. arrested the respondent in February 1981 and released him after posting a bond which prohibited him from engaging in any unauthorized employment.

At the respondent's request, an immigration judge reduced the bond, but refused to eliminate the nonemployment rider. On January 14, 1982, the respondent requested that

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the District Director eliminate the nonemployment rider. The District Director denied the request.

On appeal, the Board considered whether a request for a change in custody status can be determined by a District Director after an immigration judge has acted on the matter. In concluding that a District Director did have jurisdiction in such a situation, the Board retreated from its dictum in Matter of Vea, supra. In Vea, the Board held that after an immigration judge considers an application for modification of custody status, "the respondent's recourse ... lay in an appeal to the Board ... and not ... to the District Director." The Board in Vea noted that, after the District Director has made an initial custody determination and before a deportation order becomes final, an alien seeking a modification of the conditions of his release must make such a request to an immigration judge. In the instant case, the Board amended its finding in Vea on the grounds that

> nothing in the regulations ...preclude an alien from reapplying to the District Director for modification of the conditions of his custody after the immigration judge has been divested of jurisdiction by the lapse of seven days following the alien's release from custody or by the entry of a final administrative order of deportation.

The Board then addressed the respondent's request for cancellation of the nonemployment rider. It denied the request and concluded that the ride was proper pursuant to certain factors set forth in 8 C.F.R. § 103.6(9)(2): the status of the U.S. labor market, prior immigration violations, the recency of the alien's arrival, and the presence or absence of dependents.

In applying these factors to the instant case, the Board found that the respondent's employment did curtail job opportunities for American citizens. In addition, he had violated immigration laws several times by accepting unauthorized employment and did not have a spouse or children dependent upon him for financial support. For these reasons, the Board upheld the nonemployment rider.

ADMINISTRATIVE RELEASES

I.N.S. RELEASES

Special Parole Program for Undocumented Haitians
Released September 22, 1982

The undocumented Haitian aliens who have been detained in Brooklyn, New York pending the processing of their cases

will be paroled pursuant to the Attorney General's special parole program for Haitian aliens announced on June 14, 1982. These aliens were not included in the Miami District Court's order conderning the release of Haitians.

In response to the reasons for differentiating those Haitians detained in Brooklyn from those detained in Miami, Duke Austin of the INS noted in a memorandum dated September 22, 1982 that:

> Despite the facts that distinguish these 49 Haitians from the class members in the Miami case, they did arrive in the U.S. during the same period of time and were transferred to New York to relieve overcrowding at the Miami detention facility. The Attorney General's earlier announced decision to begin paroles, the Court's release order, and the subsequent expedited paroles have raised the hopes and expectations of all Haitians in detention.

For these "humanitarian reasons and to avoid any appearance of unfairness," the INS concluded that all Haitians detained as of the date of the court order will be treated similarly.

For further information, contact Duke Austin, Immigration and Naturalization Service, Washington, D.C., (202) 633-2648.

Postponed Departure of Silva v. Levi Recipients
Effective date August 20, 1982

The I.N.S. will not take action to enforce the departure of former Silva v. Levi recipients who were in the U.S. before August 20, 1982, until further notice is given. Those Silva v. Levi recipients who were deemed excludable or deportable will be allowed to remain in the U.S. until January 31, 1983. Furthermore, exclusion and deportation hearings will be postponed until after January 31, 1983 for those recipients who have been issued Orders to Show Cause. For those recipients whose hearings have commenced, any order of deportation will not be enforced until further notice. The policy above does not apply to former Silva v. Levi recipients convicted of criminal acts in the U.S.

For further information, contact Hugh J. Brien, Assistant Commissioner of I.N.S., Detention and Deportation Section in Washington, (202) 633-4049.

Indochinese Adjustment Program

The INS-Kansas City District Office has prepared an information packet outlining a sample processing procedure for the Indochinese Adjustment Program. The packet provides a step-by-step detail of procedure that may be used by voluntary agencies when refugees apply for permanent

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residence. The materials include sample forms used for Indochinese Adjustment and instructions for clerical volunteers.

For further information, contact the I.N.S. Outreach Program, 425 I St., N.W. Washington, D.C., (202) 633-4123.

JUDICIAL UPDATE

I.N.S. v. CHADHA: THE ONE HOUSE VETO BEFORE THE SUPREME COURT

This term, the Supreme Court will review the decision by the U.S. Court of Appeals for the Ninth Circuit in Chadha v. I.N.S., 634 F.2d 408 (9th Cir. 1980). The Ninth Circuit held that the one house veto provision in I.N.A. § 244(c) violates the constitutional doctrine of separation of powers. This provision allows one house of Congress to override the Attorney General's decision to suspend the deportation of an alien. An outline of the case facts and proceedings follows.

Agency Adjudication and the House Veto

Plaintiff Chadha, an East Indian from Kenya and a citizen of Great Britain was lawfully admitted to the U.S. in 1966 on a nonimmigrant student visa which expired in 1972. When Chadha overstayed his visa, the I.N.S. issued an order to show cause why he should not be deported. Upon Chadha's response, the I.N.S. granted his request for suspension of deportation pursuant to I.N.A. § 244(a)(1), 8 U.S.C. § 1254(a)(1). These statutory provisions allow for discretionary action by the agency where the plaintiff meets three conditions: 1) continuous residence for a minimum of seven years, 2) proof of good moral character, and 3) extreme hardship to the plaintiff if deportation occurs. Chadha met all three conditions. In this case, extreme hardship involved a showing of potential discrimination on the basis of race and nationality resulting from Chadha's return to Kenya or Great Britain. However, eighteen months later, the House of Representatives reversed the suspension granted by the I.N.S. pursuant to I.N.A. § 244(c)(2), 8 U.S.C. § 1254(c)(2). The Subcommittee on Immigration, Citizenship and International Law of the House Judiciary Committee had issued a resolution that Chadha did not meet the statutory requirement of extreme hardship.

In the Court of Appeals

Chadha then sought review of the deportation order in the Court of Appeals for the Ninth Circuit to determine the constitutionality of a one house veto of an order from an administrative agency. Although Chadha's personal stake in the case is now moot since he married a U.S. citizen on August 10, 1980 and thus became eligible for permanent residence as the spouse of a citizen, Chadha nevertheless

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asked the court to determine the constitutionality of § 244(c)(2). Section 244(c)(2) states in pertinent part:

> If during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which the case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien or authorize the alien's voluntary departure at his own expense under the order of deportation in the manner provided by law.

The Ninth Circuit held that § 244(c)(2) is severable from the remainder of § 244. It ruled that, because § 244(c)(2) is unconstitutional due to violation of the separation of powers, the original suspension of deportation by the Attorney General will be reinstated pursuant to § 244(a).

Appeal to the Supreme Court

Last February, the Supreme Court heard oral argument in I.N.S. v. Chadha, No. 80-1832 (May 1, 1981) but the case was not resolved in that term. It will be reargued on December 7, 1982. The U.S. Senate and the U.S. House of Representatives have both filed motions to intervene. U.S. House of Representatives v. I.N.S., No. 80-2170 (June 22, 1981); U.S. Senate v. I.N.S., No. 80-2171 (June 22, 1981). These two cases along with I.N.S. v. Chadha have been consolidated for oral argument.

The briefs filed by the House and the Senate both raise threshold issues such as whether the Court of Appeals had jurisdiction, whether the alien who filed the case had standing, and whether the issues are nonjusticiable political questions. The briefs also argue that § 244 cannot be severed. In addition, the briefs assert that the separation of powers doctrine has not been violated because the representative branches may share the power to grant relief from mandatory deportation law.

In reply, the I.N.S. maintains that the one house veto provision in § 244(c)(2) is severable from the remainder of § 244. The I.N.S. also argues that the Constitution explicitly requires that all Congressional exercises of legislative power receive the concurrence of both houses and be presented to the President for his approval or disapproval.

The Court's resolution of these issues may go far beyond the immediate issue of deportation of aliens. The determination of the constitutionality of the legislative veto provision in § 244(c)(2) may have an impact on other legislation contain similar veto provisions such as the Natural Gas Policy Act of 1978, 15 U.S.C. 3301. For further discussion of the legislative veto and the case before the Ninth Circuit, see G.I.M.R., Dec. 1981-Jan. 1982 at 34-40.

NEW COURT DECISIONS

Estoppel Defense Based on I.N.S. Processing Delay Rejected

I.N.S. v. Miranda, No. 82-29 (S.Ct. Nov. 8, 1982)

HOLDING

The I.N.S. did not engage in affirmative misconduct by failing to promptly process an immediate relative visa petition. Thus, the I.N.S. was not estopped by its lengthy delay from denying respondent's application and the Ninth Circuit's decision is reversed.

FACTS

Respondent Miranda, a Filipino citizen, entered the U.S. in 1971 on a temporary visitor's visa. After his visa expired, he remained in the country and, in May 1976, respondent married Linda Milligan, a U.S. citizen. Milligan filed a visa petition on behalf of the respondent. At the same time, respondent filed an application for adjustment of status to permanent resident alien. The I.N.S. did not act on either of the petitions for eighteen months. In December 1977, Milligan withdrew her petition after the marriage had ended. At this time, the I.N.S. denied respondent's application for permanent residence and also issued an order initiating deportation proceedings.

At the deportation hearing, respondent argued that a previous marriage was sufficient to support his application. The immigration judge rejected this argument, deciding that the immediate availability of an immigrant visa was a necessary condition to respndent's application. On appeal, the B.I.A. rejected respondent's argument that the I.N.S. was estopped from denying his application because of the agency's unreasonable delay in processing. The Board did not find evidence of affirmative misconduct. On judicial review, the Court of Appeals for the Ninth Circuit reversed the Board's decision.

REASONING

The Court found that the respondent did not establish affirmative misconduct by the I.N.S. This finding was based in part on the presumption of regularity which supports the official act of a public officer. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971). In addition, the Court recognized that the number of applications received by the I.N.S. and the statutory requirement to investigate the validity "may make it difficult for an agency to process an application as promptly as may be desirable." Finally,

the Court noted the increasing difficulty faced by the I.N.S. in the enforcement of the immigration laws. Deference was given to the B.I.A. decision and the Court found proof only of the fact that the government did not promptly process an application.

Landon v. Plasencia, No. 81-129 (S.Ct. argued Oct. 5, 1982).

SUMMARY

The Supreme Court heard oral argument in Landon v. Plasencia on October 5, 1982 and the parties are awaiting a decision. The Court had granted certiorari on January 11, 1982, 454 U.S. 1140 (1982), to review the decision in Plasencia v. Surek, 637 F.2d 1286 (9th Cir. 1980). The Ninth Circuit held that a permanent resident alien who, upon return to the U.S., was charged with attempting to smuggle aliens into the U.S., may be subjected to deportation proceedings, but not to summary exclusion proceedings. Summary exclusion proceedings for a permanent resident will occur only if the I.N.S. can prove that the alien's visit abroad was "meaningfully interruptive" of American residence, making the aliens return "entry" subject to exclusion proceedings. This holding affirmed the District Court finding that, under the doctrine of Rosenberg v. Fleuti, 374 U.S. 449 (1963), an alien in this situation should not be deprived of the procedural protection of deportation proceddings. The District Court had reversed the B.I.A.'s holding that the admissibility of a lawful permanent resident returning from abroad can be determined in exclusion proceedings.

PETITIONS GRANTED

I.N.S. v. Phinpathya, 673 F.2d 1013 (9th Cir. 1982), cert. granted, 51 U.S.L.W. (U.S. July 16, 1982) (No. 82-91).

SUMMARY

Suspension of deportation may be granted by the Attorney General if three conditions are met: the alien 1) has been physically present in the for not less than seven years, 2) is a person of good moral character, and 3) would be subject to extreme hardship as a result of deportation. In considering plaintiffs' appeal from a denial of their application for suspension of deportation, the Court of Apeals for the Ninth Circuit concluded that the B.I.A. abused its discretion in its failure to consider all relevant factors entering into a finding of extreme hardship. In addition, the B.I.A. applied an erroneous legal standard to determine that the continuously present residency requirement was not met and to determine that plaintiffs did not meet the good moral character requirement. See G.I.M.R. Oct.-Nov. 1981 at 31-32 for a presentation of the case.

PETITIONS FILED

I.N.S. v. Perez, 643 F.2d 640 (9th Cir. 1981), petition for cert. filed, 51 U.S.L.W. 3121 (U.S. August 11, 1982) (No. 82-243).

SUMMARY

This appeal for review requests the Supreme Court to determine whether the B.I.A.'s summary disposition of a motion to reopen deportation proceedings violated statutory regulations. The Court of Appeals held that the requirement of 8 C.F.R. § 3.8(a) could be disregarded in this case. Section 3.8(a) states that motions to reopen deportation proceedings must be supported by affidavits or other evidentiary material. The Supreme Court must determine whether the B.I.A.'s denial of the motion warrants a remand based on the failure of the Board to indicate the factors it considered in concluding that the aliens had not established a prima facie case of extreme hardship.

PETITIONS DENIED

Linnas v. U.S., 527 F. Supp. 426(E.D.N.Y. 1981), aff'd(2d Cir. Jan. 25, 1982), cert. denied, 51 U.S.L.W. 3258 (U.S. Oct. 4, 1982).

SUMMARY

The Supreme Court denied review of an unreported opinion from the Second Circuit upholding the denaturalization judgment in U.S. v. Linnas. The District Court based its judgment on a finding of fraudulent misrepresentation of documents filed for naturalization. Plaintiff maintained that he was denied a fair trial and deprived of due process because the trial court drew adverse inferences from his refusal to testify. The trial court denied making any such inferences.

CIRCUIT COURT DECISIONS

Illegal Alien Laborers Protected by the Hobbs Act

U.S. v. Hanigan, 681 F.2d 1127(9th Cir. 1982).

HOLDING

This decision affirms a federal district court conviction of a man who tortured and robbed three undocumented aliens after they crossed the border into the U.S. in search of agricultural work. The conviction was affirmed on the grounds that the defendant violated the Hobbs Act.

FACTS

On August 18, 1976, three undocumented Mexican aliens entered the U.S. near Douglas, Arizona in search of agricultural jobs. Thomas Hanigan, defendant's brother, found the three men on Hanigan property and forced them to go the family's house. During the next several hours, the three aliens were tortured and robbed by George, Patrick, and Thomas Hanigan. The victims were then told to run to the border, and pellets were fired at their backs.

PROCEEDINGS BELOW

All three Hanigans were charged in state court with assault, kidnapping, and robbery. George Hanigan died before trial. At trial, Thomas and Patrick were acquitted on all counts. The two brothers were then indicted on federal charges of committing robberies affecting commerce in violation of the Hobbs Act, 18 U.S.C. § 1951. At the district court trial, Thomas was acquitted and Patrick was convicted on all three counts.

REASONING

The court examined the Hobbs Act to determine if a violation had occurred. Pursuant to the Hobbs Act, it is a federal crime to obstruct, delay, or affect commerce "or the movement of any article or commodity in commerce by robbery." 18 U.S.C. § 1951(a). Commerce, as defined in the Act, includes "all commerce between any point in a state...and any point outside thereof...and all other commerce over which the United States has jurisdiction." 18 U.S.C. § 1951(b)(3). Hanigan argued that labor and laborers cannot be considered an "article or commodity in commerce" within the meaning of

the Hobbs Act. He further argued that, even if laborers were articles in commerce, undocumented alien laborers are not.

In response, the court noted that, in the antitrust laws, labor is explicitly excluded from the definition of commerce. 15 U.S.C. § 17. The Hobbs Act, however, does not except labor from the definition of commerce. Furthermore, the statute by its terms does not limit "articles in commerce" to legal articles. The aliens in this case come within the meaning of "articles in commerce."

The court further noted that the Constitution gives Congress both the power to regulate the movement of aliens across national boundaries into the U.S. and the power to regulate interstate commerce. The defendant, by robbing the aliens, interfered with the aliens' entry into the country, and thus prevented them from becoming agricultural workers in the U.S. The court concluded that the government had proved that the defendant's actions directly interfered with interstate commerce.

I.N.S. Factory Surveys Held to Be Fourth Amendment Seizures

International Garment Ladies' Garment Workers' Union v. Surek 681 F.2d 624 (9th Cir. 1982).

HOLDING

Questioning in custody by the I.N.S. regarding citizenship status is prohibited by the Fourth Amendment unless agents can articulate objective facts supporting a reasonable suspicion that each questioned person is an illegal alien.

FACTS

This case concerns three factory "surveys" conducted by the I.N.S. in order to find and apprehend illegal aliens. Search warrants were obtained for two of the surveys; in the third survey, the I.N.S. entered the factory with the owner's consent. The procedure used by the I.N.S. went beyond questioning or light conversation. In each of the surveys, a surprise method of operation was used and a number of agents were stationed at each of the factory exits.

REASONING

In determining whether a Fourth Amendment seizure had occurred, the Ninth Circuit followed the test set out in U.S. v. Mendenhall, 446 U.S. 544(1980), and followed in U.S. v. Anderson, 663 F.2d 934(9th Cir. 1981). According to this test, a person has been seized within the meaning of the Fourth Amendment if, in view of all the circumstances, a reasonable person would have believed that he or she was not free to leave. With the significant and threatening invasion of the privacy and security interests of the workers in this case, a reasonable worker would have believed that he or she was not free to leave, even before individual questioning

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began.

The court also determined that the factory questioning violated the Fourth Amendment because it was not based on individualized, articulable suspicion, a test required by case precedent to guarantee individual freedom from arbitrary government intrusions. The court cited U.S.v.Brignoni-Ponce, 422 U.S. 873, 884 (1975): "Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." The court found further support for its decision in U.S. v. Heredia-Castillo, 616 F.2d 1147 (9th Cir. 1980). There, after finding that a vehicle was properly stopped based on the agents' reasonable suspicion that the driver might be an illegal alien, the court required an independent ground to suspect the passenger of being an alien.

Warrantless Search of House Known as Smuggling Center Upheld

U.S. v. Briones-Garza, 680 F.2d 417 (5th Cir. 1982).

HOLDING

A warrantless search of a house does not violate the Fourth Amendment when an alien lives in a house known to be used for smuggling aliens into the U.S. An alien has no reasonable expectation of privacy in such a residence.

FACTS

Defendant Briones-Garza, an illegal alien, resided in a Houston "drop house" used as a station for smuggling Mexicans into the U.S. In a proceeding on drug charges, the defendant sought to suppress the evidence seized during a warrantless search of the drop house where he had lived for three weeks.

REASONING

The court noted that defendant must prove that he has a legitimate expectation of privacy in his place of residence. See, e.g., U.S. v. Haydel, 649 F.2d 1152 (5th Cir. 1981); Rakas v. Illinois, 439 U.S. 128 (1978). The court in Haydel considered certain factors in determining whether there was a legitimate expectation of privacy. These factors included:

> ...whether the defendant has a property or possessory interest in the thing seized or the place searched; whether he has the right to exclude others from that place; whether he has exhibited a subjective expectation that it would remain free from governmental invasion; whether he took normal precautions to maintain the privacy; and whether he was legitimately on the premises. 649 F.2d at 1155.

