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EMPLOYMENT OF "GREEN CARD" ALIENS DURING LABOR DISPUTES

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HEARINGS BEFORE THE SPECIAL SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES NINETY-FIRST CONGRESS FIRST SESSION ON

H.R. 12667

A BILL TO AMEND THE NATIONAL LABOR RELATIONS ACT,
AS AMENDED, SO AS TO MAKE IT AN UNFAIR LABOR PRACTICE
TO EMPLOY ALIENS WHOSE PRINCIPAL DWELLING PLACES
ARE IN A FOREIGN COUNTRY DURING A LABOR DISPUTE

HEARINGS HELD IN WASHINGTON, D.C.,
JULY 16, 17; AUGUST 7, AND 8, 1969

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*



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CONTENTS

Hearings held in Washington, D.C.:	Page
July 16, 1969	1
July 17, 1969	67
August 7, 1969	121
August 8, 1969	221
Text of H.R. 12667	2
Summary of H.R. 12667	2
Statement of—	
Crimmins, John Hugh, Deputy Assistant Secretary of State for Inter-American Affairs	96
Hennessy, James L., Executive Assistant to the Commissioner, U.S. Immigration and Naturalization Service; accompanied by: Cornelius J. Leary, Deputy Assistant Commissioner for Deportation, Immigration and Naturalization Service	67
Huerta, Mrs. Dolores, director of negotiations, United Farm Workers Organizing Committee, AFL-CIO	52
Kircher, William L., director of organization, AFL-CIO, Washington, D.C.; and Arnold Mayer, legislative representative, Amalgamated Meat Cutters and Butcher Workmen, AFL-CIO	3
Lesser, Leonard, secretary-treasurer, Committee for Community Affairs; accompanied by: Jack Beidler, executive director	221
Miles, Mark T., director of plans and programs, El Paso Chamber of Commerce	205
Potter, Frank A., Director, Farm Labor and Rural Manpower Service, U.S. Department of Labor; accompanied by: Robert M. Guttman	195
Samuel, Howard, vice president, Amalgamated Clothing Workers of America, AFL-CIO; accompanied by: Antonio Sanchez	236
Sanchez, Antonio M., Business Representative, Amalgamated Clothing Workers of America	239
Scammon, Richard M., vice president, Governmental Affairs Institute, former chairman, Select Commission on Western Hemisphere Immigration	91
Thornton, Richard V., executive vice president, National Council of Agricultural Employers	228
Triggs, Matt, assistant legislation, director, American Farm Bureau, Education	104
Wasserman, Jack, board of governors, Association of Immigration and Nationality Lawyers	218
Prepared statements, letters, supplemental material, etc.:	
Crimmins, Hon. John Hugh, Deputy Assistant Secretary of State for Inter-American Affairs:	
Declarations by Lic. Octaviano Campos Salas, Secretary of Industry and Commerce	99
Rules and Regulations: Part 966—Tomatoes Grown in Florida; Part 980—Vegetables; Import Regulations	101
Hennessy, James L., Executive Assistant to the Commissioner, U.S. Immigration and Naturalization Service:	
Labor disputes—Current: July 23, 1969 (list)	76
Memorandum of Decision	77
Memorandum Opinion and Order Granting Motion for Summary Judgment	84
Permanent resident alien commuters and seasonal workers, by State (table)	70
Huerta, Mrs. Dolores, vice president, United Farm Workers Organizers, letter from Chief, Taxpayer Service to LeRoy Chatfield, United Farm Workers, enclosing record file	57

Prepared statements, letters, supplemental material, etc.—Continued

Kircher, William L., director of organization, AFL-CIO, Washington, D.C.:	Page
"Climite Friendly in Mexican Border Zone," an article entitled..	49
"Green Card Labor and the Delano Grape Strike," a study entitled.....	7
"Inexhaustible Labor Supply—30 Cents an Hour," an article entitled.....	46
Statement by the AFL-CIO Executive Council on United States-Mexican problems.....	24
There's Profit for You in Twin Plants, article entitled.....	48
Lesser, Leonard, secretary-treasurer, Committee for Community Affairs, statement of.....	221
Mahon, Don, executive secretary, National Federation of Independent Unions, letter to Chairman Perkins, dated August 15, 1969.....	246
Mayer, Arnold, legislative representative, Amalgamated Meat Cutters and Butcher Workmen (AFL-CIO), statement of.....	39
McCarthy, Rev. John, director, division for poverty of the United States Catholic Conference, statement of.....	244
Miles, Mark, El Paso Chamber of Commerce, El Paso, Tex.:	
Exhibit A.—United States-Mexico Border Cities Association commuter alien worker resolution.....	209
Exhibit B.—Commuter workers identified by occupational class (table).....	210
Exhibit C.—Donald W. Holmberg, executive director, El Paso Chamber of Commerce, letter to Chairman Thompson, dated July 22, 1969.....	211
Exhibit D.—Aliens apprehended, aliens deported, and aliens required to depart (table).....	212
Holmberg, Donald W., executive director, El Paso, Tex., letter to Karl Meyer, enclosing letter from Karl Meyer, dated October 28, 1968.....	216
Miller, J. J., executive vice president, Agricultural Producers Labor Committee, statement of.....	246
Potter, Frank A., director, Farm Labor and Rural Manpower Service:	
Labor disputes, current: August 6, 1969.....	201
Number of Mexican Alien Commuters, by State and occupation, 1967 (table).....	203
Revised instructions concerning holders of forms I-151.....	196
Thompson, Hon. Frank, Jr., a Representative in Congress from the State of New Jersey:	
"Comment: The Amiable Fiction—Alien Commuters Under Our Immigration Law," an article entitled.....	181
"Executive Conference on World Trade," a publication sponsored by El Paso Chamber of Commerce.....	123
"Low-Wage Lures South of the Border," an article entitled.....	188
"The Commuter on the United States-Mexico Border," a staff report of U.S. Commission on Civil Rights.....	155
Triggs, Matt, assistant legislative director, American Farm Bureau Federation:	
A bill to provide standards governing the relationships between farmers and farm workers.....	113
Letter to Chairman Thompson, dated July 29, 1969.....	109
Wasserman, Jack, member, board of governors, Association of Immigration and Nationality Lawyers.....	218

EMPLOYMENT OF "GREEN CARD" ALIENS DURING LABOR DISPUTES

WEDNESDAY, JULY 16, 1969

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10:14 a.m., pursuant to notice, in room 2175, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Thompson, O'Hara, Ashbrook, and Dellenback.

Staff members present: William G. Phillips, director; Jeunesse M. Beaumont, clerk; and Michael J. Bernstein, minority counsel.

Mr. THOMPSON. The subcommittee will be in order.

The Special Labor Subcommittee today begins hearings on H.R. 12667, a bill to amend section 8(a) of the National Labor Relations Act to make it an unfair labor practice for an employer to hire certain aliens as replacements during a labor dispute for persons ordinarily employed by such employer.

These hearings are held to obtain information for the use of the subcommittee in assessing the impact of the problem of "border commuters" or "green carders," as they are commonly called, on American wage and labor standards and labor-management relations generally. Testimony before the Subcommittee on Migratory Labor of the Senate Labor and Public Welfare Committee on May 21 and 22 of this year was very helpful in focusing public attention on the dimensions of this problem. Subcommittee Chairman Mondale has joined in cosponsoring H.R. 12667 in the Senate, where the bill number is S. 2568.

Hearings by the Select Commission on Western Hemisphere Immigration, held in January and February 1968, in El Paso, Tex., and San Diego, Calif., had previously provided valuable testimony on the problem of border commuter aliens. The former Chairman of the Commission, Mr. Richard M. Scammon will be one of our witnesses at tomorrow's hearings.

There is ample evidence already presented at these hearings to show that so-called green carders have for many years been recruited as strikebreakers in labor disputes by employers on the American side of the border.

This practice has seriously undermined labor union organization, orderly collective bargaining, and legitimate economic strikes and has resulted in a depression of wage levels, working conditions, and other

labor standards along the Mexican-American border communities in Texas, New Mexico, Arizona, and California.

The subcommittee will also explore briefly a broader aspect of the problem—the so-called border industrialization program under which runaway industry from the United States has established twin plants south of the border to take advantage of cheap labor, tax, and tariff concessions. It is important to know the effect of this program on unemployment, wage, and labor conditions in American border communities as part of the overall social, economic, and labor problems relating to the need for legislative action in this broad area.