The court in Rakas v. Illinois determined that "there comes a point when use of an area is shared with so many that one

simply cannot reasonable expect seclusion." 439 U.S. at 164.

The Fifth Circuit in the instant case applied these standards to uphold the District Court's decision. It concluded that, although the alien was legitimately on the premises, defendant lacked a reasonable expectation of privacy in the drop house. Defendant shared the drop house with a transient group of approximately fifty people. Defendant testified that he did not have a key and that he could not prevent people from coming into the house. Given the nature of the defendant's house, the Fifth Circuit upheld the District Court's determination and found no need to consider whether the search may have been illegal regarding others in the house.

Residence Requirement for Waiver of Deportation Clarified

Tim Lok v. I.N.S., 681 F.2d 107(2d Cir. 1982).

HOLDING

An overstayed crewman has not satisfied the seven-year lawful domicile requirement needed to obtain a waiver of deportation under I.N.A. § 212(c) where lawful intent to remain in the U.S. was not established at the beginning of the claimed seven-year period.

FACTS

Lok, a Chinese nonimmigrant crewman, was admitted to the U.S. on July 27, 1959. He overstayed his permitted time and later married a U.S. citizen on February 23, 1968. Lok received an immigrant visa and was readmitted to the U.S. as a permanent resident in December 1971. Later, the petitioner plead guilty to a drug-related offense and was sentenced to five years in prison on January 3, 1973. Deportation proceedings were initiated and, in April 1975, a deportation hearing was held, at which time Lok applied for a waiver under § 212(c) on the basis of having satisfied the seven-year lawful domicile requirement. The immigration judge determined that seven years had not elapsed since 1971, the year in which he had been lawfully admitted for permanent residence. Lok's waiver application was denied.

PROCEEDINGS BELOW

In the first appeal, the Board held that Lok did not meet the requirement of "lawful unrelinquished domicile" because he had not been a permanent resident for seven consecutive years. Accordingly, the Board denied Lok's application for a § 212(c) waiver of deportation. The Court of Appeals for the Second Circuit reversed the Board, holding that "lawful domicile" did not require permanent residence status. The Court of Appeals remanded to the B.I.A., which again denied Lok's § 212(c) application.

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REASONING

The Court of Appeals for the Second Circuit upheld the B.I.A.'s decision on remand on the grounds that Lok should have established a lawful intent to remain in the U.S. if he wished to establish a domicile. Lok's lawful domicile did not begin until he was admitted as a permanent resident in 1971; the fact of his marriage in 1968 to a U.S. citizen did not establish lawful domicile any earlier than 1971. His lawful domicile ended when he was found deportable in May 1975. Thus, the waiver requirement of seven years of lawful domicile was not met.

DISTRICT COURT DECISIONS

Order to Release Haitians Detained by Invalid Regulation

Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. June 18, 1982).

HOLDING

Because defendants did not follow the proper procedures of the Administrative Procedure Act (A.P.A.), the rule implementing the new I.N.S. detention policy is null and void. Defendants failed to provide interested persons with notice and an opportunity to comment thirty days prior to the implementation of the rule. Accordingly, plaintiffs under I.N.S. detention are entitled to release on parole pending a determination of their claims for admission.

FACTS

The plaintiffs are the Haitian Refugee Center, nine named individuals on behalf of themselves, and all others similarly situated to the named plaintiffs. The class certified by the court consists of "all Haitian aliens who have arrived in the Southern District of Florida on or after May 20, 1981, who are applying for entry into the U.S. and also are presently in detention pending exclusion proceedings at various I.N.S. detention facilities, for whom an order of exclusion has not been entered and who are either unrepresented by counsel or represented by pro bono counsel." Id. at 984. The defendants are the Commissioner of the I.N.S., the District Director, and the Attorney General.

REASONING

Plaintiffs asserted a two-prong argument against the government's detention policy for excludable aliens. First, plaintiffs argued that, before the detention policy was promulgated, they were entitled under the A.P.A., 5 U.S.C. § 553, to notice and an opportunity to comment. Because the I.N.S. did not follow the proper A.P.A. procedure, plaintiffs

claimed their detention was unlawful. Second, plaintiffs argued that the detention policy was discriminatory on its face because only Haitians came within the policy. Alternatively, it was argued that, if the policy were to apply to all excludable aliens, it was being applied disproportionately to Haitians. Plaintiffs asserted that this discrimination violated the Equal Protection guarantees of the Fifth Amendment and also the United Nations Convention and Protocol Relating to the Status of Refugees. See 19 UST 6260 T.I.A.S. No. 6577 and 19 UST 6223, T.I.A.S. No. 6557. Id. at 984. Plaintiffs claimed that they should not be detained because of their race and/or national origin but should be paroled into the community pending a determination of their admissibility based on their claims for political asylum.

In addressing the plaintiffs' discrimination claim, the court reviewed the record and the historical background of the case. It determined that plaintiffs did not establish by a preponderance of the evidence that defendants intended to discriminate against plaintiffs because of their race or national origin. The court noted that, in order to establish a claim of discrimination under the Equal Protection clause, plaintiffs must show that defendants intentionally or purposefully discriminated against them. In addition, plaintiffs must show that discriminatory purpose was a "motivating factor in the decision." Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 265-66 (1976).

Upon reviewing the historical background, the court concluded the Haitians were detained because they were excludable aliens unable to establish a prima facie claim for admission. The court accepted the State Department's criteria submitted by defendants in support of their position that a prima facie case of asylum entitling plaintiffs to release on parole is not established merely from the fact that a Haitian national has left his or her homeland. The evidence presented must include a well-founded fear of persecution upon return to Haiti. The court noted in addition that non-Haitians were also detained pursuant to this policy.

In considering the plaintiffs' claim under the A.P.A., the court examined the policy reasons for the notice and comment rulemaking procedure. It noted that the purpose of the procedure was "to assure fairness and mature consideration of rules of general application." 544 F. Supp. at 1003. In addition, the court recognized the need for input from outside the agency before rules which have a substantial impact on the regulated parties are promulgated.

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LEGISLATIVE ACTIVITY

STATUS REPORT ON SIMPSON/MAZZOLI IMMIGRATION REFORM BILL

Since its introduction eight months ago, the Immigration Reform and Control Act of 1982 has made its way through passage in the Senate and currently awaits consideration on the House floor. The principal sponsors of the Act, Senator Alan Simpson, R-Wyoming and Representative Romano Mazzoli, D-Kentucky, respectively introduced S. 2222 and its companion bill H.R. 5872 (now H.R. 6514) in their separate chambers on March 17, 1982. For a textual summary of the bill as introduced in both chambers, see G.I.M.R. Feb.-March 1982 at 36-47. The primary reforms contemplated by Simpson and Mazzoli are a legalization program for undocumented aliens, a temporary work program, employer sanctions, worker identification cards and inclusion of refugees in the numerical allotment of annual immigration admissions.

IN THE SENATE

S. 2222 passed the Senate on August 17, 1982 by a vote of 80 to 19 with one abstention. The bill had progressed expeditiously through the Senate. S.2222 was ordered reported to the Senate chamber for floor action by the full Judiciary Committee on May 27, 1982. The report filed by the Judiciary Committee on June 30, 1982 included the following amendments:

1) Introduced by Senator Kennedy to move the cutoff date for legalization from January 1, 1980 to January 1, 1982.

2) Introduced by Senator Kennedy to delete the provision authorizing the Attorney General to enter into cooperative agreements with state and local law enforcement agencies.

3) Introduced by Senator Byrd to change the standard for granting H-2 labor certifications.

4) Introduced by Senator Simpson to modify the amendment of Senator Byrd retaining the current law with respect to the adverse effect wage rate.

5) Introduced by Senator Grassley to impose time limitations on application for judicial review of administrative decisions.

6) Introduced by Senator Grassley to preempt state and local laws relating to the admissibility of nonimmigrant workers.

7) Introduced by Senator Kennedy to clarify when H-2

labor certifications must be denied during a strike or labor dispute.

8) Introduced by Senator DeConcini to allow more time to complete asylum applications.

9) Introduced by Senator DeConcini to provide for a de novo administrative hearing if labor certification is denied.

10) Introduced by Senator Metzenbaum to increase the time for appeal from a deportation order.

11) Introduced by Senator Mathias to add certain retired employees of international organizations to the list of G-4 visa holders granted "special immigrant" status.

Among the amendments defeated by the Judiciary Committee were the following amendments:

1) Introduced by Senator Grassley to deny legalization to permanent resident status until a system to verify employment eligibility is implemented and to lengthen the minimum residence period.

2) Introduced by Senator Kennedy to provide for a class action type of judicial review in asylum cases.

3) Introduced by Senator Metzenbaum to provide for discretionary judicial review in asylum cases.

4) Introduced by Senator DeConcini to require the President to submit a report on implementation of employer sanctions and on whether discrimination or unnecessary regulatory burdens have resulted.

Hearings on the Senate floor began on August 12, 1982 and continued until a final vote was taken on August 17, 1982. During twenty hours of floor debate, the Senate considered 31 amendments. Fourteen of them were adopted, 13 were rejected, 3 were withdrawn and 1 was tabled. See 128 Cong. Rec. 110, S10307-10361 (daily ed. August 12, 1982); 128 Cong. Rec. 111, S10426-10507 (daily ed. August 13, 1982); 128 Cong. Rec. 113, S10609-10636 (daily ed. August 17, 1982). The following 14 amendments were incorporated into the bill:

1) Amendment No. 1226 introduced by Senator Helms revises the legalization program embodied in the Judiciary Committee's version of the bill by granting permanent residence status to illegal immigrants who entered before January 1, 1977 and temporary resident status to those who entered prior to January 1, 1980. Temporary residents would be ineligible for all Federal assistance programs such as AFDC, food stamps, and medicaid. Permanent residents would be ineligible for food stamps for the first three years of residence.

During debate on Amendment No. 1226, Senator Kennedy noted that the effect of the amendment would undermine one of the major goals Senator Simpson intended to achieve through the legalization program. Simpson's opening remarks identified this goal as the elimination of the illegal subclass of persons now present in the U.S. which depresses wages and working conditions and limits the participation of those persons in American

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society. Senator Helms' amendment leaves unchanged the illegal status of those who entered after January 1, 1980, and fails to eliminate a permanent subclass of persons subject to discrimination and exploitation. Other goals that Simpson noted for the legalization program included avoiding the inefficient use of the limited enforcement resources of the I.N.S., and allowing employees dependent on the labor pool of illegal aliens to lawfully draw on this source.

2) Amendment No. 1228 introduced by Senator Tower requires the Attorney General to consult with certain congressional committees and voluntary agencies before prescribing certain regulations regarding the legalization program. The Attorney General is vested with discretionary authority to implement the legalization program. Amendment No. 1228 does not circumscribe this authority. It only requires consultation regarding the establishment of evidence and procedure to determine date of entry into the U.S. and the establishment of a definition of the phrase "resided continuously."

3) Amendment No. 1229 introduced by Senator Armstrong expresses the desire that the federal immigration laws should be enforced vigorously while simultaneously ensuring that the constitutional rights of United States citizens and aliens are protected. Senator Armstrong's amendment reflects his concern that projects such as the I.N.S. "Operation Jobs" are conducted with due regard for the civil rights of all persons.

4) Amendment No. 1230 introduced by Senator Dole broadens the scope of Presidential authority to establish a personal identification system to facilitate an employer's determination of work eligibility. It allows the President to examine existing federal and state identification systems to evaluate their suitability and to make recommendations to Congress regarding civil and criminal sanctions of abuse of information in the system.

5) Amendment No. 1231 introduced by Senator Moynihan requires the Social Security Administration to print social security cards on banknote paper instead of pasteboard as a means of insuring that new or replacement cards will be tamperproof.

6) Amendment No. 1232 introduced by Senators Pressler and Inouye involves slight modifications to the visa waiver program already authorized in the original version of S.2222. The program eliminates the visa requirement for certain countries with a traditionally low visa application refusal rate and is intended to eliminate barriers to travel in the United States by business people and tourists.

7) Amendment No. 1234 introduced by Senator Kennedy requires the General Accounting Office (G.A.O.) and the Equal Employment Opportunity Commission (E.E.O.C.) to undertake independent reviews of the employer sanctions program in order to determine whether

it has resulted in discriminatory practices or has created an unnecessary regulatory burden.

8) Amendment No. 1237 introduced by Senator Nickles clarifies the process for determining whether an employer violation is a multiple or single one for the purpose of imposing sanctions for hiring undocumented workers. Instead of penalizing a single corporate entity, it establishes a separate unit of liability for each unit of a multidivision or multiplant entity, placing responsibility at the local level where the hiring actually occurs.

9) Amendment No. 1239 introduced by Senator Simpson contain three changes passed together as one amendment. The first change requires reports on 1) discrimination against minority citizens and residents and on 2) recordkeeping burdens on employees to be issued periodically every 18 months instead of once after 36 months. The second change reinstitutes the policy of maintaining the advisory status of labor certifications issued by the Department of Labor for use by the Attorney General. Finally, the third change provides additional safeguards for fifth preference persons with approved petitions and for second preference sons and daughters with approved petitions.

10) Amendment No. 1999 introduced by Senator Kennedy provides judicial review through a habeas corpus proceeding to "any alien held in custody pursuant to an order of deportation on the grounds of exclusion." See Cong. Rec. 111, S10487 (daily ed. Aug. 13, 1982).

11) Amendment No. 1241 introduced by Senator Kennedy protects the privacy of asylum applicants by exempting asylum records and documents from disclosure unless the applicant so requests.

12) Amendment No. 1245 introduced by Senator Simpson rescinds the provision which prevents alien professionals holding doctoral degrees or aliens of exceptional ability from establishing U.S. residency unless they have fulfilled a two year foreign residency requirement.

13) Amendment No. 2019 introduced by Senator Hayakawa expresses the sense of the Congress that English be declared the official language of the U.S.

14) Amendment No. 1236 introduced by Senator Grassley removes the provision in the current version authorizing the President and the Judiciary Committees of both houses of Congress to veto the identification document system to be established within three years as part of the employer sanctions section of the bill.

IN THE HOUSE OF REPRESENTATIVES

The Simpson/Mazzoli bill (H.R. 6514) was reported out of the House Judiciary Committee on September 28, 1982. The bill was referred for consideration to the following committees of the House: Energy, Commerce, Ways and Means,

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Education, Labor, and Agriculture. According to a spokesperson for the House Subcommittee on Immigration and International Law, reports from these committees are due by November 30, 1982. The subcommittee on Immigration and International Law expects the bill to be considered by the full House in early December before the Christmas recess and the close of the second session of the 97th Congress.

Even if the full House passes H.R. 6514, Simpson/Mazzoli is not necessarily ready for passage during the 97th Congress. There are significant differences between the House and Senate versions of the bill. Should the full House pass the committee bill, Simpson/Mazzoli would then have to go to conference committee for resolution of the differences in the Senate and House versions.

MAJOR DIFFERENCES BETWEEN HOUSE AND SENATE BILLS

The following summary contrasts the major differences between the bill passed by the Senate and the bill reported out of the House Judiciary Committee.

ON THE GRANTING OF ASYLUM:

Both versions of the bill require asylum applicants to file an application within 14 days of the institution of exclusion or deportation proceedings. Those aliens evidencing a desire to apply for asylum would be entitled to a hearing before an immigration judge. The Senate version bars judicial review of asylum and exclusion cases, except by way of a habeas corpus proceeding. The House Judiciary version, however, provides for judicial review in the U.S. Courts of Appeals.

In addition, the Senate bill requires that asylum hearings be closed to the public unless the applicant requests that the hearing be open. The House allows for open asylum hearings unless the applicant requests that the hearing be closed.

ON EMPLOYER SANCTIONS AND WORKER ELIGIBILITY IDENTIFICATION:

The House version states that nothing in the bill shall be construed to authorize, directly or indirectly, the issuance or use of a national identification card system. The Senate version specifically authorizes the development of a permanent national system of employment eligibility identification. For the purpose of carrying out this system, the Senate authorizes $10,000,000 to be appropriated for fiscal year 1983.

If an employer violates the ban on employment of those ineligible to work, the Senate version requires a $1,000 fine upon the first offense. The House version allows for a warning citation to be issued upon the initial offense; before issuing any citation or imposing a fine, a hearing must be held respecting the violation.

ON AMERASIAN CHILDREN:

The House bill facilitates the entry into the U.S. of unmarried children under the age of 21 who were born in Korea, Vietnam, Kampuchea, Laos or Thailand. The child must have been fathered by a citizen of the U.S. who (at the time

of the alien's conception) was serving in the Armed Forces of the United States. The Senate version of the bill does not have a similar section.

These areas of conflict between H.R. 6514 and S. 2222 reflect current issues in immigration law on which the House and Senate have voiced disagreement. The opinions of various immigration experts and government officials on these controversial issues of the bill are presented below.

IMMIGRATION REFORM IN 1982: OPINIONS FROM THE PUBLIC AND PRIVATE SECTORS

EMPLOYER SANCTIONS

Mexico-U.S. Border Program, American Friends Senate Commitee:

The perception that immigrants take away jobs from minorities and women at a time of high unemployment is a legitimate concern among the general public. There is only vague information on the actual net effect of displacement and economic input of immigrants, legal and illegal, in the short and long run. The immediate impact of family reunification provisions may strain local agencies. There is an immediate cost to states and counties that receive immigrants in large numbers.

"The Simpson/Mazzoli Bill," Newsletter, Spring 1982, Mexico-U.S. Border Program, American Friends Service Committee, at 19.

Amit Pandya, National Center for Immigrant's Rights:

Penalties against employers who hire undocumented persons will serve to intensify the fear and exploitability of those who remain undocumented. Since no law can be comprehensively enforced, these will take employment in what will now become a fully "underground" economy, and will be subject to further exploitation, particularly since the projected costs of employers fines will be recovered from the worker's wages.

Pandya, "The Immigration Reform and Control Act, and Amendments Effected at Senate Subcommittee Mark-Up," id. at 20.

Mexican Legal Defense Fund:

It is widely accepted that employer sanctions, as they have been proposed in the Simpson/Mazzoli Immigration Bill (H.R. 6514), will have a discriminatory effect on Hispanic

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and other "foreign looking" job applicants. Even Senator Simpson has acknowledged this in his statement. "Hispanics have the most to lose by employer sanctions." We fully agree with this statement and stand in opposition to the adoption of employer sanctions as a method of "controlling" undocumented immigration.

"MALDEF Position on Employer Sanctions," Mexican American Legal Defense Fund, July 28, 1982.

Lane Kirkland, President, AFL/CIO:

"These millions of frightened, docile, illegal workers, prey to unscrupulous employers and subject to constant fear of discovery, constitute a threat to minorities, women and unemployed workers who are American citizens or legal aliens who are seeking their own opportunities for a better life."

From the pamphlet "Illegal Immigration," The Federation of Americans for Immigration Reform.

Federation of Americans for Immigration Reform:

There are over 10 million, unemployed men and women in the United States. It isn't right to make them compete for scarce jobs with workers who are here against the law.

Some employers want a cheap, docile workforce. They claim that American workers won't work hard or take dirty jobs, that illegal aliens take only jobs Americans won't do. This just isn't true.

Americans will do hard, dirty jobs, <u>if they're treated fairly and paid a decent wage</u>. In every job category in this country, the majority of workers are Americans.

From the pamphlet "Illegal Immigration," The Federation of Americans for Immigration Reform.

The Wall Street Journal:

The ideal [of the Immigration Reform and Control Act of 1982] is to shift onto businesses the burden of enforcing our immigration laws. The immigration and Naturalization Service hasn't been very effective in policing U.S. borders... So it is argued, the only way to stop illegal immigrants is to make employers responsible for denying them jobs... Even with the penalties....many businesses ...will still have an economic incentive to hire illegal aliens. Perhaps the major reason is tha these are businesses with high worker turnover where bosses must hire people instantly.

A nation that prides itself on the rule of law can hardly be comfortable when millions of people are breaking these rules. But employer sanctions will not remove the incentives for illegal immigration. Even if they reduce the

flow somewhat, the disruption they will cause in small businesses may make the cure worse than the disease.

"Employers as Cops," The Wall Street Journal, Thursday, August 12, 1982.

Antonia Hernandez, Associate Counsel, Mexican American Legal Defense Fund:

"The purpose of the [legalization] program--to give these individuals a deserved and legitimate place in our society--has been undermined. We are also deeply troubled by the outright denial of federal benefits imposed for between three and six years, even though these individuals must nevertheless pay federal taxes. Moreover, the rollback of the dates is unfortunate and counterproductive. The people who arrived here after January 1, 1980, and who will no doubt continue to work, live, and pay taxes here will be denied even the most fundamental protections from exploitation, abuse and basic health care and emergency services."

From letter written by Antonia Hernandez, Associate Counsel for MALDEF, to Peter Rodino, Chairman of the House Judiciary Committee; August 17, 1982.

Amit Pandya, National Center for Immigrants' Rights:

"Only those persons would be eligible for legalization who had been here illegally since the specified dates. This would exclude from legalization Silva letter holders, who were present in the U.S. under legal authority."

Pandya, National Center for Immigrants' Rights, Washington, D.C., Mexico/U.S. Border Program, American Friends Service Committee.

Rose Matsui Ochi, Deputy Mayor of Los Angeles, Member of the U.S. Select Commision on Immigration and Refugee Policy:

The recommended limited amnesty for undocumented workers is a fraud...There is no evidence that illegal immigration constitutes a such a national danger to the American people that there is need for the kind of repressive measures presented here.

Acosta, "Undocumented Immigrants," Boletin Informativo, Spring 1982, El Centro de Informacion para Asuntos Migratorios y Fronterizos del Comite de Servicios de los Amigos, at 15.

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MALDEF Position on Legalization/Amnesty:

In order to accomplish the stated goal of bringing the majority of undocumented wokers into the mainstream of society, a legalizatioin program must contain the following elements. (1) a cut-off date of January 1, 1982. All aliens who have continuously resided in the country since January 1, 1982 should be eligible for legalization. (2) All aliens eligible for legalization should be granted permanent resident status immediately. We oppose the creation of a temporary status. (3) All legalized aliens should be granted the full rights and privileges accorded other legal resident aliens under current law, and (4) local and state governments should be provided impact aid pursuant to an appropriate formula, to assure that the legalization program does not unfairly burden state and local taxpayers.

"MALDEF Position on Legalization/Amnesty", July 28, 1982, Mexican American Legal Defense Fund, at 1.

III. EXCLUSION, ASYLUM AND JUDICIAL REVIEW

Amit Pandya, National Center for Immigrant's Rights:

Regardless of the desire to control immigration, there can be no justification for returning persons who fear persecution without a full and fair consideration of their eligibility for asylum.

U.S. Law and international treaties which we have signed forbid us to return a person to a country where he/she fears persecution....

Most disturbing is the provision which would allow an immigration officer to immediately turn back an alien who "has not applied for asylum." Since many refugees who have a genuine fear of persecution are not informed about their right to apply for asylum or how precisely to do so, this will mean their immediate deportation, without a court, or even an administrative review of whether they adequately were informed of their rights, or qualified for asylum....

Most seriously, the Simpson/Mazzoli bill would also eliminate challenges in federal court on asylum matters, thereby giving the green light to denials of asylum and due process regardless of the persecution faced by the applicant. The bill would preserve the constitutional right to habeas corpus. This would prevent class-wide challenges to pattern and practice instances of administrative abuse, and violations of any kind of statutes or treaties.

Pandya, "The Immigration Reform and Control Act, and Amendments Effected at Senate Subcommittee Mark-Up," Newsletter, Spring 1982, Mexico-US Border Program, American Friends Service Committee, at 23.

Antonia Hernandez, Associate Counsel for MALDEF: "There are some concerns that MALDEF wishes to convey to the Joint Committee...because of problems encountered by Salvadorians and Haitians seeking political asylum.

1. MALDEF is troubled by the summary exclusion process.
2. Time constraints on the filing of asylum claim are unrealistic.
3. The proposed legislation completely abolishes the right of judicial review on all final orders relating to asylum claims. This recommendation raises most serious concerns.
4. The time limit on filing for judicial review is unreasonable and unrealistic.

The Immigration Reform Control Act of 1982: Hearing on H.R. 5872 (S. 2222) Before the Subcomm. on Immigration, Refugees and International Law of the House Comm. on the Judiciary and the Subcomm. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary, 97th Cong., 2d. Sess. 91 (1982)(Statement of Antonia Hernandez, Associate Counsel, MALDEF).

Federation of Americans for Immigration Reform:

"It would be wonderful if we could accept unlimited numbers of immigrants as we did when America was in the covered wagon age. Unfortunately, immigration policies that helped settle an empty continent are not appropriate for today. Our economic problems have many causes, but no realistic solution can ignore the impact of immigration."

From pamphlet "Immigration Reform-The Time Has Come," Federation of Americans for Immigration Reform, Washington, D.C.

IV. EMERGENCY POWERS OF THE PRESIDENT

Thomas Enders, Assistant Secretary of State:

"Castro and the Cuban people must be in no doubt or uncertainty about the nature of our response to a new Mariel. If they believe we are unprepared to handle an illegal immigration emergency; if they believe we will waver between attempting to stop the migration and welcoming it; if they believe we will in the end welcome the arrivals and resettle them in American communities, then the temptation to deal us another blow will be very great."

"Emergency Powers of the President: Hearings on S. 1765

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Before the Subcomm. on Immigration, Refugees and International Law of the Senate Comm. on the Judiciary," 97th Cong., 2d. Sess. (1982)(Statement of Assistant Secretary of State Thomas Enders before the Senate Coomm. on the Judiciary as quoted by U.S. Senator Lawton Chiles).

Lawton Chiles, U.S. Senator:

S. 2222 carefully sets standards by which the President may declare an immigration emergency. It rightfully requires prompt and reasonable notice to the congress once such an emergency is declared. It mandates a timely sunset of the declaration. It gives a flexibility in those Federal facilities and agencies to be used as need be for unforeseeable circumstances... It acknowledges due process rights and minimizes as much as possible the devastating effects that governmental interference can have on innocent people going about their everyday business....

As I understand it, the bill allows the President to renew certain powers which are triggered by his declaration that an immigration emergency exists without any sort of notice to the Congress. This blanket extension of the broad authorities for what could be an indefinite period of time, without any sort of review by the Congress, could present problems. For instance, the draft bill allows for all environmental and historical preservation laws to be waived during a declared immigration crisis. This is consistent with the need to make sure that emergency efforts during a crisis are not delayed. However, we need to make it clear that such waivers would be related to the need to respond to the special conditions created by the crisis. Notice to Congress is required by the bill each time the President extends a declaration of emergency. So too should notice be required when the President extends exemptions to environmental protection laws. Such notice will guard against abuse by allowing timely inquiries and intervention by Congress.

"Emergency Powers of the President: Hearings on S. 1765 Befiore the Subcomm. on Immigration, Refugees and International Law of the Senate Comm. on the Judiciary," 97th Cong., 2d Sess.(1982)(Statement of U.S. Senator Lawton Chiles).

EMERGENCY POWERS OF THE PRESIDENT: A HEARING ON THE IMMIGRATION EMERGENCY ACT

In response to such immigration crises as the Mariel boat lift of 1980 and the possibility of another mass influx of refugees, Senator Strom Thurmond (R-S.C.), chairman of the Senate Judiciary Committee, introduced S. 1765, the "Immigration Emergency Act," on October 22, 1981. The bill was referred to the Subcommittee on Immigration and Refugee Policy on November 2, 1982. A hearing on the bill was held before the Subcommittee on September 30, 1982. As of press time, the bill was still pending before the Senate Subcommittee. Senator Lawton Chiles (D-Fla.), a strong supporter of the bill, stated that an immigration emergency act was originally proposed as an amendment to the Simpson/Mazzoli bill (Immigration Reform and Control Act of 1982) but, in order to expedite passage of the Simpson bill, the Immigration Emergency Act was introduced as a separate piece of legislation also amending the Immigration and Nationality Act.

In summary, the bill provides:

1) The president may declare an immigration emergency with respect to any designated foreign country if the President, in his judgment, determines that:
   a) a substantial number of aliens who lack documents authorizing entry to the U.S. appear to be ready to embark or have already embarked for the U.S.;
   b) present resources of the I.N.S. would be inadequate to respond to the situation; and
   c) the influx endangers the U.S. or any U.S. community.

2) In the event of such a declaration, the President may invoke the following powers for a period of 120 days with provision for extensions:
   a) preclusion of any class of vehicles from traveling to a particular foreign country;
   b) prohibition of such vehicles from transporting aliens regardless of destination;
   c) prevention of the entry of aliens who lack documents authorizing their entry by:
      i) precluding entry into the U.S. territorial sea or airspace of certain categories of vessels, and
      ii) returning such aliens to the country of departure.
   d) exemption of State and Federal agencies from applicable environmental regulations and requirements.

3) Methods of enforcement of the Presidential orders

include the following:

a) a violation of the ban on travel will be subject to a civil fine of up to $10,000 for each violation;

b) a knowing violation of the ban on travel will be a felony subject to a fine of up to $50,000 or five years in prison;

c) the president may authorize the Army, Navy, Air Force, and State and local Agencies to aid the Attorney General in enforcing the Immigration and Naturalization Act.

In a hearing held before the Senate Subcommittee on Immigration and Refugee Policy, Alan Nelson, Commissioner of the I.N.S., voiced strong support for the bill. Senator Lawton Chiles (D-Fla.) also strongly supports the bill, urging that the Federal government must respond to an immigration crisis which threatens the security of a local community. The League of United Latin American Citizens (LULAC) and other such organizations are concerned with the vagueness of the criteria upon which the President is to base a declaration of emergency, and the indefinite powers the bill bestows upon the president without Congressional review. During the September 30th hearing on the bill, Senator Simpson, presiding, responded that this area of concern in the legislation would be addressed.

UPDATE ON NEW AND PENDING BILLS

EDUCATION AND WELFARE

H.R. 6232 Gunderson (R-Wis.)

A bill to amend the I.N.A. to require that cash and medical assistance be made available for the full 36 month period to refugees under 25 years of age while attending school.

Action: Referred to the Subcommittee on Immigration, Refugees, and International Law on May 4, 1982.

IMMIGRATION AND NATURALIZATION SERVICE

H.R. 6506 Dannameyer (R-Ca.)

A bill to amend the I.N.A to require consent or a warrant before entering farm property.

Action: Referred to the Subcommittee on Immigration, Refugees, and International Law on June 2, 1982; report requested from the Department of Justice on June 10, 1982.

LABOR

H.R. 6357 Daniel (D-Va.)

A bill to amend the I.N.A. by repealing the authority to establish a guest-worker wage rate which is higher than the top Federal or State minimum wage rate or the prevailing wage rate.

Action: Referred to the Subcommittee on Immigration, Refugees, and International Law on May 17, 1982; report requested from the Department of Labor on May 17, 1982; report requested from the Department of Labor on June 7, 1982.

PUBLIC LAWS

Amerasian Children Given First Visa Preference

Pub. L. No. 97-359, formerly 4327, was signed into law on October 22, 1982. The law amends the I.N.A. to give first preference to certain aliens who were fathered by U.S. servicemen after 1950 in Taiwan, Vietnam, Laos, Japan, Thailand or the Phillippines. For this preference to be awarded, a five-year financial support guarantee must be signed by a U.S. citizen or permanent resident sponsor.

Expansion of Documents to be Used for Proof of Citizenship

Pub. L. No. 97-241 became law on August 24, 1982. With the enactment of this legislation, unexpired full validity passports and consular reports of birth are accorded the same legal status and weight as certificates of naturalization or citizenship for all purposes for which citizenship must be proven. However, expired passports should continue to be relied upon as evidence, not proof, of citizenship.

Appropriations for Refugee Resettlement through FY 1985

Pub. L. No. 97-363, enacted October 25, 1982, amends Title IV of the I.N.A. by authorizing appropriations through FY 1985 for refugee resettlement assistance. The amendment also limits certain refugee health reporting requirements.

Permanent Residency for Some Nonimmigrants in Virgin Islands

Pub. L. No. 97-271, the Virgin Islands Non-immigrant Alien Adjustment Act of 1981, became law on September 30,

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1982. It authorizes adjustment to permanent resident status for certain alien workers and their dependents in the Virgin Islands. To qualify, workers must show they legally entered the Virgin Islands as nonimmigrant laborers, have resided there for long periods, and have contributed to the development of the Virgin Islands. The Secretary of State has discretion to limit the number of second-preference immigrant visas given to such workers.

SUMMER 1982 UPDATE

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DEVELOPMENTS IN THE EXECUTIVE BRANCH

FEDERAL REGISTER MONITOR

ALIENS AND NATIONALITY

B.I.A. Authority over Oral Argument and Summary Dismissal Extended
8 C.F.R. § 3 - effective May 20, 1982.

The B.I.A. is granted discretionary authority to deny oral argument when it determines that oral argument would serve no useful purpose. Prior to this change, the right to request oral argument was vested in the appealing party.

In addition, the provisions of 8 C.F.R. § 3.1(d)(1-a) governing summary dismissal which were previously applicable only to deportation cases are now extended to all other cases.

Proposed Uniform Admission Period for Nonimmigrant Visitors
8 C.F.R. § 214 - comment period expired June 10, 1982.

In order to minimize routine processing costs and concentrate enforcement resources on more important cases, the I.N.S. proposes a uniform minimum admission period of six months for temporary visitors for pleasure applying for nonimmigrant visas to the United States.

Proposed Changes in Nonimmigrant Student Regulations
8 C.F.R. §§ 214 and 248 - comment period expired June 28, 1982.

Amendments to current INS regulations governing nonimmigrant students will concentrate on streamlining the procedural requirements leading to certification and continued I.N.S.' approval for study in the United States.

The new and revised student classifications which implement the 1981 amendments to the I.N.A. will both clarify the proposed courses of study and allow the I.N.S. effective control over the institutions which sponsor foreign students. The new M-1 classification designates those students enrolled in vocational or nonacademic institutions. The revised F-1 classification is limited to students in academic institutions or language training programs pursuing a full

course of study.

A proposed revision of the F-1 would reduce paperwork by requiring the student's school to issue the student form I-20 certifying the period of time needed to complete the course of study. A transfer to another school would require use of this same form by the transferee school. This new requirement thus eliminates intermediate correspondence with the I.N.S. and shifts some responsibility for approval to the student's school. Other proposed revisions would prohibit off-campus employment during the first year in the United States for those who remain for more than a year, but would allow a school official to authorize temporary employment for practical training under certain conditions.

Similar proposals apply to the M-1 classification. The proposed rule also provides for reclassification to and from M-1 status. In particular, permission for change of status to M-1 will be denied if the applicant seeks the revision solely in order to qualify for a subsequent change from M-1 to classification as an alien temporary worker. Also, an M-1 student may not seek F-1 classification.

New requirements to be imposed upon schools accepting foreign students include keeping records and allowing I.N.S.' access to such records, reporting registration of new F-1 and M-1 students, submitting signed statements of designated school officials that they intend to comply with INS regulations. While resulting in some incremental expense to the schools, the INS believes these requirements will ensure that the agency retains effective control of foreign students.

New Rules Governing Seizure and Forfeiture of Carriers
8 C.F.R. § 274 - Interim Rule - comment period expired June 7, 1982.

This interim rule is designed to implement the I.N.A. Amendments of 1981 (Pub. L. No. 97-116) which strengthen the I.N.S. authority to seize and forfeit conveyances as a deterrent to the smuggling of aliens into the U.S. The INS is now authorized to seize conveyances when probable cause exists to demonstrate that the conveyance was used to illegally transport aliens in violation of I.N.S. § 274 (a), 8 U.S.C. 1324(a). The 1981 amendments provide two exceptions to the forfeiture of seized conveyances are provided by the 1981 amendments: "1) Common carriers, unless the owner or person in charge was a consenting party or privy to the illegal act; and 2) conveyances unlawfully in the possession of a person other than the owner."

In addition, the I.N.S. is no longer required to pay incidental costs incurred by a successful claimant if there has been a showing of probable cause by the agency. Furthermore, any lien or third party interests need be satisfied only after the INS has deducted costs associated with the seizure.

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DEPARTMENT OF AGRICULTURE

Eligibility of Food Stamp Benefits to Aliens Restricted
7 C.F.R. §§ 271, 272, 273, 274, and 278 - effective June 1, 1982.

Revision of the Food Stamp Program through this rule is designed to reduce fraud, abuse, and program costs. Section 273.4 governs the disbursement of food stamp benefits by establishing eight categories of persons eligible to participate in the program. They include U.S. citizens and seven categories of aliens admitted in accordance with these provisions of the I.N.A.:

1) § 101(a)(15), 8 U.S.C. 1105 (a)(15) (Definition of "immigrant")
2) § 101(a)(20), 8 U.S.C. 1105 (a)(20)(Judicial Review of Exclusion and Deportation Orders)
3) § 249, 8 U.S.C. 1259 (Record of Admission for Permanent Residence)
4) § 207, 8 U.S.C. 1157 (Annual Admission of Refugees)
5) § 203(a)(7), 8 U.S.C. 1153(a)(7) (Allocation of Immigrant Visas)
6) § 208, 8 U.S.C. 1158 (Asylum Procedure)
7) § 212(d)(5), 8 U.S.C. 1182(d)(5)(Temporary Admission for Emergency Reasons)
8) § 243, 8 U.S.C. 1253 (Withholding of deportation)

All other aliens are ineligible to receive food stamp benefits. The rule distinguishes status as an ineligible alien from status as an illegal alien. Alien visitors, tourists, diplomats and students are aliens excluded from participation even though legally present in the U.S..

Determination of a household's resources for the purposes of food stamp eligibility shall include the income and resources of an ineligible alien as set forth by § 273.11 (c). The state agency shall determine eligibility of those household members whose alien status has been verified. Such determination is subject to amendment when verification of other members becomes available. Both the income and resources of verified and unverified members shall be considered in determining eligibility.