This morning, we will hear from witnesses who represent the AFL-CIO, the United Farmworkers Organizing Committee, and other unions who have had first-hand experience in dealing with the green cards and runaway industry problems along the Mexican American border.

Tomorrow, in addition to Mr. Scammon, we have invited witnesses from the executive branch including the Department of Labor, the Immigration and Naturalization Service of the Department of Justice, and the Department of State.

Another day of hearings will be subsequently scheduled to hear a number of witnesses—both pro and con—who have indicated a desire to be heard but who could not appear this week because of scheduling conflicts.

Before hearing our first witness, I herewith insert into the hearing record the text of H.R. 12667 and our subcommittee analysis of the bill.

(H.R. 12667 and the subcommittee analysis follow:)

[H.R. 12667, 91st Cong., first sess.]

A BILL To amend the National Labor Relations Act, as amended, so as to make it an unfair labor practice to employ aliens whose principal dwelling places are in a foreign country during a labor dispute

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8(a) and section 10(1) of the National Labor Relations Act, as amended, are amended as follows:

Add a new paragraph to section 8(a) to read as follows:

"(6) to employ any alien unlawfully present in the United States; or to hire during a labor dispute as replacement for a person or persons ordinarily employed by such employer any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States: *Provided*, That this section 8(a) (6) shall apply to any employer, whether or not he employs 'employees' as defined in section 2(3)."

SEC. 2. Amend the first sentence of section 10(1) of the National Labor Relations Act by adding the words "or section 8(a) (6)," after "or section 8(b) (7)."

EMPLOYMENT OF ALIENS AS STRIKEBREAKERS

PURPOSE OF H.R. 12667

H.R. 12667 would amend section 8(a) of the National Labor Relations Act, as amended, to make it an unfair labor practice for an employer to employ any alien unlawfully present in the United States or to hire aliens lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States as replacements during a labor dispute for persons ordinarily employed by such employer.

It is aimed at the problem of "border commuters" or "green carders" who come into the United States each day from Mexico to work in border communities, causing adverse social and economic effects on wage and working standards of American industry.

ANALYSIS OF H.R. 12667

Section 8(a) of the act sets forth various types of activities on the part of employers that are designated as "unfair labor practices." H.R. 12667 would add an additional paragraph (6) to section 8(a) to make it an unfair labor practice under the act for an employer to hire aliens under two sets of circumstances—(1) any alien unlawfully present in the United States; or (2) any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States if such alien is being hired during a labor dispute as a replacement for a person or persons ordinarily employed by such employer.

The bill further provides that this new section 8(a)(6) shall apply to any employer, whether or not he employs "employees" as defined in section 2(3) of the act. The effect of this proviso in section 1 of H.R. 12667 would be to eliminate from the definition of employee the restriction against including an individual employed as an agricultural laborer as well as other categories of persons excluded under section 2(3), such as domestic service workers, independent contractors, persons employed by parents or spouses, supervisory employees, or those individuals subject to the Railway Labor Act.

Finally the provisions of section 2 of H.R. 12667 would amend section 10(1) of the act relating to injunctive relief to prevent unfair labor practices under the act by adding the new section 8(a)(6) to the categories of unfair labor practices for which the remedies contained in section 10(1) apply.

CHANGES MADE IN EXISTING LAW BY H.R. 12667

(New matter is printed in italic, and existing law in which no change is proposed is shown in roman.)

Section 8(a)—New Language After 8(a)(5)

"8(a)(6) to employ any alien unlawfully present in the United States; or to hire during a labor dispute as replacements for a person or persons ordinarily employed by such employer any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States: Provided, That this section 8(a)(6) shall apply to any employer, whether or not he employs 'employees' as defined in section 2(3)."

Amendment to Section 10(7) Made in Section 2 of H.R. 12667

"(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b) or section 8(e) or section 8(b)(7) or section 8(a)(6), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred * * *."

Mr. THOMPSON. The first witness this morning is Mr. William L. Kircher, the director of organization for the AFL-CIO. Mr. Kircher is accompanied by Arnold Mayer, legislative representative, Amalgamated Meat Cutters & Butcher Workmen.

STATEMENTS OF WILLIAM L. KIRCHER, DIRECTOR OF ORGANIZATION, AFL-CIO, WASHINGTON, D.C., AND ARNOLD MAYER, LEGISLATIVE REPRESENTATIVE, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN, AFL-CIO, WASHINGTON, D.C.

Mr. KIRCHER. It is good to be before this committee again, as an indication of your subcommittee's continuing interest in the broad problems of the rights of workers to have self-organization and to avail themselves of the machinery of collective bargaining.

Mr. Mayer has a statement. I would like to have it included in its entirety in the record.

Mr. THOMPSON. Without objection, Mr. Mayer's statement will appear in its entirety for the record.

Mr. KIRCHER. Mr. Chairman, my name is William L. Kircher. I am director of organization of the AFL-CIO, an organization of more than 13½ million workers, most of whom enjoy their organized status because they are in work categories where the right to organize is protected by law and where procedures to determine the majority wishes of the workers are also provided.

The legislation which gives rise to these hearings relates to a problem which pertains mostly to one broad area of the country and which primarily affects a segment of the national work force which has been placed outside the coverage of the National Labor Relations law—agricultural workers.

However, the adverse effect of the use of “illegals” and “nonresident green carders” is not restricted to the agricultural work force. It plagues other categories of employment in areas of this Nation which are close to the Mexican border from the Pacific Ocean to the Gulf of Mexico, particularly in unskilled and semiskilled employment such as is found in the garment industry, the hotel and restaurant industry, the laundry industry, food packing and processing, and others.

It is a quick commentary on the ridiculous posture of our present national labor policy’s “split personality” that a fieldworker who picks beans isn’t covered but his uncle who cooks them at a hotel, and his sister who serves them, are both covered.

And yet, the problem of organizing is often as difficult for those kinds of workers in those kinds of “covered” industries as it is for workers who are not covered. There are those who mistakenly think that the right to organize and to bargain collectively flows almost automatically to workers who are covered by the NLRA and who are in the majority with their fellow workers in desiring to organize. You and your subcommittee know, Mr. Chairman, probably better than most others, that “it ain’t necessarily so.”

You know from your lengthy hearings and detailed studies of 2 years ago that the right to organize, as it exists under present law, is often only a paper right in the face of the oppressive and intimidating practices of many employers who would frustrate that effort and desire.

I think you will be interested in knowing that your subcommittee’s report of its findings in those hearings was largely responsible for the recent hesitancy of the United Farmworkers Organizing Committee to unqualifiedly endorse the idea of extending coverage of the National Labor Relations Act to farmworkers.

They told me that after reading the Thompson report and seeing what happens to established unions who are covered under the law, they became frightened. I’m sure you can appreciate their fears, Mr. Chairman, possibly as much as any person in the country.

I make these observations because I think that it is extremely important particularly at this point in history, to make it very clear that the lack of NLRA coverage is not the only roadblock for workers who want to unionize today. The massive scientific-professional campaign to destroy union organizing efforts even where there is coverage of law, sometimes may be an even greater obstacle.

Where the farmworkers is concerned the organizational process becomes one of striking. In that case, the “illegal” and the “green card commuter” are used as strikebreakers.

Where there is NLRA coverage the "illegal" and the "green card commuter" are used in another way. The employer knows their "foreign" status and he lets them know that any indication on their part to become part of the unionizing effort will be looked upon with disfavor, to say the least. In each case, where you don't have the law or where you do have the law, they are used to frustrate the organizational process and they are skillfully maneuvered to fit the peculiarities of the situation.

Mr. Chairman, the commuter problem is a sensitive problem and it is a complex problem to deal with. I think one of the things that makes it most complex is the manner in which there are three Cabinet-level branches of the Government that have a direct interest in the problem.

They are the Department of Labor, the Justice Department and the Department of State. Unfortunately their interests do not coincide. Beyond the similarity of representing the same Government and the same administration the differences prevail.

The State Department is interested in international relations and foreign policy. The Justice Department is interested in immigration policy and law violators. The Labor Department is interested in the effect of relationships and practices on national labor policy and standards.

I won't bother reading the citations here, but I have included them in my testimony, quotes from the Immigration Service, quotes from the Department of State, quotes from the Labor Department, which indicate the different approach and the different attitude that each of these three have to this problem, and I pointed it out, you know, not really to embarrass the agencies and the fact that they get in fusses over this, and that the fusses tend to stalemate any action, but so that you can understand part of our position with respect to welcoming any kind of a legislative approach which offers some kind of an action pointed toward a reasonable solution.

It has not been forthcoming through any kind of administrative procedures.

The experiences we have had would take many, many more hours than this committee would want to spend listening. The frustrations we have had trying to work with the Immigration Service, trying to get some action out of the Justice Department, trying to get the State Department to peel off a little bit in its resistance to anything that might represent change and therefore rock the boat, you see, where the relationship with a foreign county, Mexico, is concerned.

We had at one time—I think it was about in June of 1967—the administrative regulation, which was promulgated and interpreted the rights of the Justice Department and therefore, the Immigration Service to deal with this problem as it relates to the utilization of nonresident green carders as strikebreakers and scabs, and it wasn't in our estimation, at least as interpreted, a very good regulation.

We met many hours, and we ultimately got them to accept an interpretation that would have almost adequately done the job of denying an employer the right to hire a nonresident green carder during a strike that had been certified.

It took almost a year, incidentally, to do that, and so in 1968, the Farm Workers Union went into the Coachella Valley, which is substantially closer to the Mexican border, within 100 miles of the border,

and that was the first time we had dared venture that close in any kind of a real operation, because the closer you get to the border, the more drastic is the impact of this kind of a situation.

Armed with what we thought was a reasonable interpretation of the regulation, a strike was commenced in the Coachella Valley against about 8,000 acres of grapes. Within 24 hours, a Federal judge issued an injunction enjoining the Immigration Service from enforcing the regulation. Within 24 hours of that time, the green carders came across the border.

The radio announcements were ready, and within a matter of hours after the judge enjoined the Immigration Service, the growers had radio spots along the border that all was clear, and the strike was broken and lost.

Several weeks after that, hearing the injunction on its merits—incidentally, the judge who issued the injunction disqualified himself, and the judge who heard the injunction on its merits threw it out and requalified the standard, and it was like standing over a dead body with a smoking gun and saying, "I didn't know the gun was loaded."

We lost the strike and won the injunction.

My point is that now with the reinstitution of that regulation, there has been no indication of a desire on the part of the Immigration Service to get back into the act and aggressively police this situation under the power that we feel that regulation has.

To help you understand the problem with the Immigration Service and the border patrol, and I have told them this personally, I have met with the officials, so I am not saying anything behind their backs. It is an older service, and a lot of the personnel have been there a good while, at the field level and the national level. There is nothing necessarily bad about that, except it is only in recent years that there has been two sides in the agricultural community.

For many, many years there was no organized worker side. The only voice in the community was the voice of the power structure and the employer side.

It is only natural in that period of time the Service identified almost completely with the grower side, as these are the only people they have known, and this provides a sort of a, I think, a built-in bias or prejudice against the workers in their organized form, and I think it tends to also immobilize the Service in taking any kind of aggressive action to protect the rights of these workers to effectively organize from the impact of the green card situation as it is today operated.

I think one of the good things about this legislation is the fact that it gives, or will give, workers an opportunity to become part of the—I hesitate to use this word—the "policing operation," at the point you place this in the category of labor-management relations, and into the stream of the machinery that deals with it.

Then the workers become, through their organized representatives, they become part of the policing operation, and I think this is one of the good parts.

I would quickly want to qualify that by saying that just because you make something an unfair labor practice for an employer in this day and age doesn't encourage us too much that that is going to dissuade him from doing this, in the light of the record, which indicates that

over the last 10 years, each year has set a new record in terms of unfair labor practices complaints issued by the National Labor Relations Board against employers.

I think today the record is a little bit more than twice as many than it was 10 years ago.

I have brought with me a large study, and I have a copy of it, by Richard A. Fineberg, by the Council for Christian Social Action, of the United Church of Christ. It is dated October 31, 1968, which is very recent, and it is entitled "Green Card Labor in the Delano Grape Strike, a Study of the Post-Bracero Workers in 1968."

I think the committee would do well to have it, because in a more statistical way, it deals with the extent to which migrants and green-card holders are part of the labor-management relations problem in this particular context.

Mr. THOMPSON. Without objection, we would like to have it. We will make that a part of the record following your testimony.

(The information referred to follows:)

GREEN CARDS LABOR AND THE DELANO GRAPE STRIKE: A STUDY OF POST-BRACERO
MEXICAN NATIONAL FARM WORKERS IN THE SAN JOAQUIN VALLEY, 1968

(Prepared by Richard A. Fineberg for the Council for Christian Social Action
and Board of Homeland Ministries, United Church of Christ, October 31, 1968)

CONTENTS

- I. Introduction
- II. Legal Dimensions of the Green Card Question
- III. Physical Dimensions of the Green Card Question
 - A. Introduction
 - B. Profile of the Delano Table Grape Region
 - 1. Location, Acreage and Varieties of Grapes
 - 2. The Work Force: Number, Habitat, Ethnic Composition
- IV. The Green Carder in the Delano Table Grape Harvest Force: Survey Results and Conclusions
 - A. Introduction
 - B. Data on Green Carders in Delano
 - C. Green Card Seasonal Commuters and Labor Disputes
 - D. Proposal for a Strengthened Regulation
 - E. INS and Enforcement of Border Regulations
- V. Appendices
 - A. Sample Interview Schedule
 - B. Maps
 - 1. San Joaquin Valley
 - 2. Delano Table Grape Area
 - C. Tables
 - D. Miscellaneous Data

ACKNOWLEDGMENTS

This study, which is an integral part of my doctoral program at Claremont Graduate School, was made possible by: (1) a research grant from the Council for Christian Social Action and Board for Homeland Ministries, United Church of Christ; (2) the time and courtesies extended to me by county, state and federal officials, growers and their representatives, labor organizers, farm workers and numerous other persons connected with California farm labor; (3) the cooperation of the members of the survey team who worked with me in the field.

Above and beyond the support of many friends, I owe a special debt to Doug Mitchell, Assistant Chaplain at The Claremont College, for his continual advice and encouragement.

Responsibility for the contents of this report, of course, rests entirely with me. Questions, comments and criticisms will be welcomed and may be addressed to the author as follows: Richard A. Fineberg, 5201 Palmer Canyon, Claremont, Calif. 91711.

I. INTRODUCTION

There is no quick or easy solution to the labor dispute which polarizes Delano, California, the center of the largest table-grape producing area in the United States. The problem is a tangled one: The United Farm Workers Organizing Committee (UFWOC) seeks collective bargaining elections to determine whether or not workers employed by California table grape farmers desire union representation. In each of nine elections or card checks conducted at ranches producing winery grapes to ascertain workers' desires, the workers have endorsed UFWOC.¹ Table grape growers, however, remain rigid in their unwillingness to countenance the possibility of losing an election and being forced to recognize the union.² As the strike drags on, the growers continue to tap the complex and constantly shifting pattern of farm labor in the San Joaquin Valley to harvest their crop in spite of UFWOC's organization efforts.

Who harvests the grapes? Among those persons who have not heeded the union's call to picket rather than pick are: (1) those farm workers whose poverty and family responsibility prevent them from joining the picket line of a newly-formed union; (2) housewives and students who work temporarily during the peak harvest season; (3) Mexican nationals with no legal status in the United States (illegal-entry "wetbacks"); (4) Mexican nations with permanent resident visas which enable them to work in the U.S. and spend a substantial portion of the year in Mexico. Although this report focuses primarily on the Mexican national permanent alien resident, field study conducted during the summer of 1968 indicates that all four types of strikebreakers are being employed in large quantities during the Delano grape harvest.

Workers of Mexican descent comprise the great majority of the labor which harvests the crops produced by California's thriving agricultural industries. More than half of the Mexican-descent workers are Mexican nationals. The Mexican national working in California's fields may have one of three legal statuses. In popular terminology he may be identified as a wetback, a bracero or a green card. It will be useful at the outset to differentiate these three statuses in order to clarify the problems with which we are dealing.