If a person is determined to be ineligible for benefits because he/she is present in violation of the I.N.A., state agencies are obligated to immediately report the person to the I.N.S.. However, the rule does not authorize state agencies to pursue efforts to obtain documentation from a household or person who indicates inability or unwillingness to provide such documentation. Such persons shall be classified as illegal aliens.

FOREIGN RELATIONS

State Department Classifies Nonimmigrant Students
22 C.F.R. § 41 - Final Rule - effective June 1, 1982.

Classification of alien students has been amended by the State Department to implement the 1981 I.N.A. amendments. Henceforth, the F-1 classification is limited to aliens pursuing a course of academic study, a program in language training, or a combination of academic courses and English instruction. The M-1 classification has been established to certify alien students at vocational or other recognized nonacademic institutions. The M-2 classification provides for the entrance of an alien spouse or minor children accompanying an M-1 student.

HOUSING AND URBAN DEVELOPMENT

Restrictions on Availability of Housing Assistance Proposed
24 C.F.R. §§ 200, 215, 235, 236 and 812 - comment period ended June 2, 1982.

According to the terms of these proposed amendments, financial assistance under the United States Housing Act of 1937, § 235 and 236 of the National Housing Act or § 101 of the Housing and Urban Development Act of 1965 will no longer be available to aliens not lawfully present in the U.S..

These legislative acts covers grant programs including housing and community development, rent subsidies, condominiums, cooperatives, low and moderate income housing, mortgage insurance, homeownership, and project rehabilitation. Aliens are ineligible for receipt of such benefits unless they fall within these provisions of the I.N.A.:

1) § 101(a)(15), 8 U.S.C. § 1105 (a)(15) (Definition of "immigrant")
2) § 101(a)(20), 8 U.S.C. § 1101(a)(20) (Lawful Admission for Permanent Residence)
3) § 249, 8 U.S.C. § 1259 (Record of Admission for Permanent Residence)
4) § 207, 8 U.S.C. § 1157 (Annual Admission of Refugees)
5) § 208, 8 U.S.C. § 1158 (Asylum Procedure)
6) § 203(a)(7), 8 U.S.C. § 1153(a)(7) (Allocation of Immigrant Visas)
7) § 212(d)(5), 8 U.S.C. § 1182(d)(5) (Temporary Admission for Emergency Reasons)
8) § 243(h), 8 U.S.C. § 1253 (h) (Withholding of Deportation).

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ADMINISTRATIVE RELEASES

I.N.S. RELEASES

Deportation and Exclusion of Polish Nationals

The Department of Justice has granted Polish nationals a six month extension of the current June 30, 1982 deferred departure date to December 31, 1982 upon a determination by the State Department that political conditions in Poland have worsened. The deferred departure date is applicable to all Polish nationals present in the U.S. as of December 23, 1981 who are unwilling to return to Poland.

Deportation and Exclusion of Ethiopian Nationals

Deportation or exclusion orders against Ethiopian nationals who were present in the United States as of June 30, 1980 and who have indicated an unwillingness to return to Ethiopia will not be enforced after July 12, 1982. Deportable or excludable aliens will be permitted to remain in the U.S. notwithstanding their eligibility for extensions of stay. Deportation or exclusion hearings which are pending shall be postponed. Deportation and exclusion hearings which have commenced shall continue to completion but judgments ordering deportation or exclusion shall not be enforced. Voluntary departure may be granted in one year increments. This policy is not applicable to Ethiopian nationals who have not demonstrated an unwillingness to return to Ethiopia, nor does it apply to Ethiopians who are residents of a third country, or who have been convicted of criminal acts in the U.S.. No special treatment has been accorded Ethiopian nationals who arrived in the U.S. after June 30, 1980.

I.N.S. Institutes One Step Processing

Many I.N.S. district offices have implemented a procedure entitled "one-step processing" for aliens seeking adjustment of status or completion of record of admission cases. The requirements of eligibility review, interview by an I.N.S. officer, and tentative approval may all be completed in one day if the alien applicant has obtained all required documentation. The required documents consist of the following:

1. Birth Certificate

2. A letter from the alien's present employer showing his or her name, job title, and salary, If unemployed, a letter and bank statement from the person responsible for the alien's support. (Indochinese refugees are are not required to provide this documentation.)
3. Written results from a completed physical examination.
4. Evidence of the alien's eligibility to apply for permanent residence. This may be in the form of one of the following:
   a. an approval notice of petition previously filed in the alien's behalf.
   b. a consular letter establishing a priority date.
   c. an I-30 petition and supporting documents.
   d. an I-40 petition and supporting documents.
   e. an I-94 card showing classification as refugee or conditional entrant (must have been physically present in the U.S. for at least one year).
   f. a notice approving political asylum (must have been physically present in the U.S. for at least one year after having been granted asylum).
5. Three identical color photographs.
6. Passport and I-94 (Arrival-Departure card)

If proper FBI clearance is obtained, the alien will be notified by mail of the decision and will receive the alien registration card through the mail.

Eligibility of Foreign Nurses Clarified

The following nonimmigrant classifications for which foreign nurses may be eligible have been clarified through the revision of I.N.S. operations instructions:

1. H-1: Professional Nurses
2. H-2: LPNs, technicians, and other non-professionals. This classification requires temporary certification from the Department of Labor.
3. H-3 Nonimmigrant trainees: No state license is required.
4. H-4 Spouses and children of those holding a valid H-1, H-2, or H-3 classification. An H-4 immigrant is not authorized to work in the U.S..

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DEPARTMENT OF JUSTICE MEMORANDUM

A press guidance memorandum issued by the State Department on May 29, 1982 by the has been circulated by the Justice Department to I.N.S. outreach centers. The memorandum reviews the State Department's consultations with Congress on the status of refugee admissions from Latin American and explains State Department efforts to implement the Congressional policy providing for admission of current and former political prisoners.

In particular, the State Department has established eligibility criteria for a group of 175 to 200 former political prisoners primarily from Spain and Costa Rica who have been imprisoned in Cuba. Each must demonstrate that he/she were 1) jailed in Cuba for a political offense, 2) they are not firmly resettled in the country of first asylum,and 3) they are otherwise admissible to the U.S.

STATE DEPARTMENT RELEASES

Validity of Certain Nonimmigrant Visas
Public Notice 803 - April 12, 1982.

Designated consular officers have discretionary authority to issue indefinite nonimmigrant visas to certain nationals of specified countries. State Department authority is now extended to include Mexican nationals who wish to enter for business purposes.

Continued Financial Assistance to Haiti is Authorized
Public Notice 808 - April 5, 1982.

The State Department has authorized continued aid to Haiti pursuant to the International Security and Development Cooperation Act of 1981. This follows a determination that Haiti 1) is cooperating with the U.S. in halting illegal immigration from Haiti, 2) has not consistently participated in human rights violations, and 3) is cooperating in implementing United States development assistance programs in Haiti.

B.I.A. INTERIM DECISIONS

DEPORTATION PROCEEDINGS

Matter of Hall, Interim Decision 2897 (BIA Feb. 4, 1982)

HOLDING
Respondent may not be granted adjustment of status to lawful permanent resident since his fundraising activities as a missionary for the Unification Church violated the unauthorized employment bar of I.N.A. § 245(c)(2), 8 U.S.C. 1255(c)(2).

DISCUSSION
Respondent is a native and citizen of Guyana who entered the U.S. as a nonimmigrant visitor. He now works in Puerto Rico as a missionary for the Unification Church performing a variety of tasks which include selling toys, jewelry, and trinkets to raise funds for the Church.

The respondent contends that the prohibition against employment not authorized by the I.N.S. (see I.N.A. § 245, 8 U.S.C. 1255) does not apply to his situation since his activities do not constitute "employment" for the purposes of the statutory provision. He argues that Congress did not intend the ban of § 245(c)(2) to apply to his missionary services, work characterized by respondent as unpaid volunteer work.

The court found, however, that though the respondent receives no fixed salary, the Church provides him with all his essential needs and some minor compensation. In addition, while the legislative history of § 245(c)(2) is unclear, there is no indication that the exclusive Congressional intent was to protect the American labor market. Other feasible goals included the enforcement of immigration laws and the discouragement of illegal migration.

The application of § 245(c)(2) would not have been challenged if the respondent's fund raising activities benefitted a non-religious organization. Nothing in the language or history of the statute indicates that the secular activities of churches are immune from this provision.

EXCLUSION PROCEEDINGS

Matter of Lin, Interim Decision 2900 (BIA May 6, 1982)

HOLDING
The B.I.A. granted the I.N.S. motion to reconsider its decision of October 6, 1981 in which it dismissed an I.N.S.

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appeal from the termination of exclusion proceedings against applicant. Petitioner who escaped from I.N.S. detention pending exclusion proceedings does not thereby "enter" the U.S. (see I.N.A. § 101(a)(13), 8 U.S.C. 1101(a)(13)) and circumvent exclusion proceedings in favor of the more stringent procedural benefits of deportation proceedings. Petitioner was judged excludable.

DISCUSSION
Petitioner was detained by the I.N.S. subject to exclusion proceedings for attempted entry by fraud or material misrepresentation and for lack of a valid immigrant visa. Petitioner escaped from I.N.S. custody and was later apprehended. The immigration judge terminated the exclusion proceedings because petitioner was deemed to have made an "entry" into the U.S.. A deportation hearing rather than an exclusion hearing was the appropriate forum for adjudicating petitioner's immigration status in these circumstances.

The I.N.S. appealed an October 6, 1981 decision in which petitioner was determined to have fulfilled the four element test prescribed in Matter of Pierre 14 I.&N. Dec. 467 (BIA 1973) for determining entry" 1) crossing into the territorial limits of the U.S.; 2) inspection and admission by an immigration officer; 3) actual and intentional evasion of inspection and 4) freedom from restraint.

However, the I.N.S. now argues that the test in Matter of Pierre was not met because the petitioner did not evade inspection but was inspected and detained subject to exclusion proceedings. This is in accord with Luk v. Rosenberg, 409 F.2d 555 (9th Cir. 1969) in which an alien was found excludable and paroled into the U.S.. The alien eluded authorities until apprehended three years later. No "entry" into the U.S. had been made under these circumstances. Submitted with these argument, the motion to reconsider was granted.

FINE PROCEEDINGS

Matter of M/V "Solemn Judge", Interim Decision 2894 (BIA Jan 21, 1982).

HOLDING
I.N.A. § 273(a) imposes strict liability on owners of conveyances who transport illegal aliens. Fines cannot be remitted unless it can be ascertained that the owner did not know and "could not have determined by the exercise of reasonable diligence that the individuals transported were aliens and that visas were required."

DISCUSSION
The owner of the carrier Solemn Judge (hereinafter "carrier") chartered his vessel for $1000 per day for the purpose of

bringing 54 Cuban nationals to the United States. Upon his return he was charged with violation of I.N.A. § 273 (a), 8 U.S.C. § 1323(a). Fines of $190,000 were imposed.

I. Liability. The carrier's owner unsuccessfully argued the defense of estoppel against the government. Courts have refused to honor this defense unless the carrier can establish that agents of the U.S. government engaged in "affirmative misconduct." No such showing was established here. Since neither the U.S. Coast Guard or Customs Services was under a legal duty to warn the owner of § 273 (a), legal clearance of the vessel for passage to Cuba does not establish affirmative misconduct. In addition, the owner's contention that the selective enforcement of the law invalidated these proceedings has no merit.

II. Remission of Fines. Remission of the statutorily-imposed fines turns upon whether the owner's exercise of reasonable diligence would have uncovered the passenger's undocumented status. What constitutes "reasonable diligence" varies with the circumstances of each case. In Matter of M/V "Emma", I.&N. 2862 (BIA 1981), the B.I.A. ruled that under the circumstances of the Freedom Flotilla of 1980, there could be no finding of reasonable diligence unless there was a reasonable effort to ascertain the requirements of the law before departure for Cuba and a judgment of reasonable prudence was entered into a decision to go to Cuba. The owner argues that he made a reasonable effort to ascertain the legal requirements from the Customs Service. Since he was forced to bring 138 of 190 passengers to the U.S. by the Cuban authorities, the owner presents the argument that he was under duress and could not have acted otherwise. A similar "duress" argument was rejected in Matter of M/V Emma. The appeal was dismissed.

VISA PROCEEDINGS

Matter of Hann, Interim Decision 2895 (BIA Feb. 3, 1982)

HOLDING
The beneficiary of a petition for immediate relative status was disqualified from consideration since her marriage was invalid at the time contracted.

DISCUSSION
Petitioner, a native and citizen of the U.S. residing in Japan, married a citizen of Japan and filed a visa petition in her behalf to obtain immediate relative status as the spouse of a U.S. citizen. He presented evidence demonstrating that he had been validly divorced in proceedings in the Dominican Republic.

A nonresident may lawfully obtain a divorce in the Dominican Republic. Petitioner's divorce however, did not become effective until February 9, 1980, fifteen days after his marriage to beneficiary. Prohibitions against bigamous

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marriage thereby rendered his marriage to beneficiary invalid. The petition was denied.

Matter of Sauceda, Interim Decision 2896 (BIA Feb. 4, 1982)

HOLDING
Petitioner must be denied a visa for beneficiary seeking immediate relative status as an adopted child because the adoption did not conform with the provisions of the Civil Code regulating adoption in Mexico.

DISCUSSION
Petitioner's son was adopted in the Mexican state of Tamaulipas according to the provisions of a civil code which allows for adoption only by those who have no direct natural descendants. Since petitioner has two natural children of his own, he was not eligible to adopt beneficiary as his son and his petition was denied.

In a motion to reconsider that denial, petitioner argues that current trends in Mexican civil law support abolition of the "no direct descendants" requirement, but he has not presented evidence that the state of Tamaulipas supports this trend. In addition, Matter of Espinoza, I.&N. 199 (BIA 1977) does not support a statutory presumption of validity. Neither does this case come within the ruling of Mila v. District Director, 494 F.Supp. 998 (D.Utah 1980), recognizing customary adoptions, since the adoption in issue was effected through statute and not through custom. The Texas doctrine of adoption by estoppel does not apply to Mexican adoptions. Accordingly, the motion was denied.

Matter of Richard, Interim Decision 2898 (BIA Feb. 9, 1982)

HOLDING
Beneficiary, a native and citizen of Haiti, argues that he should be deemed a legitimate child for immigration purposes, since his natural father legitimated him in accordance with Haitian law. Remanded to determine whether beneficiary qualifies as a "child" for purposes of the I.N.A. § 101(b)(1), 8 U.S.C. § 1101(b)(1).

DISCUSSION
Petitioner is a lawful permanent resident of the U.S. who seeks a visa petition for beneficiary, a twelve year old native of Haiti born out of wedlock whom petitioner acknowledged as his son in 1977. The 1959 Haitian Presidential decree eliminated all distinctions between legitimate and illegitimate children. This case is remanded to the district director for a determination of beneficiary's rights under the I.N.A. Specifically, does beneficiary fall within the definition of child under I.N.A. § 101 (b)(1), 8

U.S.C. 1101 (b)(1) and thereby qualify as an unmarried son for visa petition purposes?

Matter of Fakalata, Interim Decision 2899 (BIA March 10, 1982)

HOLDING
Customary adoptions occurring in Tonga which do not establish parent-child relationships exclusive of the natural parents, do not confer on the adopted child legal rights and duties comparable to a natural legitimate child. For this reason, such adoptions will not be recognized as valid under U.S. immigration law.

DISCUSSION
Petitioner is a native and citizen of Tonga who resides lawfully in the United States and who has applied for preference status on behalf of his adopted son under I.N.A. § 203(a)(2), 8 U.S.C. 1153(a)(2). The child is the legitimate son of the petitioner's cousin and was taken into petitioner's family at the age of nine months.

Adoptions through custom rather than statute are recognized by the I.N.A. where they establish substantive legal rights and obligations between parents and children and where they are sanctioned by the government. Tongan statutory law recognizes the adoption of illegitimate children as establishing rights and duties of the parties involved, but has no provisions governing the adoption of legitimate children.

In contrast to Western norms, child rearing practices in Tonga extend parental obligations beyond the natural parents to relatives, neighbors, and friends. Customary adoptions of legitimate children provide the means of extending the parent-child relationship to others. A customary adoption does not extinguish the relationship to the natural parents but establishes an additional relationship to the adoptive parents.

The Board concludes: "A system which gives an adopted child the option to maintain a legal relationship with his natural parents is inconsistent with our concept of adoption and with I.N.A. § 101(b)(1)(E), 8 U.S.C. § 1101(b)(1)(E)." Slip op. at 6. Hence, customary adoptions do not create legally enforceable rights and duties and will not be recognized for immigration purposes.

Matter of Drigo, Interim Decision 2901 (BIA May 6, 1982)

HOLDING
Eligibility for preference status as an adopted child must be determined according to the applicable law at the time the petition is filed. Amendments to the I.N.A. are not

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applicable retroactively.

DISCUSSION

Petitioner is a lawful permanent resident who adopted her son after he reached the age of fourteen and before the age of sixteen. Even though the decree of adoption was issued before the child reached the age of fourteen, the beneficiary did not meet the fourteen year old age limitation because the act of adoption occurred after the age of fourteen.

Furthermore, beneficiary does not qualify under the amendments enacted subsequent to the filing of his petition which changed the age limitation from fourteen to sixteen. Even though beneficiary qualifies under current law, eligibility depends upon qualifications held at the time an application is filed. If beneficiary were granted preference status, he would receive a windfall, a priority date for which he was not entitled at the time of filing. See Matter of Bardouille, I.&N. 2880 (BIA 1981).

JUDICIAL UPDATE

SUPREME COURT MONITOR

NEW COURT DECISIONS

Toll v. Moreno, 50 U.S.L.W. 4880 (U.S. June 28, 1982) aff'g 645 F.2d 217 (4th Cir. 1981).
(See G.I.M.R. Oct.-Nov. at 28-29 for a previous discussion of the case.)

HOLDING

The Maryland state policy establishing an irrebutable presumption that a G-4 alien cannot establish Maryland domicile is inconsistent with the Fourteenth Amendment guarantee of equal protection under the law.

FACTS

Plaintiffs are students at the University of Maryland classified as nonimmigrant aliens with G-4 status--dependents of foreign national employees. Unlike most nonimmigrant aliens, employees of international organizations are exempt from state and federal income taxation but are required to pay all other taxes--excise, motor vehicle, real estate, retail sales, etc. Plaintiffs challenge a University policy which establishes an irrebutable presumption that a G-4 alien cannot establish Maryland domicile and therefore cannot qualify for preferential tuition fees conferred on in-state residents. The Fourth Circuit Court of Appeals invalidated the University policy on equal protection, Supremacy Clause, and due process grounds and ordered the University to refund the tuition fee differentials between out-of-state and in-state tuition rates.

REASONING

1. Authority to regulate the status of aliens is within the exclusive jurisdiction of the federal government. It is derived from the Constitutional grant of authority to establish a uniform rule of naturalization and to regulate commerce with foreign nations from the and broad executive authority over foreign affairs.

2. "State regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress." DeCanas v. Bica, 424 U.S. 351,

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358, n. 6 (1976). See also Graham v. Richardson, 403 U.S. 365 (1971); Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948).