Wetbacks.—During fiscal 1967 the U.S. Immigration and Naturalization Service (INS) located 108,327 deportable Mexican aliens. Of that total, about 78,000 entered the U.S. by crossing the land border between Mexico and the southwestern United States. Although some enter overtly with forged or altered documents, almost all of the 78,000 are catalogued as "surreptitious entries" with no papers whatsoever.³ Although it is difficult to ascertain how many illegal aliens are engaged in farm labor in California (estimates range from 2 to 25 percent of the labor force), it is certain that there are many "wetbacks" working in the fields.⁴

Braceros.—Braceros were admitted to the U.S. under PL 78 which terminated December 31, 1964. Under PL 78 braceros received temporary permits to work for specified contracting employers for a limited period of time. Although some braceros have been authorized in special cases since the termination of PL 78, the large-scale use of bracero labor has ceased. There were no braceros authorized for California farm labor during the period in which this project was conducted.

Green Cards.—The Mexican National permanent alien resident is commonly referred to as a green card or green carder. The term derives from the color of the INS Form I-151 registration card he carries bearing his picture and identification number.

3,210,678 permanent alien resident green cards reported their addresses to INS in January 1967. Of that total, 668,514 were Mexican nationals. About 53 per cent of the Mexican nationals (354,000) listed California as their home state.⁵ The green card may be used at the border in lieu of a visa for re-entry. Many green-carders—ostensibly immigrants—maintain homes and families in Mexico and use their green card to cross the border to work in the U.S. Those green card holders who live in border regions are permitted to cross the border daily, working in the U.S. by day and returning home to Mexico by night. Green carders also commute

¹ California wineries at which contracts with UFWOC are in effect include Almaden, Christian Brothers, DiGiorgio, Gallo, Goldberg, Novitiate, Paul Masson, Perelli-Minetti and Schenley.

² Provisions of the National Labor Relations Act which guarantee workers in industry the right to collective bargaining do not extend to farmworkers.

³ *Annual Report of the Immigration and Naturalization Service, 1967*, pp. 11-12.

⁴ During the 6 months from March through August, 1968, it has been reported that more than 2,000 illegal entry Mexican aliens were apprehended in Kern County alone.

⁵ *Annual Report of the Immigration and Naturalization Service, 1967*, p. 23.

on a seasonal basis, harvesting crops in California during the summer, for example, and returning home to Mexico to vacation during the winter.

Are green card seasonal commuters, working either intentionally or unintentionally to the detriment of unionization efforts, a significant factor in the Delano table grape harvest? This is the question to which the following study is addressed.

II. LEGAL DIMENSIONS OF THE GREEN CARD QUESTION

Federal immigration law is of central importance to the green card question. Acts of Congress are the basis for the administrative procedures followed by INS and its Border Patrol field units. The legal dimensions of the green card issue revolve around the Immigration and Nationality Act of 1952, PL 414 (the McCarran-Walter Act), as amended in 1965 by PL 89-236, and administrative regulations pursuant to those acts.

PL 414 allowed non-immigrant temporary workers to enter the U.S. as long as the Secretary of Labor did *not* certify that their presence would have an adverse effect on the wages and working conditions of U.S. domestics similarly employed. Moreover, Mexican aliens were allowed to enter the U.S. as Western Hemisphere special immigrants without consideration of their impact on domestic working conditions and wages.¹ PL 89-236, however, modified the original act with specific provisions designed "to protect the American labor market from the influx of both skilled and unskilled labor".² Specifically, the new law enacted by Congress in 1965 stipulates that no immigrant visa for the purpose of temporary labor can be issued *unless* the Secretary of Labor has certified that the domestic labor supply is inadequate and that the entry of such aliens would not adversely affect the wages and working conditions of individuals in the same occupation. These amendments to PL 414 notwithstanding, the green card continues to be used in lieu of a visa at the border, enabling a green carder to work in the United States while maintaining his permanent home in Mexico.³

The ease with which the Mexican national green carder may cross the border has special bearing on domestic labor disputes: The green carder who maintains his permanent residence in Mexico is liable to upset the balance between labor and management by seeking work at the site of a labor dispute.

Thus the green card commuter, geared to the lower cost of Mexican living index and lacking a stake in the resolution of domestic labor disputes, is liable to affect a strike to the detriment of the goals sought by striking domestic workers. In this instance the commuting alien is not filling a normal labor shortage as envisioned in either PL 414 or PL 89-236; rather, he is filling a labor demand artificially created by the strike.

It is to prevent this misapplication of immigration procedures from interfering with domestic labor disputes that a Federal Regulation, designated 8 CFR 211.1(b) (1) was promulgated on June 10, 1967, to restrict the use of a green card for re-entry by a would-be strike-breaker. According to the Federal Register in which the new regulation was published, "The basis and purpose of the . . . (regulation) is to preclude the use of Form I-151 by a lawful permanent alien resident in lieu of his obtaining . . . a re-entry permit when such use would adversely affect a domestic labor dispute".⁴ The regulation itself, however, is a good deal less proscriptive:

When the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, Form I-151 shall be invalid when presented in lieu of an immigrant visa or re-entry permit by an alien who has departed for and seeks re-entry from any foreign place and who, prior to his departure or during his temporary absence abroad has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks re-entry with the intention, of accepting employment at the place where the Secretary of Labor has determined

¹ See 8 USC Sec. 1101 (a) (27) (A), 8 USC Sec. 1182 (a) (14).

² U.S. *Congressional and Administrative News*, 1965, Senate Rept. 748, p. 3333.

³ The practice of allowing green card holders to return to the U.S. without restriction is presently being challenged in court. (Joe Gooch and Rafael Bustamante *et al.* v. Ramsey Clark, *et al.*, filed June 25, 1968, in U.S. District Court, San Francisco). The thrust of this complaint is that the temporary immigration of green card holders who actually reside in Mexico has an adverse effect on both the wages and working conditions of California farmworkers and that all green card commuters should therefore be excluded from reentry. The plaintiffs seek to compel INS to distinguish at the border between lawfully readmissible permanent alien residents and green card commuters who would not be readmissible under the 1965 modifications to the McCarran-Walter Act.

⁴ 32 *Federal Register* 112 (June 10, 1967).

that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's determination."

A decision handed down in the Central District Court of California August 2, 1968, upheld the limited validity of 8 CFR 211.1(b)(1). The decision held that an alien who has not perfected his status as a permanent resident is still "at sufferance of the Attorney General". In other words, the Attorney General still has discretionary powers over the re-admission of a green card who has not established his lawful permanent residence in the United States. The regulation is therefore valid when limited, in the phrasing of the Immigration Service Counsel, "to aliens who live in a foreign country".⁵

Although 8 CFR 211.1(b)(1) remains on the books, the letter of the law and its application in practice are sometimes entirely different matters. In practice the regulation appears to have virtually no force whatsoever. UFWOC officials note that INS has yet to utilize the regulation to effect what the union feels to be the regulation's expressed purpose: to prevent green card holders from crossing the border to work as strike-breakers.

III. PHYSICAL DIMENSIONS OF THE GREEN CARD QUESTION

A. Introduction

How important is the green card issue to the labor dispute in the table grape industry? The relative importance of the problem is contingent upon the incidence of green carders who still maintain Mexican residence to the total number of workers on struck ranches. A quantitative inquiry, then, is clearly necessary. Two kinds of data are involved—immigration and farm labor statistics.

Meaningful farm labor statistics are difficult to obtain because the farm labor pool is highly fluid and conditions will vary markedly from week to week, county to county, crop to crop and camp to camp. Consequently, basic statistics on farm labor should be used cautiously and should be regarded as estimates rather than precise quantification. This is particularly true of the primary source for information on farm labor in California, the reporting section of the Farm Labor Service of the State Department of Employment.

With regard to green card holders, prior to this summer INS had no publicly available information on the incidence of green card commuters and no precise information on green carders in farm labor.¹ During the past summer INS began to remedy this situation by instituting a series of procedures designed to enable immigration authorities to distinguish among temporary border crossers, daily and seasonal commuters, as well as to identify green card holders working on struck ranches. How effective this system will be remains to be seen.

This project was conceived in response to the need for concrete information on the green card worker in the Delano table grape harvest. Before we turn to the study itself, a thumbnail sketch of the Delano region and the table grape harvest force will be useful to put the problem into focus.

B. Profile of the Delano Table Grape Region

1. *Location, Acreage and Varieties of Grapes.*—Last year 89% of this nation's grapes were grown in California.² California table grape growers harvested over 80,000 acres.³ The Delano region is the largest table-grape producing region in the country. Lying in a rough triangle bounded by the towns of McFarland, Earlimart and Ducor (see map, Appendix II), this area includes approximately 10,000 acres of table grapes in Kern County and 18,000 in Tulare County. Thomp-

⁵ *Giumarra v. I&NS* (Memorandum of Decision, U.S. District Court, L.A., August 2, 1968).

¹ The U.S. Department of Labor has attempted to extract data on green card farm labor from a sample of the cards which aliens must file with INS in January of each year. See "Characteristics of Mexican Immigrants Working on Farms", *Farm Labor Developments*, September-October 1967 (Fourth Issue), pp. 36-41. According to this study, some green card holders "continue to live in Mexico and migrate seasonally to the United States or commute daily to jobs in border areas". This study has two major shortcomings: First, the month during which address forms must be filed with INS—January—is precisely the time at which the green card seasonal commuter is most likely to be out of the country. Second, more than half of the occupations reported on the sample were general laborers, housewives, students, unemployed or unknown. Many of these persons, the study notes, probably engage in farm labor "at one time or another during the year".

² California, Department of Employment, Farm Labor Service, *California Annual Farm Labor Report*, 1967, p. 5.

³ California, Department of Agriculture, Crop and Livestock Reporting Service, *California Fruits: 1967 Annual Summary*, p. 3.

son seedless grapes, the most common variety in the Delano vicinity, account for about 16,000 acres. Much of the remaining acreage in the Delano vicinity is planted in the Emperor variety. The peak Thompson harvest in this area occurs in late August; the Emperor harvest does not begin until early September, after the peak Thompson harvest is virtually completed.⁴

2. *The Work Force: Number, Habitat, Ethnic Composition.*—During the week of the peak Thompson harvest in the Delano vicinity in 1968, the Farm Labor Service estimated that 8,500 workers were picking grapes in Kern and Tulare Counties.⁵ The majority of those workers were located in the Delano region, although many were working on scattered grape ranches outside the area.

One grower described as "typical" employed a maximum peak harvest work force of one person per 2.12 acres. If that ratio held for other ranches and the entire Thompson crop required simultaneous harvesting, the total work force in the Delano vicinity for that period would be 7,550 workers. The Thompson harvest, however, is in fact stretched out over a period of several weeks and not all acreage is harvested simultaneously. The growers' estimate of "more than 5,000 workers" seems to be a reasonable one.⁶

During the peak Thompson seedless harvest in 1968, approximately 2400 workers were living in about 60 grower-owned or grower-operated camps in the Delano vicinity.⁷ At that time most of the remaining grape pickers, numbering perhaps 3,000, lived in various scattered communities in the vicinity (see map, Appendix B).

The work force includes a large number of students and housewives who are not full-time field workers. A study conducted in Kern County in 1961 showed that nearly half of the farm labor force was comprised of seasonally-employed wives and youths.⁸ Other studies indicate that students and non-student women have been utilized in increasing numbers throughout the San Joaquin Valley since the termination of the bracero program.⁹ It seems reasonable, therefore, to estimate that housewives and students comprise a minimum of 40% of the peak labor force harvesting Delano grapes.

Depending on the source and the definition of migrancy, estimates vary widely on the number of migratory workers engaged in the Delano table grape harvest. Field data accumulated in the process of this study indicate that during the 1968 harvest 35% of the workers living in grower-owned or grower-operated camps lived or worked in one other area outside the daily commuting area, 33% lived or worked in two or more other areas, and 32% lived and worked only in the Delano vicinity. Among the community residents who worked the grape harvest the degree of migrancy was somewhat lower but still significant. (See Appendix D).

Estimates regarding the ethnic composition of the Delano table grape work force also vary. Although a large number of Anglos and Negroes work in other agricultural activities in Kern County, e.g., potatoes, cotton and sugar beets), there are virtually no Anglos and few Negroes harvesting table grapes. One grower estimates that 40% of the labor force is Mexican, 40% Filipino, the remaining 20% predominantly Puerto Rican and Arabian. With regards to workers of Mexican descent this estimate seems rather low: A spokesman for the Delano growers has acknowledged that the percentage of Mexican national green card holders alone may be as high as 40%. The latter estimate is in line with figures from routine Border Patrol field checks conducted during 1968.¹⁰

⁴ Based on information and estimates provided by the Kern and Tulare County grape specialists of the California Department of Agriculture and the Delano-Earlimart Irrigation District.

⁵ California, Department of Employment, Farm Labor Service, *Weekly Farm Labor Report*, August 24, 1967.

⁶ *The Delano Grape Story . . . From the Growers' View* (Delano: South Central Farmers' Committee, 1968).

⁷ See Appendix C, Table One.

⁸ William H. Metzler, *Farm Mechanization and Labor Stabilization* ("Technological Change and Farm Labor Use, Kern County, California, 1961", Pt. II; Berkeley: Gianini Foundation Research Reports, 1965), pp. 20-24.

⁹ See for example James W. Becket, *The Domestic Farm Laborer: A Study of Yolo County Tomato Pickers* ("Department of Agricultural Education: Research Monographs", No. 2; Davis: University of California, 1966).

¹⁰ According to Border Patrol checks covering 4,893 workers at 24 struck ranches during early 1968, 2,009 were green card holders. A Border Patrol field ranch check conducted during the peak Thompson harvest in vineyards in the Delano vicinity indicated that 83 of 195 workers investigated (42.6%) were green card holders.

With this background sketch of the work force in the Delano table grape industry in mind we now turn to the problem with which this study is concerned: Do green card holders who take advantage of loopholes in immigration procedures to return to Mexico for extended periods of time constitute a significant portion of the Delano table grape harvest force?

IV. THE GREEN CARDER IN THE DELANO TABLE GRAPE HARVEST FORCE: SURVEY RESULTS AND CONCLUSIONS

A. Introduction

This survey was conducted in the Delano table grape region of Kern and Tulare Counties during the peak Thompson seedless harvest week of August 19-23, 1968. The period of time was limited to five days in order to minimize the possibility of double-counting as workers moved in and out of the area. Interviewers covered 60 grower-owned labor camps in the area. Survey teams also worked in the rural communities of Terra Bella, Earlimart, Richgrove, Ducor and McFarland, as well as in Delano. (Interviewing was also conducted outside the Delano table grape region at the Tulare County Farm Labor Center in Woodville and the Wasco Farm Labor Camp, as well as in a privately-operated tract in Shafter; results from the latter three locations are not tabulated here.)

Interviewers used a uniform survey schedule (see Appendix A) and usually worked in pairs; at least one person in each team was bi-lingual (more than two thirds of the Mexican-descent interviews were conducted in Spanish). A total of 368 forms were filled out. Of these, 219 were taken in grower camps and 149 in rural or semi-rural communities.

In considering the data from this survey the reader is advised to remember that this project was conducted in a troubled atmosphere resulting from the continuing labor dispute. Workers were often reluctant to talk to outsiders, even with the permission of their employer. At one camp, for example, an interviewer noticed that many potential subjects left the barracks hastily by one door as he entered the other. Unwillingness to be interviewed was particularly noticeable among Mexican-descent workers. Due to wide-spread union publicity informing green carders that their employment at struck ranches might jeopardize their legal status in the U.S., it would be reasonable to assume that green card seasonal commuters would be especially unwilling to be interviewed or might falsify information concerning their immigration status. When these factors are taken into consideration, the incidence of alleged seasonal commuting among green card holders reported below is strikingly high. Moreover, it seems probably that the incidence would be much higher if random surveying under non-stress conditions were possible.

Interview teams sought to conduct interviews at random but the tendency for potentially deportable aliens to avoid attention of any sort probably resulted in a skewed sample. Therefore the data reported below may be taken as indicative of the minimum degree to which this migratory pattern is prevalent among Delano table grape pickers of Mexican descent.