3. Under the I.N.A., selective categories of nonimmigrant aliens are permitted to establish U.S. residency. G-4 aliens are nonimmigrant aliens who fall within such a category. The policy of the state university denying G-4 aliens in-state tuition status strictly on the basis of a G-4 visa conflicts with the Congressional intent to permit the G-4 alien to establish U.S. residency.

4. G-4 aliens are exempted by treaty, statute, and international agreement from federal and some state and local income taxes on salaries earned through international organizations which employ them. The resulting reduction in cost serves as an inducement to the international organization to locate its operations in the U.S.. The University seeks to recoup the state taxes which fund it by charging the tax exempt aliens higher tuition fees. Such a policy imposes a discriminatory burden on aliens due strictly to their immigration status and violates the Supremacy Clause.

United States v. Valenzuela-Bernal, 50 U.S.L.W. 5108 (U.S. July 2, 1982) rev'g, 645 F.2d 72 (9th Cir. 1981).
See G.I.M.R. Oct.-Nov. 1981 at 34 and G.I.M.R. Feb.-Mar. 1982 at 25 for prior case history.

HOLDING

Government deportation of witnesses to a criminal proceeding who are illegally present in the U.S. does not constitutes a violation of a defendant's Fifth and Sixth Amendment rights unless the defendant can demonstrate that the witnesses might have provided information which is material and favorable to his/her defense.

FACTS

Defendant alien entered the U.S. without inspection and was arrested with three other illegal aliens after refusing to stop at a manned Border Patrol checkpoint. Defendant was indicted on one count of transporting an illegal alien. One of the three aliens apprehended was detained in the United States; the other two were deported to Mexico. The Ninth Circuit found that the U.S. government violated defendant's Fifth and Sixth amendment rights by deporting other aliens with whom defendant had been arrested before defendant had an opportunity to interview them and obtain possible defense testimony.

REASONING

1. In the circumstances of this case, the Executive branch of the government has the duty of apprehending and prosecuting those who violate federal criminal statutes, but also of upholding the Congressional policy of apprehending

illegal aliens at or near the border and deporting them promptly. When there is no indication that illegal aliens who are eyewitnesses to a criminal proceeding possess any material evidence relevant to the proceeding, the government should follow the Congressional policy of prompt deportation.

2. In order to successfully allege a violation of a criminal defendant's Sixth Amendment right to compulsory process, the defendant must demonstrate the he/she was deprived of evidence having a material bearing on his/her defense. Washington v. Texas, 388 U.S. 14 (1967). While defendant need not allege with particularity the exact testimony that a potential witness could offer, defendant should make some showing of general knowledge possessed by witnesses and the relevancy of this knowledge to the defense. Cf. Roviaro v. United States, 353 U.S. 53 (1957).

3. The Due Process clause of the Fifth Amendment guarantees defendant a fair trial. "In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial." Lisenba v. California, 314 U.S. 219, 236(1941). There can be no finding of unfairness unless defendant can show that the government deported alien witnesses who might have provided the defense with relevant and favorable testimony.

4. Sanctions will only be imposed against the government if the potential testimony of deported witnesses could have affected the judgment of the trier of fact. However, because the relevance of evidence may only become apparent after all other evidence received at trial is evaluated, judges may wish to defer rulings on materiality until all the evidence has been presented.

Plyler v. Doe, 50 U.S.L.W. 4650 (U.S. June 15, 1982).
See G.I.M.R. Aug.-Sept, 1981. at pp. 18-19 and G.I.M.R. Oct.-Nov., 1981 at pp. 38-44.

HOLDING

A statutory provision requiring children of illegal aliens to pay for a public education which is provided without charge to children of U.S. citizens or legal aliens is a denial of the Fourteenth Amendment guarantee of equal protection of the laws.

FACTS

The influx of illegal immigrants into border states such as Texas has been particularly acute in recent years. In 1975, Texas enacted a statutory provision amending its education laws to withhold state funds from local school districts for the education of children not legally admitted into the U.S. and authorizing local schools to deny enrollment to such children. See Texas Educ. Code Ann. § 23.031 (Vernon Cum. Supp. 1981). Plyler v. Doe is a consolidation of two cases in which the Texas statute was declared an unconstitutional violation of the Equal

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Protection clause.

REASONING

1. Plaintiffs fall illegal immigration status does not nullify their standing under the Equal Protection clause as persons within the jurisdiction of the state who are insured equal treatment under the law.

2. Legislative distinctions between different classes of persons must be tailored to the problem or purpose which those classifications were intended to serve. A heightened degree of judicial scrutiny is applied to those classifications which disadvantage a "suspect class" or impinge upon the exercise of a fundamental right. Unless the state can demonstrate that such classifications are necessary to serve a compelling governmental interest, the courts will treat these classifications as presumptively invidious distinctions which violate fundamental constitutional rights.

3. The considerations which mandate application of the higher standard of judicial scrutiny are not present here since illegal aliens are not a suspect class and education is not a fundamental right. However, the consequences resulting from denial of a public education are substantially greater in magnitude than those which occur when other governmental benefits are denied. "The inestimable toll of that deprivation on the social, economic, intellectual and psychological well-being of the individual, and the obstacle it poses to individual achievement, makes it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause." Id. at 4655.

4. Regulation of immigration policy is within the exclusive jurisdiction of the federal government. Congressional policy embodied in the Immigration and Nationality Act (I.N.A.) penalizes unlawful entry and presence within the U.S. The individual states enjoy no authority to regulate the status of aliens, and the illegal presence of the alien children does not establish a sufficient basis for the denial of public education.

5. The state of Texas suggests three governmental interest legitimating § 23.031. which the court rejected:

a. Incentive to immigrate without legal authority for the benefit of obtaining a free public education is discouraged if the benefit can be withheld. However, the Supreme Court concluded that incentive to immigrate is motivated by employment opportunities rather than the availability of free public education.

b. Illegal children have special needs which impose extra burdens on the educational system. However, the evidence suggests that the financial savings from the state policy will not have a significant impact on the quality of education. Furthermore, the needs of undocumented children are no greater than those of legally resident alien children.

c. The state of Texas fears that due to their illegal status, undocumented children will be more likely in

the future to move outside the borders of the state and deprive the state of the productive value of their education. However, no quantifiable evidence suggests that undocumented children have a greater or lesser tendency than lawful residents or citizens to emigrate from the state after receiving an education within its borders.

PETITIONS GRANTED

Miranda v. INS, No. 79-7370, slip op. at ___ (9th Cir. April 8, 1982), cert. granted, __ U.S.L.W.___ (U.S. ____)(No. ___) See G.I.M.R. Aug.-Sept., 1981 at 16 and G.I.M.R. Oct.-Nov. 1981 at 31.

SUMMARY

The Ninth Circuit had ruled that the government was estopped from denying plaintiff immediate relative visa status because of its unreasonable delay in acting upon his application. On certiorari to the Supreme Court, the case was remanded for consideration in light of Schweiker v. Hansen, 450 U.S. 785 (1981). In Schweiker, the Supreme Court refused to estop the government from denying lost social security benefits to an applicant who had been misinformed of her eligibility status by a government employee. The critical factors in Schweiker were 1) the lack of a finding of affirmative misconduct by government agents and 2) the duty of the courts to respect Congressional limitations on financial appropriations. Here, no such factors were present on remand. The Ninth Circuit reversed the BIA finding that 1) no affirmative misconduct existed and 2) no burden on public funds is involved in granting plaintiff an adjustment of immigrant status. Defendant have appealed and the Supreme Court has granted certiorari.

PETITIONS DENIED

Tejeda-Mata v. INS, No.___, slip op. at __- (9th Cir. 1981) cert. denied, 50 U.S.L.W. 3929 (U.S. May 24, 1982)(No. 81-1460)

SUMMARY

"Although immigration judge abused his discretion at deportation hearing by refusing to permit simultaneous translation of testimony against alien by either official interpreter or alien's own counsel, untranslated testimony only confirmed aliens' own admission of alienage, thereby rendering judge's error harmless." Id. at 3929.

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PETITIONS FILED

United States v. Armijo-Martinez, 669 F.2d 1131(6th Cir. 1982) petition for cert. filed, 50 U.S.L.W. 3918 (U.S. May 5, 1982),(No. 81-2049)

SUMMARY

The U.S. government violates the constitutional right of a criminal defendant to compulsory process when it unilaterally deprives the defendant of access to material witnesses.

FEDERAL COURT MONITOR

DISTRICT COURT DECISIONS

Nunez v. Boldin, 537 F. Supp. 578 (S.D. Tex. 1982)

HOLDING

Constitutional guarantees of Due Process afford all persons reasonable access to the court in both civil and criminal matters. Whether restrictions imposed on plaintiffs deny them such reasonable access must be determined by balancing the interests of plaintiff and the interests of the institution in maintaining security and order.

FACTS

Plaintiffs, four citizens of El Salvador and one citizen of Guatemala, have filed a class action in which they seek injunctive and declaratory relief from INS practices implemented at the Los Fresnos, Texas detention facility in which they are housed.

SUMMARY

The court concluded that the following INS practices violated the plaintiffs' due process rights:

1. The INS' prohibition against attorney visits after 3:30 P.M. was deemed unreasonable in view of the remoteness of the facility from population centers and may have impaired the statutory right to counsel guaranteed to plaintiffs subject to deportation proceedings.

2. The INS practice of reviewing a detainee's legal documents and correspondence may have amounted to intimidation and also may have prevented plaintiffs from exercising their legal rights.

3. Finally, the Attorney General is directed by I.N.S. § 208, 8 U.S.C. 1158, to establish a procedure affording an alien physically present in the United States to apply for

political asylum. While no regulation obligates the INS to notify plaintiffs of their right to apply for asylum, failure to notify may effectively undermine the Congressional intent to grant asylum to those who can demonstrate a well-founded fear of persecution in their homeland. INS' officials must therefore notify plaintiff of their right to apply for political asylum.

Ngou v. Schweiker, 535 F. Supp. 1214 (D.C. 1982)

SUMMARY

A class of Asian refugees numbering more than 10,000 has been granted a preliminary injunction in a class action seeking to enjoin the Secretary of Health and Human Services from implementing a regulation which withdraws the current cash and medical benefits available to plaintiffs pursuant to the Refugee Act of 1980. Plaintiffs claimed that the Secretary failed to comply with the thirty-day notice requirement of the Administrative Procedure Act. The court found plaintiffs entitled to a preliminary injunction deferring implementation of the regulation, since they demonstrated a substantial likelihood of success on the merits as well as irreparable injury if deprived of the current level of benefits.

Chairez v. County of Van Buren, No. k79-429, slip op. at ___ (W.D. MI. June 24, 1982)

HOLDING

The I.N.A. creates a private cause of action to redress violation of statutory rights conferred by the I.N.A.

FACTS

Defendant is a migrant farmworker in Van Buren county who was detained along with a companion because his companion resembled a suspect in a criminal sexual assault case. Defendant was frisked for weapons and questioned regarding his immigration status, and then arrested as an illegal entrant to the United States. While in custody, he was questioned over the phone by an INS Deputy Chief patrol agent, then transported from police station to county jail where he remained for two days without contact from the INS. Processing of immigration forms for voluntary departure then began and continued for two days, at which time the voluntary departure order was withdrawn and defendant was served with a warrant of arrest and an order to show cause. Plaintiff filed suit against the INS contending that he had a private cause of action against the INS for failure to comply with I.N.A. § 287, 8 U.S.C. § 1357, a statutory provision which entitles an alien arrested without warrant to examination by an INS officer without unnecessary delay.

REASONING

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1. Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) has no application because the plaintiff alleges a violation of statutory rights, not a deprivation of constitutional guarantees as was alleged in Bivens.

2. To determine whether the I.N.A. creates a private cause of action the court engaged in statutory construction by examining I.N.A. § 287, 8 U.S.C. § 1357 against the four-factor test prescribed by Cort v. Ash, 422 U.S. 66 (1975). The court concluded that a statutory right was indeed conferred by the provision. It applied the four-factor test in the following manner:

a) "Whether the statute was enacted for the benefit of a special class of which the plaintiff is a member." Section 287 authorizes warrantless arrests of aliens by immigration officers under some circumstances; however, aliens arrested according to this authority are entitled to prompt examination "without unnecessary delay." Procedural protections are granted in order to check the potential for arbitrary exercise of power inherent in § 287.

b) "Whether there is evidence of an express or implicit legislative intent to negate a private right of action": Statutes that do not expressly create or deny a private cause of action will usually be silent on this issue. However, it is unnecessary to show intent as long as a class of persons is granted certain rights and the statute does not expressly deny a private action.

c) "Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?": implication of a private right of action would be consistent with the legislative goal of requiring an alien arrested to be examined without unnecessary delay.

d) "Whether the subject matter of the cause of action has been so traditionally relegated to state law as to make it inappropriate to infer a federal cause of action.": Regulation of immigration policy has always been a federal duty.

3. The court pointed out that the question of whether a cause of action exists is analytically distinct from the question of what relief is available to plaintiff. In this case, relief in damages as well as declaratory relief is appropriate if plaintiff prevails on the merits.

4. Plaintiff's right to a timely determination of lawfulness of custody, right to be informed that a decision about his/her release would be made in 24 hours, right to be informed that he/she was entitled to the representation by legal counsel, right to remain silent, and right to access to a listing of free legal services are rights granted by the I.N.A. and by the regulations and operating instructions promulgated pursuant to it. These rights were violated by INS enforcement authorities.

Vigile v. Sava, 535 F. Supp. 1002 (S.D.N.Y. 1982)

HOLDING

The discretionary parole authority conferred on the INS by the I.N.A. may not be used to grant parole strictly on the basis of race.

FACTS

Plaintiffs are eight Haitians who were transferred from the INS detention center in Miami, Florida to a facility in Brooklyn, New York where they are detained at the present time. Ongoing exclusion proceedings are now pending against them. All have filed petitions requesting political asylum as well as requests for parole until the final adjudication of the petitions. Authority to grant parole is within the government's discretion and all requests have thus far been denied. Plaintiffs have filed habeas corpus petitions alleging arbitrary use of the parole authority and discriminatory treatment in violation of the Fifth Amendment and the United Nations Convention and Protocol Relating to the Status of Refugees.

REASONING

1. While parole decisions are normally unreviewable, the determination whether or not to grant parole cannot be left wholly in the discretion of unelected INS officials. Parole adjudications during the pendency of exclusion proceedings are reviewable in an appropriate context. Although a limited inquiry for abuse of discretion is the prescribed standard of review, a stricter standard will be applied where special circumstances and risk of discrimination is implicated.

2. According to defendant Sava, the INS district director, three criteria govern the decision to grant parole: "whether the applicant poses a risk to the community, is likely to abscond, or presents a particularly compelling case for release." A survey of defendant's comparable parole decisions was undertaken to determine whether he abused his authority. The court concluded that the only factors which led defendant to deny plaintiffs' claims while granting similar claims of non-Haitians were their race and national origin. Plaintiffs' petitions were treated as a group rather than on a case by case basis.

The court's findings make out a prima facie case of discrimination by revealing the highly disproportionate impact of defendant's decisions in Haitian cases as compared to the cases of other aliens. The decisions reflect a "clear pattern unexplainable on grounds other than race."

The court ordered plaintiffs to be released on parole unless defendant can show on a case-by-case basis that the individual poses an unreasonable risk of absconding.

One month later in Bertrand v. Sava, 535 F. Supp. 1020 (S.D.N.Y. 1982) the District Court granted petitioners leave to amend their petition through the addition of class-like

allegations. The court certified all Haitian aliens transferred from the INS detention center in Miami to the center in Brooklyn as the relevant class and plaintiffs' summary judgment motion.

CIRCUIT COURT DECISIONS

United States v. Anton, No. 81-2435, slip op. at ___(7th Cir. May 3, 1982)

SUMMARY

I.N.A. § 276, U.S.C. 1326 proscribes entry into the U.S. of an alien who has been arrested and deported. Defendant is an alien who had been previously arrested and deported; he was subsequently apprehended in the U.S. without consent of the Attorney General for readmission. However, defendant introduced evidence that he had consulted with the American consulate, the INS Chicago office and the Attorney General's office prior to his reentry, and had been granted a new visa to enter the U.S.. Though the government argued that the defendant's reasonable belief that he was admissible in these circumstances was irrelevant to a violation of § 276, the court concluded that intent was a pertinent consideration. Though the statute does not explicitly address this factor, the defense of reasonable mistake may now be invoked against an alleged violation of § 276.

United States v. Rubio-Gonzalez, 674 F.2d 1067 (5th Cir. 1982)

SUMMARY

Defendant was convicted of concealing aliens illegally in the United States in violation of I.N.A. § 274(a)(3), 8 U.S.C.§ 1324(a)(3) because he had warned two fellow employees that "immigration is here." According to the Fifth Circuit, conduct in violation of the statute is not limited directly to the smuggling process; the act of warning illegal aliens of immigration officers can constitute concealing or shielding from detection. See United States v. Cantu, 557 F.2d 1173(5th Cir, 1977). Such conduct also indicates that defendant had knowledge of the aliens' illegal status. Furthermore, evidence admitting defendant's prior record involving illegal entries was relevant to show appellant's knowledge of I.N.S. practices and procedure and was not erroneously admitted.

United States v. Rodriguez-DeMaya, 674 F.2d 1122 (5th Cir. 1982)

SUMMARY

Defendant's guilty plea to a charge of transporting illegal aliens was knowingly and voluntarily made in compliance with Federal Rule of Criminal Procedure 11. Although defendant claims she is innocent and her plea was

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based on the advice of her court-appointed attorney and her belief that affidavits executed by aliens implicated her conduct, the court found that her plea was motivated by a plea bargain in which defendant agreed to plead guilty to one count of transporting illegal aliens if the government dropped the other two counts.

Rios-Pineda v. INS, 673 F.2d 225 (8th Cir. 1982)

SUMMARY

Petitioner illegally entered the U.S. in 1974, has since been employed by Union Packing Company, has acquired a home and an automobile, and with his wife is raising two daughters. At a deportation hearing in 1978, petitioner submitted petition for suspension of deportation. The Attorney General may suspend deportation if three conditions are met: 1) the alien has been physically present in the United States for not less than seven years; 2) is a person of good moral character; 3) would be subject to "extreme hardship" as a result of deportation.

Petitioner's application for suspension of deportation was denied as a matter of law since he did not meet the seven year residency requirement. However, subsequent to the deportation hearing, the Fifth Circuit ruled that eligibility for suspension of deportation may be reevaluated if the petitioner meets the seven-year residency requirement during the pendency of an appeal from the order of deportation. See Vargas-Gonzalez v. INS, 647 F.2d 457 (5th Cir. 1981). Thus, petitioner is entitled to file a motion to reopen his claim for suspension of deportation since the residency requirement was met while awaiting an appeal from the deportation order of 1978.

Arana v. INS, 673 F.2d 75 (3d Cir. 1982)

SUMMARY

Petitioner was adjudged deportable and his petition for habeas corpus appealing his deportation order was denied. The Third Circuit Court of Appeals has refused to hear his appeal from the denial of habeas corpus because petitioner has concealed himself from immigration authorities has refused to appear in court or to comply with an order and bench warrant to report to the I.N.S.. Access to the courts is denied to one who refuses to comply with lawfully issued court orders.