B. Data on Green Carders in Delano

With regard to green card holders and the Delano table grape harvest, the data presented in the tables (App. C) point to the following conclusions:

1. *The majority of the Mexican-descent workers are green carders.*—61.2% of the Mexican-descent subjects (74 out of 121) were green card aliens.
2. *Many Mexican green card holders have entered or re-entered this country during the last two years.*—41.2% of the Mexican-descent subjects (49 out of 119) were green carders who had crossed the border since January 1967.
3. *Many green carders spend extended periods of time in Mexico.*—26.5% of the Mexican-descent subjects (30 out of 113) were green cards who had re-entered the U.S. since January 1967 after spending one month or more in Mexico.
4. *This migratory pattern is particularly noticeable in labor camps, but it is also prevalent in rural communities.*—In grower-owned or grower-operated camps, 44 out of 67 Mexican-descent subjects were green card holders, of whom 15 out of 63 (23.8%) had spent three consecutive months or more in Mexico since January 1967. One would expect farm workers living in rural communities to be significantly less transient than those living in labor camps. Nevertheless even in community dwellings 30 out of 54 Mexican-descent subjects were green card holders and 6 out of 54 (11.1%) had spent three consecutive months or more in Mexico since January 1967.

C. Green Card Seasonal Commuters and Labor Disputes

What effect does this incidence of green card seasonal commuting have on domestic labor disputes such as the one in the table grape industry? In all probability the green card commuter will not be receptive to a unionization movement. He comes to the U.S. to earn money, returns to Mexico to spend it. He does this because he is able to work for higher wages in the U.S. than he could in Mexico. His American-earned income, applied to the lower Mexican cost of living, gives him added purchasing power across the border. (Mexicans frequently observe that a dollar equals 12½ pesos but that 12½ pesos buys much more in Mexico than a dollar does in the U.S.) The green card holder thus is in a position to take advantage of a legal-administrative loophole which allows him the best of both worlds—American wages which may be spent on a foreign economy at a favorable exchange rate. Under these conditions he is hardly likely to leave his home in Mexico and come to California to join a strike on behalf of U.S. domestic whose interests are quite different from his own. If he has any stake in the socio-political processes of the U.S., it is to preserve the status quo, not to alter the system. In broad terms, the green card seasonal commuter has an adverse effect on the efforts of domestic farm workers to organize a union.

Green card seasonal commuters who work struck ranches may have a much greater impact in labor disputes than their numbers alone would indicate: Even though the domestic worker may know that his wages are substandard and may desire collective bargaining to remedy the situation, he will not be very likely to join the picket line if he fears that he can easily be replaced by a green card strike-breaker. Half a loaf being better than none, the threat of green card strike-breakers may serve to hold many potential domestic strikers to their jobs.

D. Proposal for a Strengthened Regulation

The burden of this report is that the incidence of green card seasonal commuting and its adverse effects on domestic labor disputes warrant effective enforcement of regulations to remedy the problem. The regulation restricting the employment of green card holders at struck ranches, 8 CFR 211.1(b) (1), has had virtually no effect on the California table grape strike. Its exact meaning is unclear; its complicated verbiage is considerably weaker than the statement of purpose which introduces it in the *Federal Register*. Moreover, at a critical point during the Coachella strike last June, INS was enjoined by a court order which prevented the Border Patrol from enforcing the regulation for several weeks.

One of the chief defects of 8 CFR 211.1(b) (1) is the inherent difficulty in interpreting and enforcing such basically ambiguous criteria as "primary purpose" and "intention" for crossing the border. INS reverts to location of permanent residence as the tangible criterion for establishing the primary purpose or intention with which a green carder crosses the border. Two difficulties immediately arise: First, the so-called permanent domicile of an agricultural worker is liable to be rather impermanent. Even if he does have a permanent residence—in Texas, for example—investigation necessary for proper verification of this fact may prove difficult and costly. Already pressed with increasing illegal entry problems stemming from Mexico's population boom and economic difficulties, INS does not seem to be in a position to provide the manpower which investigation of alleged permanent residence for each green card strike breaker would entail. The second problem is that INS tends to associate the permanent domicile with the location of the green carder's family. That guideline may have worked when the typical green card was a male, single or travelling alone. In 1968, however, many green cards were travelling with their families, thus rendering obsolete this criterion for residence.¹

As an alternative to the elusive criteria of intention and purpose stipulated by 8 CFR 211.1(b) (1) a new regulation might focus on the length of time

¹The green card in California agriculture is usually characterized as a single male (possibly married with family in Mexico or Texas) who moves frequently to earn the highest possible wages. (See for example James W. Becket, *The Domestic Farm Laborer: A Study of Yolo County Tomato Pickers*, University of California Davis, Department of Applied Behavioral Sciences, Research Monograph #2, 1966, pp. 20-21.) This picture may no longer be valid. In the pilot study for this project, extensive interviewing was conducted in OEO flash-peak housing units in Stanislaus County. Out of 41 families interviewed, 30 were green card holders. Contrary to the classical picture, the typical green card in these camps seemed fairly stationary, hoeing tomatoes at \$1.50 per hour rather than looking elsewhere for fruit-picking jobs which would offer substantially higher piece-rate wages.

spent in Mexico. The green card might be declared invalid for use at a struck ranch until the holder has demonstrated the validity of his immigrant status. Perfection of permanent alien resident status (a concept upheld by the *Giumarra v. INS* decision) would be achieved by the green card holder who lives in the U.S. continuously for one year, exclusive of a limited number of visits to Mexico not totalling more than a specified number of days (say, for example, 3 visits and 30 days). After one year of continuous residence in the U.S., the permanent alien resident would be entitled to seek employment at a struck ranch if he so desired. Such a procedure would not restrict the green card holder's right to cross the border freely. If properly enforced, however, it would accomplish the purpose for which 8 CFR 211.1(b)(1) was supposedly framed; to preclude the use of a green card for border crossing to work at a struck ranch.

E. INS and Enforcement of Border Regulations

The letter of the law notwithstanding, INS will continue to play a key role in the green card problem. Restrictions on green card seasonal commuting can be no stronger than the will and capabilities of INS to enforce them.

An unpublished U.S. Department of Labor report which issued from an investigation of the green card problem in Delano last Spring noted that INS field investigations were "rather superficial." At that time, Labor Department officials observed, when the Border Patrol encountered aliens working at struck ranches in possible violation of immigration regulations they made no effort to remove or detain the suspected violators.

According to the Labor Department report, this negligence permitted the suspected alien to leave the area temporarily, only to return at a later date when no longer under scrutiny by INS.¹

INS has instituted new procedures apparently designed to tighten up enforcement of immigration provisions, but the routine field-ranch check conducted in the Delano vicinity August 21 did not appear to be very thorough. Although Border Patrol ground units were checking for violations of green card regulations (they found none), the light-aircraft pilot guiding the ground units to field crews indicated that he was choosing crews without any regard for the strike below and that he had not been advised as to which ranches below had labor disputes which might require more thorough Border Patrol checking. During the check the ground unit inadvertently "lost" two presumable wetbacks when they fled the field in which they had been working. That closed the incident for the Border Patrol, but it would have been a fairly simple matter to locate the camp in which the two lived in order to apprehend them. In fact, a member of this research team, without prior knowledge of the Border Patrol check or the suspected wetbacks who had fled, identified the camp later the same day when he overheard a conversation about the incident while requesting permission to conduct interviews at the camp in which they lived. In another camp within the area which the Border Patrol had checked that morning, interviewers working on this project located two probable illegal entries who claimed to have lost their green cards and several other probable violators of 8 CFR 211.1(b)(1). Both camps belonged to growers involved in the labor dispute.

In view of the presence of a significant number of green card seasonal commuters working in the Delano table grape industry, a stronger and more clearly worded regulation governing the use of a green card for border-crossing to break a strike would seem to be in order. Getting a stronger regulation on the books, however, is only the first step. It is evident that even if a new green card regulation were to be promulgated, it could be given teeth only by vigorous and thorough enforcement on the part of INS.

APPENDIXES

- A. Sample Interview Schedule
- B. Maps
 - 1. San Joaquin Valley
 - 2. Delano Table Grape Area
- C. Tables
- D. Miscellaneous Data

¹ The Department of Labor filed "The Alien Commuter Problem" when its representatives to the combined Labor-Justice task force inquiry which met in Delano May 6-7, 1968, did not concur with the report INS representatives drafted for the Attorney General. See Los Angeles Times, June 21, 1968, p. 3.

SAN JOAQUIN VALLEY FARM LABOR SURVEY

INTRODUCTION: This project seeks to provide better understanding of the problems facing farm workers and growers by obtaining accurate information about migratory patterns -- How many workers actually do migrate? How far do they travel? With family? Etc.

This study is being conducted by a graduate student as part of his Ph. D. program. It has no connection with union activity or any government organization.

We do not need your name; the purpose of this study is merely to learn about migratory patterns; your time and cooperation will be very much appreciated.

1. Location: 2. Date: Aug. 3. Male ☐ Female ☐
4. Mexican ☐ Anglo ☐ Negro ☐ Filipino ☐ P.R. ☐ Other ☐
5. Age 6. Education: Grade 1 2 3 4 5 6 7 8 9 10 11 12/ Other
7. Single? ☐ Married? ☐ 8. Is your immediate family with you? Yes ☐ No ☐
- 8 a. IF "NO": Where is your family?
9. How many months a year do you work in the fields?
10. What crop are you working now? For whom?
11. How long have you worked for your present employer?
12. What other crops have you worked during the past two years?
13. What other areas have you worked in during the past two years?
14. Where do you expect to go after the grape harvest is finished?
Stay here ☐ Go to: ☐ U.S. ☐ Mexico
15. What do you expect to do after the grape harvest is complete?
Farm work ☐ Other
16. Last year where did you spend the winter? U.S. ☐ Mexico ☐
17. Date of last entry into U.S. from Mexico
How long were you there? Less than one week ☐
More than one week weeks months
17. Green-carder? Yes ☐ No ☐ (asked ☐ inferred ☐)

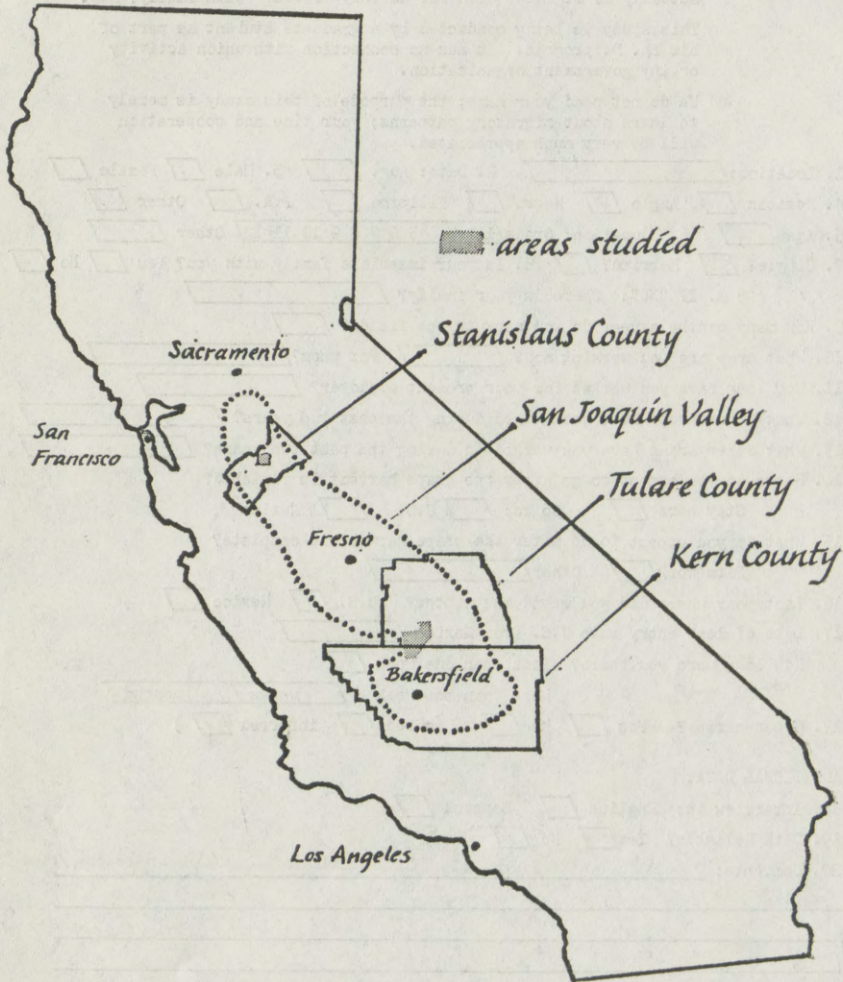
ADDITIONAL DATA:

18. Interview in: English ☐ Espanol ☐

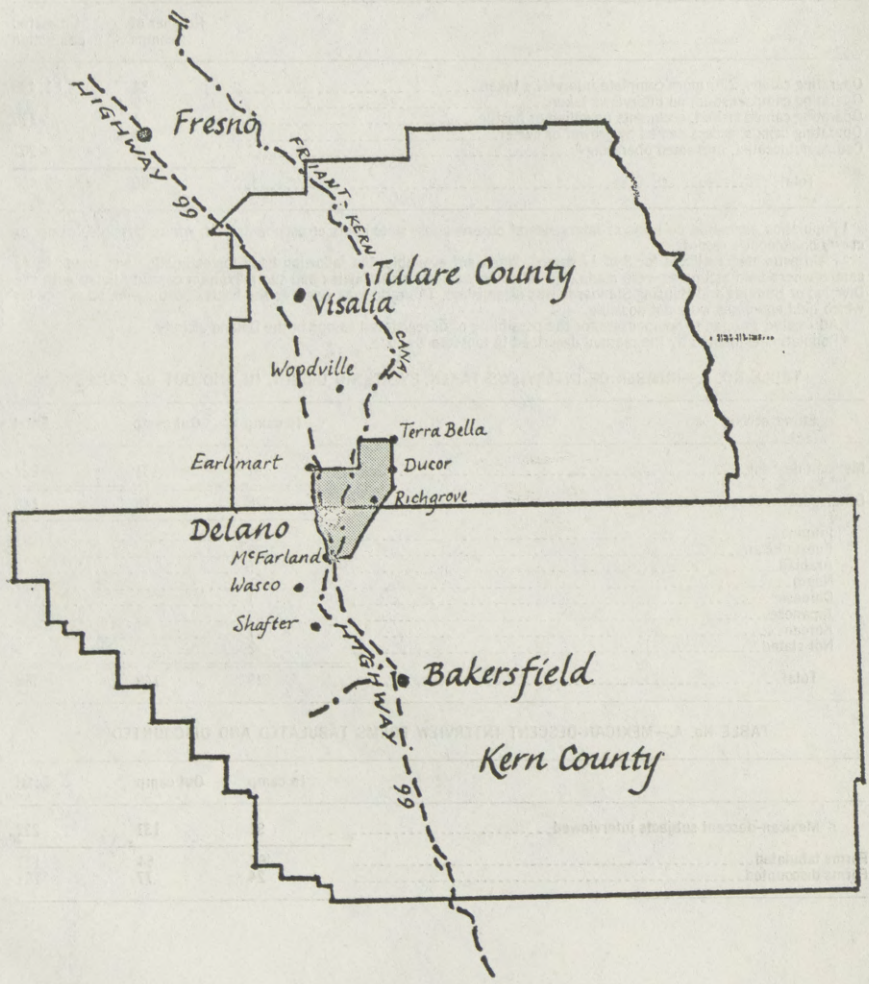
19. Data Reliable? Yes ☐ No ☐

20. Comments:

CALIFORNIA: SAN JOAQUIN VALLEY



DELANO TABLE GRAPE AREA



APPENDIX C: TABLES

TABLE NO. 1.—*Delano-vicinity labor camps owned or operated by Table Grape Growers*

Camps registered with State division of building and housing standards.....	71
Camps located for survey.....	62
Camps operating during survey.....	51
Camps closed during survey.....	11
Camps not located.....	9

TABLE NO. 2.—*DELANO-VICINITY GROWER CAMPS IN OPERATION, BY NUMBER AND ESTIMATED POPULATION*

	Number of camps	Estimated population
Operating camps, 2 or more complete interviews taken.....	34	¹ 1,405
Operating camps visited, no interviews taken.....	9	² 795
Operating camps visited, occupants unwilling or hostile.....	4	
Operating camps, access denied by grower or owner.....	4	
Camps not located, presumed operating ³	9	⁴ 207
Total.....	60	2,407

¹ Population estimated on basis of interviewers' observations, statements of occupants and, where possible, camp or crew bookkeeper's records.

² Field estimates available for 8 of 17 camps. When not available, the following basis for estimation was used: In 43 camps where field estimates were made, the ratios between those estimates and the maximum capacity listed with the Division of Building and Housing Standards was established. The ratio was used as the basis of estimation on camps for which field estimates were not possible.