Stevic v. Sava, 678 F.2d 401 (2nd Cir. 1982)

HOLDING

The standard for granting political asylum established by the Refugee Act of 1980 turns on the determination of a person's "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

FACTS

Plaintiff is a Yugoslavian citizen whose petition for withholding of deportation under I.N.A § 243(h) 8 U.S.C. 1253 (h) was denied in 1977; a susbsequent motion to reopen his deportation proceedings was again denied in 1981. However, the passage of the Refugee Act of 1980 prior to his motion to reopen changed the standards by which plaintiff's claim should have been evaluated and he is now entitled to a plenary hearing according to the newly established standards.

REASONING

1. Two provisions of the I.N.A. govern political asylum of aliens: 1) aliens present within the U.S. who seek a withholding of deportation through an application for political asylum must demonstrate a clear probability that they will be persecuted. See I.N.A. § 243(h), 8 U.S.C. 1253 §(h); 2) aliens not present within the United States may be admitted because of persecution or fear of persecution from a Communist or Communist-dominated country or from a Middle Eastern country. See I.N.A. § 203(a)(1), 8 U.S.C. § 1153 (a)(1).

2. In 1968, the United States became a signatory to the United Nations Protocol Relating to the Status of Refugees. Though the definition of refugees seeking asylum under the Protocol appeared more generous than the definition under the I.N.A., Congress was advised by the President that reconciliation of the I.N.A. with the Protocol could be accomplished by minor administrative changes.

3. Nontheless, the U.S. did not adopt the standard established by the Protocol for granting political asylum until the ratification of the Refugee Act of 1980. By incorporating the language of the Protocol into U.S. federal law, the U.S. acknowledged that refugee status turns on the existence of a person's "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." See Refugee Act of 1980, § 201(a)(42), 8 U.S.C. § 1101(a)(42). Under this standard it is irrelevant whether the applicant is seeking asylum from a location inside or outside U.S. territorial borders. Plaintiff is entitled to the benefit of the more generous standard established through the enactment of the Refugee Act.

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Haitian Refugee Center v. Smith, 676 F.2d 1023 (5th Cir. 1982)

HOLDING

Plaintiffs have a substantive due process interest in the right to petition the United States government for political asylum. The State Department and the I.N.S. have violated plaintiffs' Fifth Amendment rights by depriving them of procedural due process guarantees needed to effectuate the right to petition for asylum.

FACTS

This is a class action suit filed by eight Haitian nationals and the Haitian Refugee Center on behalf of over 4,000 Haitians in the south Florida area who had sought political asylum in the U.S.. The plaintiffs challenge I.N.S. procedures governing asylum interviews and decisions, contending that they resulted in unlawful discrimination against and denial of due process to class members. See Haitian Refugee Center v. Civiletti, 503 F.Supp. 442 (S.D. Fla. 1980). The District Court previously found that the I.N.S. program to expedite mass deportation of Haitian nationals violated the Constitutional, statutory, administrative, and treaty rights of the plaintiff class.

REASONING

1. Before addressing the merits, the court ruled on two standing issues: jurisdiction and exhaustion of remedies.

a. Jurisdiction. Although I.N.A. § 106(a), 8 U.S.C. § 1105(a) vests the courts of appeals with exclusive jurisdiction to review individual deportation hearings for procedural irregularities, a district court may review an alleged program, pattern, or scheme by immigration officials to violate the constitutional rights of aliens.

b. Exhaustion of Remedies. Requiring the plaintiff class to exhaust all remedies is a matter within the discretion of the trial court. The policies which underlie the exhaustion requirement are not served in this case.

2.. The court then addressed the due process claim:

a. Illegal aliens are entitled to the protection of the due process clause and the regulation of federal immigration policy cannot override due process guarantees.

b. Due process safeguards are triggered by the deprivation of a constitutionally protected interest in life, liberty, or property or in an interest established by substantive state law.

c. The right to petition the U.S. government for political asylum is a constitutionally protected interest, although there is no constitutionally protected

right to asylum per se. See United Nations Protocol Relating to the Status of Refugees; I.N.A. 103 (a), 8 U.S.C. § 1103(a); 8 C.F.R. § 108.1, 108.2.

d. The courts should not impose constitutional restrictions which prevent the political branches from fulfilling their duty to formulate a federal immigration policy. However, the government violates standards of fundamental fairness when it establishes a right to petition for political asylum and then prevents potential beneficiaries from exercising that right.

e. Due process entitles a person to an opportunity to present his/her case and to the assurance of an impartial judgment on the merits of the case.

In evaluating the asylum procedure, the constitutional adequacy of protections attaching to it must be balanced against competing government interests. The court concluded that the plaintiffs' interest in a fair adjudication of their claims was not outweighed by the governmental interest in the speedy and efficient disposition of claims. However, the court added that the risk of an erroneous asylum determination was unacceptably high because of the combination of several factors: speed, knowingly-created schedule conflict, and unattainable filing deadlines. The Circuit Court then affirmed the district court order requiring the government to submit a procedurally fair plan for the disposition of asylum applications.

Contreras v. United States, 672 F.2d 307 (2d Cir. 1982).

HOLDING

The existence of probable cause to believe a person has violated federal immigration laws is sufficient to justify a warrantless arrest; an independent finding that the person is likely to escape need not be established.

FACTS

I.N.S. officers arrested appellant Contreras on her admission that she had entered the U.S. illegally; they arrested appellant Siliezar on the basis of an anonymous corroborated tip. Both arrests were made without warrant. Although appellants concede the existence of probable cause to arrest, they contend that their arrests were illegal because there was no reason to believe that appellants were likely to escape before a warrant could be issued. They seek damages under the Federal Tort Claims Act.

REASONING

1. In order to prove that a warrantless arrest was legally conducted, two requirements must be fulfilled: the arresting officers must have 1) probable cause to believe that the alien has violated immigration laws and 2) reason to believe that the alien was likely to escape. See I.N.A. § 287(a)(2), 8 U.S.C. § 1357(a)(2).

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2. Probable cause to arrest Siliezar was based upon her "unfamiliarity with English, her attempt to avoid questioning about her entry from Guatemala into the U.S., her nervousness, her resemblance to the informer's description, and the corroboration of details of the anonymous tip." Probable cause to arrest Contreras was based upon her admission that she entered the U.S. illegally.

3. "When the aliens' deportability is clear and undisputed, that circumstance alone may provide a sufficient basis for an I.N.S. officer to believe that escape is likely before a warrant can be obtained." Ojeda-Vinales v. INS, 523 F.2d 286,288 (2d Cir. 1975)(per curiam).

a. Contreras' admission of her illegal presence established clear and undisputed liability.

b. Siliezar's acknowledgement that she was from Guatemala, the absence of a claim of lawful status, and her attempt to evade custody was sufficient to fulfill the "likely to escape" criterion.

LEGISLATIVE ACTIVITY

H.R. 6071: REFORM OF ASYLUM PROCEDURES

On April 5, 1982, Representative Shirley Chisholm introduced H.R. 6071, "a bill to amend the I.N.A. to reform the procedures relating to asylum and for other purposes," to the House Committee on the Judiciary. H.R. 6071 was passed to the Subcommittee on Immigration, Refugees, and International Law on April 12 where it is currently under consideration. No action has been taken on H.R. 6071 as of November 6, 1982.

H.R. 6071 reflects Representative Chisholm's concern that current executive policy ignores the definition of refugee under international law and applies a double standard in regulating the admission of refugees. The Refugee Act of 1980 authorizes admission of all applicants who can demonstrate that they have fled their country due to a "well-founded fear of persecution." Mrs. Chisholm claims that admissions are actually based on skin color. Ethiopian and Haitian applicants are routinely denied admittance while Polish applicants are routinely granted admittance. Since both Ethiopia and Poland are communist controlled countries, Representative Chisholm argues that political organization is not the critical factor. See 128 Cong. Rec. 36, H1345 (daily ed. April 1, 1982). According to Representative Chisholm, exclusive authority to administer asylum and refugee admissions would eliminate much of the inconsistency which she believes is involved in current executive policies.

H.R. 6071 etablishes that asylum shall be granted to an applicant who can demonstrate that "because of persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion," he or she is unable or unwilling either to return to the country of nationality or accept the protection of country of nationality. This standard conforms to the standard incorporated in the I.N.A., the Refugee Act of 1980, and the U.N. Protocol on Refugees.

Other provisions bar an applicant from obtaining asylee status where an alien: 1) has persecuted others on account of race, religion, nationality, membership in a particular social group, or political opinion, or 2) constitutes a danger to the U.S. community because of the commission of a serious crime or 3) has committed a serious nonpolitical crime outside the U.S. prior to arrival in the U.S. or 4) may reasonably be considered a danger to U.S.

H.R. 6071 seeks to amend I.N.A. § 208(a)(1), 8 U.S.C. §

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1158(a)(1) which authorizes the Attorney General to establish procedures for the admission of aliens seeking asylum within the U.S.. It confers discretionary authority upon the Attorney General to admit aliens who qualify for refugee status within the meaning of I.N.A. § 101(a)(42)(a), 8 U.S.C. § 1101(a)(42)(a). The House bill eliminates the Attorney General's jurisdiction over asylum procedures and placing it within the auspices of an independent executive agency, the United States Asylum Commission. The Commission's primary responsibility would be to oversee the process of asylum applications and hearings. The Commission would be appointed by the President with the advice and consent for a term of six years. No more than four members of the Commission would be members of the same political party.

Panels of no less than three commission members would conduct hearings to review decisions of asylum admission officers, and a record of each commissioners vote shall be available for public inspection. An asylum admissions officer is defined as an administrative law judge who processes and directs asylum applications, conducts the asylum hearing and renders written decisions on the application's status. Any alien physically present in the U.S. or attempting to enter the U.S. may apply to an officer for asylum. Any alien against whom exclusion or deportation proceedings have been instituted and who has not previously applied for asylum may apply to the commission at any time before an order of deportation or exclusion has been issued. Application for asylum would suspend deportation or exclusion proceedings until a decision on the application has been rendered.

Upon receipt of an asylum application, the officer shall notify the Attorney General; inform the applicant of his or her rights; schedule a hearing some time between thirty and sixty days after filing of the application having allowed sufficent time to retain counsel and prepare for the hearing. The bill provides that asylum applicant and his or her counsel shall have access to all relevant documents used by the I.N.S. in his or her preparation of the case at least 21 days before the scheduled hearing date.

The asylum admissions officer shall conduct an adjudicatory hearing at which both applicant and witness will have the opportunity to be represented by counsel, to present and cross examine witnesses, and to present evidence. Simultaneous translation shall be provided for an application who is not fluent in English. In addition, a verbatim written record of the hearing shall be made available to all the parties. Within seven days of the final date of the hearing the officer must render a written decision on the application, including an explanation setting forth the reasons denying or granting the application.

Appeal of the hearing decision to the U.S. Asylum Commission could be filed by either party within 30 days after an asylum decision is rendered. The Commission would consider briefs and responsive pleadings in order to evaluate

the merits of the appeal. Within 30 days of the date on which final briefs are filed or oral arguments are heard, the Commission must issue a decision and notify the parties in writing of the reasons supporting the decision. Although exclusion or deportation hearings may commence at any time following a denial of asylum by an asylum admissions officer, no order of exclusion or deportation may be enforced until a decision of final appeal is issued from the United States Asylum Commission.

The bill vests jurisdiction to review an agency decision in the federal courts. Furthermore, certain class actions alleging a pattern or practice of resistance to the rights secured under this bill may be brought in federal district court. Within 3 years after enactment of this bill, the National Advisory Council on Asylum and Refugee Policy shall report to Congress on the feasibility of permitting such suits. As long as a final decision of denial has not been issued,an applicant may be eligible for work authorization.

Once asylum has been granted it will not be revoked except under these circumstances: 1) a change of status is requested and is granted to alien, or 2) there is a finding by the Commission that i) the alien is no longer a refugee within the meaning of I.N.A. § 101(a)(42)(a), 8 U.S.C. § 1101 (a)(42)(a) due to a change in circumstances in the country of nationality, or ii) there is a finding by the Commission that the alien falls within one of the categories barring asylee status.

Termination of asylee status by the Commission shall not occur until the alien has been provided with written notice of the Commission's intent and an opportunity to present evidence why such status should not be revoked.

H.R. 6071 establishes a National Advisory Council on Asylum and Refugee Policy to be composed of five members who are appointed by the President who have a demonstrated interest and exceptional qualifications relating to matters of asylum, refugee trends and international human rights. Each of the five members shall serve a five year term and none shall be employed by the federal government.

The duties of the Council would include 1) advising the President and the Congress on refugee and asylum concerns, including the coordination of efforts to assist refugees by federal, state and local agencies and by private institution, 2) recommend that studies be undertaken to evaluate the sufficiency of pertinent legislation, 3) aid in proposing guidelines for state and local legislation relating to refugee assistance, 4) providing necessary information to the United States Asylum Commission and its employees, 5) aid in preparing country reports by gathering timely and authoritative information regarding political, economic, and social developments throughout the world.

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UPDATE ON NEW AND PENDING BILLS

Annual Admissions Refugee Quota

I.N.A. § 207 (d) and (e), 8 U.S.C. § 1157 (d) and (e) currently directs the President to consult with the Committees on the Judiciary of the House of Representatives and of the Senate in determining the annual refugee admissions quota. Senator Huddleston has introduced S. 2003, a bill which would require the President also to consult with appropriate state and local government officials regarding the anticipated number of refugees in need of resettlement. State and local officials would be allowed an opportunity to be heard and to participate in hearings to review proposed numerical determinations. Any information which the I.N.A. requires the President to provide to Congressionals members would be provided to state and local government officials.

Polish Refugee Act of 1982

Senator Moynihan has introduced S. 2023, "a bill to assist in the admission into the United States of certain aliens who have fled from Poland." The I.N.A. currently sets a numerical annual quota of 50,000 refugee admissions for the years 1980, 1981, and 1982. See I.N.A. § 207 (a), 8 U.S.C. 1157 (a). Under I.N.A. § 207 (b), 8 U.S.C. § 1157 (b), the President is also authorized to admit refugees under a quota independent of the 50,000 quota in response to an unforeseen emergency refugee situation. Senator Moynihan's bill would take Polish refugees out of the 50,00 quota. Refugees who have fled Poland due to "the imposition of martial law and the widespread oppression of the liberties and rights of the Polish people," are deemed to be of special humanitarian concern and qualify for treatment under I.N.A. § 207 (c), 8 U.S.C. § 1157 (c). Under this section, the Attorney General has discretionary authority to admit "any refugee who is not firmly resettled in any foreign country" and is otherwise admissible under the I.N.A.

PUBLIC LAWS ENACTED

Appropriations to Help States in Cuban-Haitian Assistance

Pub. L. No. 97-216, 96 Stat. 182, the 1982 Supplemental Appropriations Act, was enacted on July 18, 1982. The law appropriates an additional $20,000,000 for refugee and entrant assistance. The money will be directed to aid states in implementing the change in regulations published March 12, 1982

providing refugee resettlement assistance and domestic assistance to Cuban and Haitian entrants.

SUBSCRIBER SURVEY

In order to better serve our subscribers, the Editorial Board of the Centro de Inmigracion would appreciate your respnse to the following questions.

1. How did you find out about the Georgetown Immigration Law Report (GIMR)?

   a) ____ By reading an issue of GIMR; If so, when?
   Where? ____ law library
   ____ office of private practioner
   ____ civil rights organization
   ____ voluntary agency
   b) ____ By referral to Centro or GIMR.
   c) ____ By other means: If so, please explain:

2. Is your organization:
   _____profit
   _____nonprofit

   a) How long has your organization been in operation?

   b) If your organization is non-profit, how are you funded?

3. What is the aim/purpose of your organization?

   a) _____dissemination of information on immigration law
   b) _____legal services for aliens
   c) _____politically oriented organization
   d) _____social services agency
   e) _____other; If so, please explain:

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4. How do you use GIMR in your organization and which needs does it serve?

   a) Do you depend on GIMR for notice regarding comment periods for proposed executive rules or rule changes?

      Does your organization send comments to Federal agencies regarding proposed immigration rules?

      _____frequently
      _____sometimes
      _____never

   b) Do you depend on GIMR for notice of changes in I.N.S. policies?

5. What additional information or services could Centro provide your organization?

   a)_____information in the Monitoring Report about available articles on current immigration law and policy
   b)_____separate publishes positon papers
   c)_____increased news analysis within GIMR
   d)_____quarterly journal analyzing developments in immigration law and policy
   e)_____other:

6. Does the GIMR reporting style provide you with an adequate discussion of current cases, bills and regulations?

7. Would GIMR be most useful to you if published:
And why?

a)_____bimonthly
b)_____quarterly
c)_____other:

8. From what other sources have you gained knowledge about immigration law, policy or procedures?

a)_____Bachelor's Degree: major area of study:
b)_____Graduate Degree: what field(s)?
when?
c)_____J.D. Degree: when?
d)_____L.L.M. degree: when?
e)_____Continuing Legal Education: when?
specify subject matter:

f)_____I.N.S. Workshops: when?
specify subject matter:

g)_____Conferences, seminars and lectures
h)_____Other:

9. What other immigration periodicals does your office receive?

10. Please state the name and address of your organization.

CENTRO DE INMIGRACION
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BOLETIN INFORMATIVO
Number 10 FEBRUARY-MARCH 1980

SOBRE ASUNTOS MIGRATORIOS Y FRONTERIZOS

(ENGLISH VERSION)

PUBLICADO POR EL CENTRO
DE INFORMACIÓN PARA ASUNTOS
MIGRATORIOS Y FRONTERIZOS
DEL COMITÉ DE SERVICIO DE LOS AMIGOS

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We dedicate this issue to the question of undocumented workers in the U.S., given that there soon will take place in Mexico City the First International Conference for the Full Rights of Undocumented Workers. We will be participating in this conference, along with numerous labor unions, legal defense and religious groups from both Mexico and the United States.

We believe that the Workers' organizations themselves are those with the most authority to be able to describe and analyze the situation of undocumented workers, since they are directly involved in trying to change such conditions. For this reason, we once again are giving the voice to *campesino* organizations. We present two interviews, the first with José Dolores López, a leader of the Mexican CIOAC (Independent Organization of Campesinos and Farmworkers), and the second with David Burciaga, an organizer for the United Farm Workers.

Following the interviews we present the *Convocatoria,* an invitation to participate in the international conference on undocumented workers, we also present the experiences of a group in California that is trying to better the current working conditions of undocumented workers in that state.

In the section on recent events, we present a brief summary of the First International Meeting of Women along the Border, which took place at the beginning of February in Ciudad Juarez, Mexico.

Hasta la próxima.

EL COMITÉ DE SERVICIOS DE LOS AMIGOS, IS AN INTERNATIONAL QUAKER ORGANIZATION WHICH CARRIES OUT PROGRAMS OF PEACE & SERVICE, & SOCIAL ADVANCEMENT. OUR PROGRAMS ARE BASED ON A BELIEF IN THE DIGNITY AND WORTH OF EACH PERSON, AND IN A FAITH IN THE POWER OF LOVE AND NONVIOLENCE TO BRING ABOUT CHANGE. EL COMITÉ SUPPORTS NONVIOLENCE & DISARMAMENT PROGRAMS IN MEXICO, THE UNITED STATES, LATIN AMERICA, AND SEVERAL THIRD WORLD COUNTRIES.

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MEXICO/US BORDER PROGRAM
AMERICAN FRIENDS SERVICE COMMITTEE
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NEWS SYNOPSIS
February and March, 1980

I. Mexico will not enter GATT

In previous issues we have discussed the debate about Mexico's possible affiliation to the General Agreement on Trade and Tarrifs (GATT). On the anniversary of the expropriation of the oil industry, President López Portillo announced that Mexico will not join this international trade regulating body. The decision, while lamented by U.S. officials, was supported by diverse sectors of Mexican society: business, labor and official and opposition political parties. According to the official explanation, membership in GATT would have limited Mexico's ability to use oil and other natural resources as important tools in negotiating trade agreements and fomenting independent national development.

With this decision, questions of foreign trade will continue to be negotiated bilateraly. In this context the negotiations with the U.S. take on a particularly crucial character, since last year more than two thirds of Mexico's trade was with this one country alone. Mexico's considerable trade deficit with the U.S. has grown despite the increase in oil and gas exports.

II. The exploitation of oil and gas is limited (but not enough)

The President also announced that the capacity of the petroleum industry will be increased only 10%, representing a daily production goal of 2.7 million barrels. After rumors of the possibility of up to 100% increase, this decision was generally approved by diverse social and political sectors of the country. Nevertheless, it was pointed out that the current levels of production are still too high, and represent an irrationally rapid exploitation of oil resources, as gas is being burned off and inflation soars as a result of the rapid influx oil-purchasing dollars into the Mexican economy. Given this situation, it is doubtful to what extent oil may be used as an efficient "strategic arm" in the negotiations with the U.S. and other countries, especially with PEMEX's growing international debt, which in 1980 will reach close to 45 million dollars in payments alone.

In addition, the State apparatus receives strong pressures from the U.S. and from the PEMEX bureaucracy itself to increase oil production. We can understand the magnitude of such pressures when we take into account that PEMEX is the main taxpayer of the country, and is expected to pay more than 71 million dollars in 1980.

III. The crisis in agriculture: not enough corn. . .

During the last two months the press published very revealing data about the crisis in the *campesino* sector of agriculture. The *ejidos, which produce most of the basic food for the Mexican population, have been producing at only 33% of their capacity, due to lack of credit, irrigation and seeds. This crisis has resulted in increasing unemployment and a drop in production of basic foods, to the extent that 65 out of every 100 youths find themselves forced to leave the countryside to find work. In 1980, the CONASUPO* will have to import 7.39 million tons of grains from the U.S. While in 1965, 9% of Mexico's basic grains were imported, in 1980 this figure will reach 80%, a situation which implies increasing dependence on our neighbor to the North.**

To deal with this growing crisis the Mexican government presented a new plan, the *Sistema Alimentario Mexicano* (SAM, Mexican Food System), through which they hope to reach self-sufficiency by 1982, with production levels of 13.5 million tons of corn and 1,149 million tons of beans. In their reaction to the plan, many sectors considered it unrealistic, given the limited measures it proposes, i.e. raising the guaranteed prices of basic foods and reactivating the unirrigated lands through goverment credits.

Independent and opposition sectors articulated the impracticality of the plan, claiming that the only way to achieve true self-sufficiency is through the nationalization of the transnational corporations, which through a variety of commercial means control a great portion of Mexican agricultural production.

IV. . . .while we export luxury crops.

In recent years the amount of land devoted to producing vegetables for export has been steadily increasing, to the point that Mexican products now represent 50% of the winter vegetables in the U.S. market. But the large landowners of Northwestern Mexico and their Southwestern U.S. agribusiness allies seem to have won the latest battle in what has come to be known as the "tomato war" with the Florida Producers Association, as the U.S. Department of Commerce rejected the Florida growers' accusations of "dumping" against Mexico. While Carter stated that the decision was a part of his move against inflation, it also is seen as having political importance in the negotiations over Mexican oil and gas.

V. Undocumented workes

According to the figures of the INS, in 1970 a total of 879,566 Mexicans were deported from the U.S. While numerous investigations into corruption at all levels of this government service continue, with accusations ranging from bribes to rape and murder of undocumented immigrants, the Border Patrol is requesting additional funding: 122 million dollars for personnel and equipment, electronic detectors and computer systems. We must wonder about the priorities of the Federal budget if they agree to such an increase in funding for this police agency, while in Texas the right to education is continually being denied to the children of undocumented immigrants, supposedly for lack of funds.

The Mexican Secretary of Foreign Relations affirmed that instructions have been sent to the Mexican consuls in the U.S. to pay closer attention to the violations of the rights of undocumented Mexicans in that country. Along with various Chicano and religious organizations, one consul is currently demanding a rigorous investigation into the deaths of two Mexican citizens in Laredo, Texas, resulting from a chase by the Border Patrol and local police. Meanwhile in Mexico, the Mexican Communist Party declared that the government is trying to solve the problems of unemployment through means of migration of workers to the U.S.

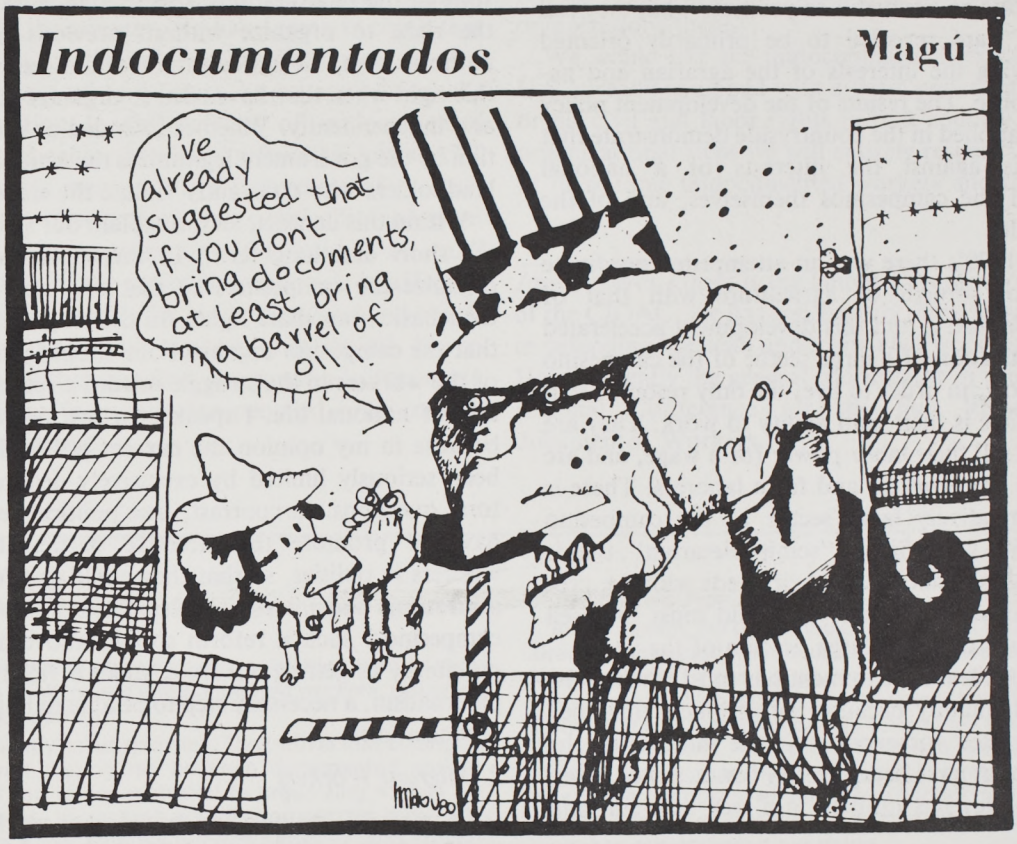
The hearings of the Senate Select Commission on Immigration Policy have continued. A number of U.S. politicians and businesspeople and some Mexican researchers maintain that there is a scarcity of labor in the U.S., usually to back up their arguments for some form of temporary worker program. However, with 1979 unemployment rates estimated at 8.3% for Hispanics, 11.3% for Blacks, and 5.1% for Anglo Saxons, and reaching 50% for Black youth, we see that we are not dealing with an actual labor scarcity, but with certain sectors' particular need for exceptionally cheap workers.

Nevertheless, in spite of the struggle of the minority that supports organizing undocumented workers, the AFL-CIO decided to maintain their policies against undocumented immigrants in the U.S.

VI. Maquiladoras

The trend for the U.S. business sector to look for lower wages can also be seen in the maquiladoras, or assembly plants, along the Northern Mexican border. These countries were exposed in the magazine *Proceso,* because "they are acquiring the quality of an arm of political pressure extremely useful for the (U.S.) empire in the conflict with its wounded and 'petrolized' neighbor." Meanwhile, the business section of a U.S. newspaper presents these businesses in a very favorable light, quoting the director of an industrial plant in Juarez as saying that a company's costs for maintaining an assembly worker in this city are close to $3,200 per year, while this figure would be multiplied 10 to 20 times to maintain a worker in the U.S.

Confronted with this situation, the U.S. labor unions protest that these complaints "are exporting American jobs."



VII. U.S. politics: the possibilities for Mexico

In general, the official politics in the U.S. are moving in a markedly rightward direction. Voters in the November presidential election may have a choice between Carter and Reagan, the latter's campaign slogan being "Let's make America great again."

With the pretext of controlling inflation the government has reduced the budget for social, educational and employment programs, simultaneously increasing the military budget and the price of gasoline. Given this context, it will be difficult for any person, even with good intentions as Ambassador Julian Nava, to find a way to improve relations between Mexico and the U.S.

Note: This synopsis is based in articles, editorials and commentaries from the Mexican newspapers *Uno mas Uno* and *Excelsior,* the magazine *Proceso,* and the *New York Times*

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JOSÉ DOLORES LÓPEZ

THE INDEPENDENT CENTRAL COMMITTEE OF DAY LABORERS & FARM WORKERS (CIOAC), PRESENTED TO THE FIRST INTERNATIONAL CONFERENCE OF UNDOCUMENTED WORKERS RIGHTS

I. The Crisis in Agriculture and the Campesino Response

In the CIOAC we think it is important to understand the capitalist character of the Mexican agricultural structure. When viewed in this context the actions of the Federal and state governments to promote what they call "productivity" are revealed to be primarily oriented toward satisfying the interests of the agrarian and national bourgeoisie. The results of the development policy that has been applied in the countryside demonstrate that said policy is against the interests of a national agriculture, of the campesinos themselves, and of the Mexican people.

During the 1970's there was an attempt to coordinate the rhythm of growth of agriculture with that of monopolized industry, and this development accelerated the proletarianization of a large sector of the campesino population. Now, in order to live, the only resource that these people have is their own ability to work. They are thus forced to sell their labor power for a wage, and are converted into day workers and farm laborers. There is also another relatively large sector of the campesino population which we define as "semiproletarian", that is to say, those who cannot meet their needs with the product from their small piece of land and must thus sell their labor power during a large portion of the year.

This policy of rural development has most favored the irrigated zones, mainly because the products that they harvest are directed for export. At the same time, the non-irrigated areas have been severely handicapped, since for them the policy has resulted in a lack of credit and technical aid.

It is currently said that there is a process of capital flight from the countryside, in spite of the high investment level of the transnational companies in irrigated districts. If investment has diminished this is principally due to the fact that, in contrast to industry, the production cycle in the countryside does not allow a rapid return on investments, and it is therefore not sufficiently profitable to private interests.

This rural development policy has resulted in a considerable increase in the prices of products from the countryside, and this means greater impoverishment of the campesino population that is dependent on very low wages, as their acquisitive capacity is diminished. In addition, this process leads to a reduction of the internal market, and we find it necessary to import food products that we are perfectly able to produce ourselves.

The role of the CIOAC and the SNOAC (Sindicato Nacional de Obreros Agricoles y Campesinos) is to help promulgate and support the struggles of campesinos to obtain more credit and win respect for their organizations.

In its dealings with agricultural workers the government has seriously violated the law, through denying their rights to organization and unionization as established in Section A of Article 123 of the Constitution. In spite of the fact that in this section all workers are given the right to organize without previous governmental authorization, the agricultural workers have been denied this right when they have tried to organize autonomously and independently. Whether intended or not, this violation by the government legitimizes the actions of the large landholders who constantly violate the same laws.

Within this context, let me explain our struggle both in the short and long term: In the short term we must organize the campesinos so that they can struggle for their basic immediate rights. In the long term we believe that the campesino organizations should join with those of the workers in the struggle toward a real democratization of national life. I speak of a *real* democratization, because in my opinion the current political reform has been seriously limited by exclusively dealing with electoral questions. In contrast, true political reform would have to promote the effective participation of the workers in politics, so that they could put forward their aspirations and interests with complete liberty. For the campesinos, such a reform should above all mean the possibility of getting out from under official control and paternalism, a necessary step to be able to build their own organization.

2. Migrant Workers

In terms of the question of migrant workers, we believe that this problem must be dealt with by all of civil society. It should not be seen as a far-away problem of others, since it is generated by our own economic, social and political structures.

We do not deny the political responsibility of the North American State in this issue, but we believe that the Mexican government must also promote a policy of defense of the civil and working rights of undocumented workers who emigrate to the U.S.

For this reason we have worked along with other groups and organizations to promote the First International Conference For the Full Rights of Undocumented Workers. We are certain that the conference represents an important step. Through the organized pressure of different political, social and religious groups, the Mexican government will be forced to adopt a clear and definite posture in favor of the undocumented migratory workers.

3. No to a New Bracero Plan

In our perspective of political organizations we reject any so-called solution to the problem that advocates

reestablishing either totally or partially the Bracero Program. Such a plan has a negative impact on workers who are now undocumented, in that it often confines them to a single worksite, where they are basically under the control of a foreman. In addition, their type of plan usually results in flagrant violations of the worker's human and labor rights, such as the prohibition of family visits, or the restriction of contracting conditions to an age limit between 25 and 30 years old.

This is not the time to maintain false optimism. Nevertheless, analyzing some events and the current political conjuncture of the country, we have come to think that this may be a particularly appropriate moment for peoples' organizations to pressure the government to take an active position in the defense of undocumented workers. In this sense, Mexico's refusal to join GATT reflects to a good measure the effectiveness of pressure exerted on the government by politically conscious groups and mass organizations. Of course, we can't overlook the role of the national bourgeoisie in affecting the decision, in its search for better positions and conditions of negotiations with transnational capital. Nevertheless, we think that our first observation is important, and the pressure from popular peoples' organizations was also determinant.

As a principle of political organizing, we believe that it is important that the workers and campesinos also take part in the defense of their sisters and brothers in the U.S. The question of the undocumented workers has been seriously taken up by the *Congreso de Trabajo* (Labor Congress) in the last two years, and this is a significant precedent for the Conference.

For our part, in CIOAC, we will work for the union organization of undocumented campesinos, through our political education work. Then hopefully when they leave for the U.S. they will be able to join already existing organizations there.

We would like the undocumented Mexican to go the U.S. already equipped with a basic understanding of her or his civil and labor rights in that country. For future organizational steps we will entirely respect the decisions of these same undocumented workers and their unions.

José Dolores López is the Union Organization Secretary of the CIOAC. He has consistently demonstrated interest in defending Mexican undocumented workers in the U.S. He is currently the general coordinator of the First International Conference for the Full Rights of Undocumented Workers.

DAVID BURCIAGA: "In the UFW we do not discriminate against undocumented workers"

1.Mr. Burciaga, the media often presents confusing reports about the posture of the UFW toward undocumented workers. Could you please give us your opinion?

Yes, this a frequently asked question. The truth is that among our workers we do not distinguish between documented and undocumented. Our job is concentrated in organizing strikes and negotiating contacts. In general, we UFW organizers must work more than 8 hours a day, Monday through Saturday, and at times even on Sunday. In the organizing—I repeat—we are interested in the worker, and not whether he or she is documented or not. One time, while we were negotiating with a mushroom company in Ventura County, they asked us to send them workers from our employment program with proof that they weren't undocumented. I told them that my office is not the INS, and that my job is not to control workers documentation. In another occasion we were five UFW representatives negotiating with a company, when one *compañero* stood up and said to me: "Burciaga, tell this man that I am an illegal and that these two who are with me are also; I'm afraid if they send me to Mexico, but they have no right to set such conditions for negotiations. . ." This is just one example of the commitment and strength that an undocumented worker can have within the UFW.

2. What level of strength do undocumented workers represent within the union?

In the first place, I would say that the UFW represents more undocumented workers in the U.S. than any other organization. In the company with which we're currently negotiating in San Diego, 25% of the workers are undocumented, and at times this figure reaches 90% in some of the companies where we still have not signed a contract. Approximately 20% of the UFW members in San Diego are undocumented; in the San Joaquin Valley and Bakersfield they represent about 10%, and this approximation is probably also accurate for the Imperial Valley.

3. What are your opinions of the possibility of the reestablishment of the Bracero Program?

In my opinion, the UFW should fight so that workers do not come already contracted from Mexico. If they were to be contracted in Mexico it would make our work much more difficult, and we would probably lose all possibility of organizing them, because they lock them up in concentration camps where they are constantly under the bosses control. A bracero, in addition, would always be afraid of being sent back to Mexico, and would never want to organize. A new Bracero Program would be very bad for the UFW, but "illegal" workers can still move back and forth across the border. Organizing them has strengthened our union.

We just want to organize the workers, and we don't care if they're Blacks, Americans or "illegals". The struggle of the UFW is to change the social system through means of the strike and economic pressure, and for this reason we act with equal energy against everything that opposes us. Also for this reason, as Cesar Chavez says, "If my own mother were a strike breaker, I'd ship her back to Mexico."

4. What services does the UFW provide for its members?

In the first place, a decent wage: in places where there is no contract farmworkers are paid between $2.90 and $3.00 per hour, but with UFW, in contrast, the starting pay is $3.20. A UFW worker cannot be fired from the job. In addition, we offer medical insurance and a pension plan. Our plan pays clinics and private doctors and is available for undocumented workers while they are in the States. When they return to Mexico they are only covered by the services dealing with childbirths and deaths. We have two clinics installed in Tijuana and Mexicali which offer very good services, because everything on the other side of the border is cheaper.

David Burciago works as an organizer with the UFW, and has a good deal of experience as negotiator and union representative dealing with agricultural companies. We would also like to thank *Marco Antonion Rodríguez*, representative of the AFSC in San Diego, California, for interviewing Mr. Burciaga for us.

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A CALL FOR ACTION

The migration of Mexican workers to the United States of North America, with or without documents, is not a recent phenomenon, but a situation that has existed since the last century.

The Mexican worker is faced with the impossibility of finding work in his or her place of origin and is therefore forced to migrate without documents. From time to time different figures are utilized by both governments for their political interests.

Undocumented workers have represented a very important subsidy for the North American economy due to the low wages that they receive and to his status as taxpayers. They represent a very important labor force not only in agriculture but in other sections of industry such as construction, clothing, food production, etc.

The situation of these workers inside the U.S. has been characterized by the most brutal exploitation and the systematic violation of their most basic human and civil rights—a situation which affects all of the workers in that the undocumented from a part of the North American labor force, as such, the labor unions should organize and defend the undocumented workers, without regard to their nationality or immigration status.

The constant violation of the rights of the undocumented workers has given, in the past years, a series of struggles to guarantee these workers the right to organize, the right to collective bargaining, social security, decent working conditions, etc. In these struggles, the undocumented worker has counted with the support and solidarity of Chicano organizations, unions, political and religious organizations, and others in the United States.

On the other hand, labor, social, political and religious organizations from Mexico, have been working towards the defense of these workers and have pointed out the need to mobilize the labor movement to fight for their rights. In this light, a section of this stated movement, and as a result of the indifference from both governments, have demanded that the rights of undocumented workers be respected, action that represents a major advance in addressing this problem.

Considering that only through an organized struggle and concrete joint actions will we be able to preserve the rights of undocumented workers, and considering that such organized struggle constitutes a historical responsibility that we as working people we must assume.

WE ARE INVITING labor, civic, religious and democratic organizations from Mexico and the United States, to participate in the International Conference in Defense of the Undocumented Worker, which will take place on the 28th, 29th, and 30th of April, 1980, in Mexico City, under the following themes:

1. Stuctural causes for the migration to the United States. Situation and conditions of the undocumented workers.
2. Labor laws and the Mexican and U.S. labor movements in relation to the undocumented workers.
3. Policies of both governments in relation to the undocumented workers.
4. Adoption of a document which guarantees the rights of these workers, and
5. Plan of Action.

FROM MEXICO:

Central Independiente de Obreros Agrícolas y Campesinos,
Sindicato Nacional de Obreros Agrícolas,
Similares y Conexos,
Sindicato Único Nacional de Trabajadores Universitarios,
Movimiento Revolucionario del Magisterio,
Unión General de Obreros y Campesinos de México,
Centro de Coordinación de Proyectos Ecuménicos,
Centro Nacional de Comunicación Social,
Unión Nacional de Mujeres Mexicanas,
Centro de Información y Documentación Sobre Asuntos Migratorios,
Accíon Comunitaria, Accíon Politica,
Unión de Periodistas Democráticos,
Tribuna de la Juventud,
Sindicato de Empleados de Industria y Comercio, Zaragoza,
Oficina de Asesores del Trabajo.

FROM THE UNITED STATES:

Texas Farm Workers' Union,
Arizona Farm Workers' Union,
Centro Campesina "Adelante",
Shopmens Local Union No. 627, (Ironworkers),
Californians Against Taft-Hartley,
Hermandad Internacional de Trabajadores Generales, Local 310, Los Angeles, Calif.,
United Migrants, Immokalee, Florida Centro de Acción, Dallas,
National Equal Rights Congress,
Comite de Apoyo de los Campesinos del Valley "La Mesila",
New Mexico,
Students and Parents Education Action Committee, Raymondville,
Southern New Mexico Legal Service Client Council, New Mexico,
Comité Obrero en Defensa del Indocumentado en Lucha, Los Angeles.

Ciudad Juárez, Chih., March 2, 1980

WORKING CONDITIONS OF UNDOCUMENTED WORKERS

Joe Razo is the director of the Concentrated Enforcement Program, Division of Labor Standards Enforcement, Department of Industrial Relations, of the State of California. In a conference dealing with the working rights of undocumented workers that took place in San Diego in September of last year, Joe explained the efforts of this program to better the working conditions of undocumented immigrants in Los Angeles and San Diego. His speech of that day reappears below in an edited version. It is important because, in addition to its strong testimony against the current situation, Joe proposes concrete and creative actions to bring about change.

The Concentrated Enforcement Program started in January, 1978. Its objectives were principally two. One was the elimination of the unfair competition that was occurring on many marginal industries. Marginal industries are defined as industries that usually pay the minumum wage or slightly above or slightly below. Such industries would include the garment industry, restaurants, hotels, motels, car washes, tortilla factories, furniture makers, mobile home makers, and shoe factories. These are usually factories that employ minority workers and usually undocumented workers. These also are industries in which we usually find quite a lot of exploitation.

The second aspect of the program was to eliminate the exploitation that was resulting. An example of this is workers not getting paid the minimum wage. Many employers were having to go out of business because they could not afford to pay their employees the minimum wage. In order to remain in competition they had to pay their employees below the minimum wage.

The program was initially funded under federal funds, Title II, Public Works Employment Act. It was a demonstration project set up for one year with a staff of 59 people. We selected two geographical areas, San Diego and Los Angeles. In Los Angeles I divided the task force into two groups, one entirely directed at the garment industry and the other for the remaining industries, but principally in restaurants. In San Diego we concentrated on restaurants, hotels, motels, nurseries and agriculture.

The findings were as follows: In San Diego we inspected 1,945 firms. Of these, we discovered that 33% were not paying the minimum wage and/or overtime. We inspected 176 nurseries and farms and almost 100% were not paying the minimum wage and/or overtime. In addition, most of them were manipulating the time cards of the employees. For example, we would come in at eight o'clock and there would be no time cards. This gave us an indication that the majority of workers were getting paid below the minimum wage or were getting paid in cash and in many instances the employer was deducting taxes from the employee, but not forwarding them on to the state or to the federal government.

In addition to that, we found that 10% of the employers did not carry Workers Compensation Insurance. This meant that if the worker was injured on the job, he or she did not qualify for medical benefits or else they would have to take it out of their own pockets in order to pay for those benefits.

There were horror stories as many of the farmworkers, in order to secure work, would have to kickback pay to the foremen. In this way they were sure of a job. In some instances catering trucks would come into the farms and would kickback to the foremen and then increase their prices of hamburgers, drinks, etc. The workers did not have other ways of buying food so they were dependent on the catering trucks.

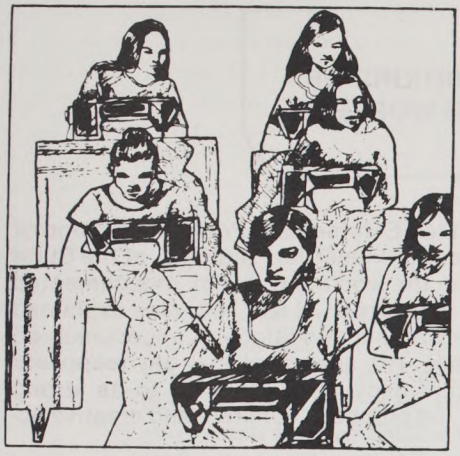
Supervisor Hedgecock already spoke of the drinking water from irrigation ditches, lack of sanitary conditions, etc. We've been trying to pressure the county, the city, the state and the health department to get involved.

Sheldon Maram mentioned earlier that the solution was vigorous enforcement of labor standards. I think that is only one aspect. Being realistic, I think we have to recognize that we are in the proposition 13 era. So enforcing standards is going to be limited, and so we will have to find other solutions.

In Los Angeles we inspected 1,848 garment firms and discovered that 81% were not paying minimum wage and/or overtime. Thirty-one percent of them did not have Workers Compensation Insurance for their employees. We inspected 2,253 firms in the restaurant industry and we found that 63% were not paying minimum wage and/or overtime.

This all means that in the 16 months that we have been operating, we have collected close to $2.3 million in back wages for workers. This is not just for undocumented workers, but any workers that we have found that have not been paid their full wages.

We have assessed fines of $811,000 on employees, because they do not carry Workers Compensation Insurance. This figure was tabulated in the following manner. If we find an employer who has employees working for him without Workers Compensation Insurance. If the employer chooses to ignore our directive, then we file criminal charges. In those 16 months we have filed about 140 criminal charges against employers, not only for failure to obey our "Stop Orders" but also for not paying minimum wage



and/or overtime, and not keeping adequate records.

There is a lot of manipulation of time cards going on. We'll go in at eight o'clock and we won't find any records. Then we'll come in the next day at eight o'clock and the employer will have all his employees clocked in at eight. We discovered that most of our employers were adjusting their recording of the time cards to our work week. So, if our work hours were from eight to five, most of the time cards had the same hours. So, I started mixing up my work hours by putting staff out in the field before six in the morning and after five in the afternoon. We found situations such as people being punched out at five o'clock, but still working after five. So employers were getting a lot of free labor.

We recently in the last three months also initiated a program where I have the staff working on Saturdays. We discovered the same results. The employers were getting an extra day of work out of their employers without clocking them in. This enables the employer to pay the employee straight time wages, maybe at the minimum, during the week, but not pay them overtime or for Saturday or Sunday. They pay them in cash and therby avoid time-and-a-half or overtime and also avoid paying taxes.

The approach that we have taken is that we turn over all the records that we receive from an employer, after we are through with them, to the Internal Revenue Service's Criminal Intelligence Division. We find that additional criminal filings are made against the employers for income tax evasion. Due to the privacy laws of the federal government we do not know how successful they are. But, they are investigating all the cases that we turn over.

One of the reasons why attention has not been focused on this issue in the past is not only because undocumented workers are the constituency of no one, but since they do not vote, the politicians do not come to their aid. This means that they must rely on people outside of government to work on their behalf, whether they be in community organizations or in religious denominations. Most governmental agencies stay away from this problem. You, as part of the religious community or as part of the Hispanic community, must continue to focus on this issue.

This morning we had a number of speakers talking about restrictionism versus non-restrictionism. I suspect that in 20 or 30 years from now we'll be speaking about the same problems. "Should we have an open border policy or should we continue the same policy that we now have—a door half-way open?" The federal government is not going to do anything about this problem because it is politically sensitive.

Even if today we granted immunity to all undocumented workers that are in the United States, twenty years from now we would be faced with the same problem. I feel we have to take a much more realistic approach and direct ourselves to the realities of what we have today. We have possibly millions of undocumented workers in this country. What shall we do about them? Will we give them full equal rights, or shall we use them as peon labor?

Even though the Fourteenth Amendment forbids slavery, there are still forms of slavery in this country. We see it every day. We've seen rats and cockroaches in factories. We've seen the working conditions of undocumented workers and other employees in marginal industries.

For the last six months, we have seen boat people arriving in Los Angeles and San Francisco. We are finding those people in those same industries where we find the undocumented, in the garment industry, hotels, motels, restaurants, etc., working under the same conditions. We found at least four or five cases where boat people had been locked in closets when we conducted inspections on Saturdays, and employers had said, "I do not have anyone working on Saturdays." Yet, when we checked the closets, we found Laotians, Cambodians, and so on. Many of these employers are not just employers who have legal status in this country. Many of these employers are boat people themselves who are used to conditions in their countries that undercut the labor standards and they are employing the same tactics here. Those boat people who are escaping Communism or whatever the issue may be, come to this country expecting a better life and in essence they are finding slow death. When we speak to employers, they tell us, "These people have a choice. They don't have to accept these jobs. They can go elsewhere."

We all know the problems that the undocumented and boat people have with regards to fluency in the English language. We know that they have limited resources in seeking available jobs.

Our approach is basically to concentrate on a given geographical area and to saturate that area with investigators. I currently have 32 investigators. I take East Los Angeles, downtown Los Angeles, or down here in San Diego, and I put all 32 investigators there. We then say, "You take that side of the street and I'll take this one." We hit every business that's a marginal industry and inspect it.

Almost always we find violations. We bring our bookkeepers who audit the wage history for the employer for the last three years. Then we make a demand on the employer for back pay. If he settles, then we have no problem. If he doesn't then we take it to court. Within a short given period (timeliness is the answer in inspecting these firms) of about a month, we come back again and conduct another sweep. Any employer that we find violating the same laws that were cited the first time, has criminal charges filed against him. He is then taken to court.

There are problems in taking him to court. We have to educate the judiciary that an employer who is cheating 20 or 30 of his workers deserves a stiff fine and to be sentenced. Most of the time they receive probation or a fine of $150 per employee. That doesn't do anything. It's a slap on the hand. The other aspect that we have to make

the judiciary aware of is that these employers are depriving many people of their livelihood. That's a constant problem that we have.

After a year we have finally sensitized the Los Angeles City Attorney. They will accept almost any client that we give them, and they are putting people in jail. Unfortunately, that is not true in other geographical areas.

The judiciary, like politicians, government officials and everyone else, only work one way — under pressure. If they feel that their constituency is putting them up against the wall, they respond. I think all of us are very naive if we expect government, whether it be local, state or federal, all of a sudden out of the goodness of their hearts, to start passing all sorts of legislation to eliminate the problem. A presidential year is coming up, and in 1982 the governorship, and that's the time to move.

What we also have to do is to promote strict enforcement. Strict enforcement is possible in many instances depending on the availability of manpower resources. The way that we are focusing our program is that it is going to be a very mobile program that is going to be in transit all the time.

For example, we had an office here in San Diego which I've now moved to Orange County. It stayed in San Diego for 14 months. Now we are operating in Orange County and Los Angeles, and we will be operating in San Jose. Our objectives is to use this process of enforcement up and down the state.

After we have conducted a process of strict enforcement and a filing of criminal charges, we usually find that the industry starts adhering to the labor standards. So, what we do is leave two or three people behind in that given geographical area to continually monitor those industries. When those industries start getting bad again, we bring in our people to hit them again and file criminal charges.

There are specific industries that, no matter how much you try to enforce, will never clean up. They will continue to violate the law. One of these is the garment industry. We will visit a garment shop three or four times and we still find the same kinds of violations. We finally came to the conclusion that we need legislation in order to restructure the industry. We don't need more labor law enforcers in that industry. In fact, if we put one enforcment agent in every shop we would still not stop the violators.

The reason that industry needs legislation for enforcement is because right now, the way the law reads, the only one we can make directly liable for the labor violations is the contractor. The contractor is the one that employs the people that do the actual sewing. The manufacturer is the head man that contracts out the work to various contractors. After numerous studies we have come to the conclusion that the manufacturer is not paying the contractor sufficient money for the contractor to make a profit, cover his overhead costs and pay the minimum wage. When the contractor is faced with the choice of covering his costs or paying the minimum wage, he's not going to pay the minimum wage.

We have spoken with State Senator Joseph Montoya and are now introducing legislation which will require the manufacturer to be liable for any violation that we find in any contractor shop. We are also requiring those employers to register with the state. If we find a shop where the employer has not registered with us, then we will confiscate all the garments. That means that we not only hurt the contractor but the manufacturer also because the manufacturer cannot deliver the goods to the retail stores.

I would suggest that about 50% of the clothes you are now wearing were manufactured in sweat shops or were manufactured as home-work (work that is given by a contractor to a garment worker to complete at home), the practice of which is illegal. Garments of Bullocks, Sears, and some of the specialty shops are being manufactured at home right now by undocumented workers who are getting paid maybe as much as seventy-five cents or a dollar a blouse, and it takes about an hour to sew a blouse. This is below the current minimum wage of $2.90 an hour.

This leads to another possible approach rather than just restructuring the industry. There is the need to get community groups to testify before any legislation that is going to effect any true wage structure for undocumented workers. The only thing that we usually see in Sacramento are the lobbyist from employer groups who are complaining about government regulations which are forcing them, they say, to move to Korea and Taiwan.

The other two approaches which I suggest is that when community and church groups develop that they publicize the firms that are commiting violations. Our division is doing that now in Los Angeles. We are going to start to give on a weekly basis to the media the names of those employers that are involved in serious violations. Most employers do not want a penal record on their corporations or on them as individuals. They also would not want that publicity because people they do business with are going to come to them directly and say, "Pretty soon you're going to involve me in this, and it's going to hurt me economically." So, either those employers start doing work with other businesses, or else those employers clean up their act.

Lastly, the most important weapon is the economic boycott. I, for one, would love to see community and church groups stand in front of Sears, Bullocks or whatever company it may be and say, "Do not buy this blouse, dress or shirt that has a particular label. That article was made in a sweat shop." Pretty soon Sears, Bullocks and others would be saying, "We are no longer going to be selling products made in sweat shops."

Those then, are the approaches I suggest: strict enforcement, filing more criminal charges, restructuring the industry, negative publicity and economic boycott. I think that is the realistic solution, rather than waiting for the state or federal government to initiate some new, innovative procedure, while these problems have been going on for the last six to eight years.

***To obtain the pamphlet "Undocumented Workers in the U.S. Labor Market," which contains the texts of all of the speaches of the September conference, write:**

American Friends Service Committee
980 N. Fair Oaks Avenue
Pasadena, CA 91103

EVENTS

International Meeting of Women along the Border/Reunión Internacional de Mujeres Fronterizas

Sponsored by the *Centro de Orientación de la Mujer Obrera* (COMO, Orientation Center for Working Women), the First International Meeting of Women along the Border took place in Ciudad Juárez, Chihuahua, Mexico, on the second and third of February.

Out of the total of approximately 150 people attending the meeting, the presence of close to 50 women who work in the *maquiladoras,* or assembly plants, of Ciudad Juárez, stood out clearly.

Numerous researchers on border questions also attended, along with representatives of grass-roots organizations of Tijuana, Mexicali, Juárez, Raymondville and Brownsville.

The contributions of the *maquiladora* workers were very valuable, being based in their own personal experiences. Although some of the information that they shared was already known by those attending the conference, it took on greater force and realism coming from the mouths of those who deal with these problems daily. The following is a synopsis of some of the points that they emphasized:

a) In the *maquiladoras* there is a lack of regulations and security conditions and therefore there are frequent accidents. On the 31st of January 40 women workers were poisoned by inhalation of hydrochloride in the maquiladora Banda Grande (a subsidy of Sylvania). There is also the danger of slow but permanent damage to vital organs (nervous system, optical nerve, etc.)

b) The companies manipulate the women's condition in a variety of ways:
   —Sexually: They are constantly harrassed by their supervisors. Often accepting proposals is the only way to obtain or maintain one's job.
   —Emotionally: The company tries to manipulate them through words or gestures that would touch the so-called feminine sensibility: On beauty queen competitions, etc.
   —Ideologically: "We hire you because you know how to work better than men. You are more responsible, you recognize the problems of the company and you help out." (That is to say, you better put in extra hours)

c) The creation of new technology: Two RCA workers explained how, based on a series of experiments closely followed by the plant engineers, they had succeeded in developing a new kind of circuit board for color televisions. Obviously their work was not recognized, neither verbally nor economically.

d) Open or subtle threats to keep them from organizing or joining a union: a sign posted in Banda Grande reads: "Any worker caught signing up with a union will be promptly fired. . .We urge you to consider. . ."

e) Defective and inadequate ventilation, both in winter and in the hottest season. The hydrochloride poisoning was precisely due to the fact that the ventilation system was not working.

Through the contributions of the working women present at the Meeting, it became clear that they have been through a process of developing consciousness about their situation of exploitation, both as workers and as women.

They are aware that building an organization is very difficult, because of their lack of experience in the labor force, the scarce or nonexistent social and political consciousness of the majority of young workers who start at the factory, and finally because from a very young age women are taught, and forced, to be submissive and docile. When it is common knowledge that for every woman employed there are three waiting for a job, the fear of losing one's employment is very large.

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