³ All treated as open to compensate for the possibility of unregistered camps in the Delano vicinity.

⁴ Population estimated by the method described in footnote 2 above.

TABLE NO. 3.—*NUMBER OF INTERVIEWS TAKEN, BY ETHNIC ORIGIN, IN AND OUT OF CAMPS*

Ethnic origin	In camp	Out camp	Total
Mexican descent.....	91	131	222
Other.....	128	18	146
Filipino.....	97		
Puerto Rican.....	20		
Arabian.....	5		
Negro.....	1		
Chinese.....	1		
Japanese.....	1		
Korean.....	1		
Not stated.....	2		
Total.....	219	149	368

TABLE NO. 4.—*MEXICAN-DESCENT INTERVIEW FORMS TABULATED AND DISCOUNTED*

	In camp	Out camp	Total
Mexican-descent subjects interviewed.....	91	131	222
Forms tabulated.....	67	54	121
Forms discounted.....	24	77	101

TABLE NO. 5.—MEXICAN-DESCENT INTERVIEW FORMS DISCOUNTED, BY REASON FOR DISCOUNTING

Reason for discounting	In camp	Out camp
Altered green card ¹	1	0
Allegedly "lost" green card.....	2	0
Form incomplete.....	1	0
Subject unwilling to answer some questions.....	5	0
Vague, shifting, or self-contradicting.....	4	0
Interview deemed unreliable by interviewer, reason not stated.....	8	9
Not farmworker.....	1	14
Other.....	2	54
Total.....	24	77

¹ Immigration documents examined only when subject volunteered to show them.² One "statistical twin" excluded because his responses duplicated his older brother's tabulated biography; one interview conducted in a rural home rented from a grower and registered as a camp.³ 41 interviews taken in housing outside Delano grape area: 13 interviews discounted because interviewer's understanding of Spanish was inadequate.

TABLE NO. 6.—NUMBER AND PERCENTAGE OF MEXICAN-DESCENT INTERVIEW FORMS TABULATED, BY GREEN CARD STATUS, IN AND OUT CAMP

	In camp		Out camp		Total	
	Number	Percent	Number	Percent	Number	Percent
Green card.....	44	65.7	30	55.6	74	61.2
Not green card.....	23	34.3	24	44.4	47	38.8
Total.....	67	100.0	54	100.0	121	100.0

TABLE NO. 7.—MEXICAN-DESCENT GREEN CARDS BY DATE OF ENTRY OR LAST REENTRY INTO UNITED STATES, NUMBER AND PERCENTAGE OF TOTAL MEXICAN-DESCENT FORMS TABULATED, IN AND OUT CAMP

	In camp		Out camp		Total	
	Number	Percent	Number	Percent	Number	Percent
Total domestic and green card Mexican-descent forms tabulated.....	165	100.0	54	100.0	119	100.0
Mexican-descent green cards tabulated, by date of entry or last reentry:						
1968.....	28	43.1	15	27.8	43	36.1
1967.....	2	3.1	4	7.4	6	5.0
1966.....	2	3.1	1	1.9	3	2.5
1965-60.....	5	7.7	6	11.1	11	9.2
1959 or before.....	5	7.7	4	7.4	9	7.6
Total.....	142	64.6	30	55.6	72	60.5

¹ Discounts 2 green card holders who did not state when they had crossed the border.

TABLE NO. 8.—MEXICAN-DESCENT GREEN CARDS ENTERING UNITED STATES IN 1967 OR 1968, BY ALLEGED LENGTH OF STAY IN MEXICO

	In camp		Out camp		Total	
	Number	Percent	Number	Percent	Number	Percent
Total domestic and green card Mexican-descent forms tabulated.....	1 63	100.0	54	100.0	117	100.0
Total green cards entering or reentering United States since January 1967.....	1 28	44.4	19	35.2	47	40.2
Allegedly immigrated.....	2	3.2	0	-----	2	1.7
Frequent border crosser.....	1	1.6	1	1.9	2	1.7
Length of stay in Mexico prior to re-entry since January 1967:						
Less than 2 weeks.....	4	6.3	6	11.1	10	8.5
2 to 4 weeks.....	1	1.6	2	3.7	3	2.6
1 month or more.....	3	4.8	3	5.6	6	5.1
2 months or more.....	2	3.2	1	1.9	3	2.6
3 months or more.....	4	6.3	1	1.9	5	4.3
4 months or more.....	2	3.2	2	3.7	4	3.4
5 months or more.....	5	7.9	2	3.7	7	6.0
6 months or more.....	2	3.4	0	-----	2	1.7
7 months to 1 year.....	2	3.2	1	1.9	3	2.6

¹ Discounts 2 green cards who had crossed the border since January 1967 but did not state the amount of time spent in Mexico prior to entering/reentering the United States.

APPENDIX D: MISCELLANEOUS DATA

The following information, gathered in the course of this research project, is included here because the author feels that this data is necessary to an informed evaluation of the Delano labor dispute and may not be easily accessible to the casual observer. The material presented below is limited to the factual basis for statements contained in *The Delano Grape Story from the Grower's View*, a widely-distributed pamphlet published by the Delano Growers' South Central Farmers Committee. No attempt is made here to speak to the value judgments held by the growers, whose clear-cut hostility to UFWOC is easily recognizable throughout the tract. The data presented below is focused on migrancy and wages, two of the issues which are frequently puzzling to the uninitiated reader.

I.

The degree to which the Delano Table Grape harvest force has its roots in the Delano area is a subject of much controversy and confusion. As growers point out, migrant workers are more difficult to organize because they don't stay in one place long enough for convenient recruiting. *The Delano Grape Story* makes the claim that the Delano harvest is regularly picked by a "well-settled, non-migrant work force". How stable is the work force at the struck Delano ranches? We shall investigate this question with regard to: (a) migrancy, (b) the turn-over rate at Delano grape ranches and (c) the degree to which year-round employment is provided by Delano grape ranches.

A. *Migrancy*.—According to the growers, "approximately 90% of the more than 5,000 pickers hired at the peak of the harvest in Delano are residents of the area". The basis for this statement? *The Delano Grape Story* elaborates:

"Payroll records provide the proof. A typical payroll, for example, reveals that 70% of the growers' employees in 1967 lived in Delano, 13% in McFarland, 6% in Bakersfield, 1% in Richgrove, and 10% with home addresses outside of the immediate living or commuting area."

It must be noted that payroll records cited do not provide adequate proof for the growers' contention. The addresses listed on payroll records are *mailing* addresses, not *home* addresses as the growers claim. Examination of the payroll cited above, for example, showed that nearly one-third of the local addresses were Post Office Boxes, not residences. Moreover, the payroll cited is not in fact "typical" of Delano growers: Although more than 40% of the workers employed by Delano growers at peak harvest live in labor camps owned or operated by growers, the rancher whose payroll is cited is one of the few growers who does not provide housing for temporary workers. In view of the fact that he has no labor camps, it is to be expected that the workers employed at his ranch, which lies just outside Delano, might live in the Delano vicinity during the time that they work for him.

Field study conducted in the Delano vicinity during the summer of 1968 does not substantiate growers' claims that 90% of their workers are permanent residents of the Delano area.

Out of 206 Mexican-descent and Filipino grape workers employed on Delano ranches only 66 said they had worked and lived only in the Delano vicinity during the last two seasons; 72 said they had worked or lived in one other area outside the daily commuting range; and 68 listed two or more areas.¹ These figures confirm those of a study, conducted in Kern County before the strike began, which showed that approximately 60% of the grape workers were migrants.²

B. Turn-over Rate.—The Delano Grape Story claims that "more than 5,000 grape workers have regularly picked the crops in fields that are supposed to be struck." In view of numerous eye-witness accounts to the contrary, this statement must be examined carefully. Are the pickers presently employed the same people who were working for the growers when the strike began? Out of 194 workers interviewed in 34 grower-owned or grower-operated labor camps in the Delano vicinity during the 1968 harvest, 111 (57%) were in their first year with their present employer; 140 (72%) had not worked for their present employer prior to 1966; only 30 (16%) had worked for their present employer—either continually or on a seasonal basis—for more than five years. Among the recent entrants to California's struck vineyards were 17 Filipinos who had begun field work in the U.S. since 1966, three Korean college students working for the summer under special work permits which supplement their student visas, in addition to several Arabians and Puerto Ricans.

This high turn-over rate is particularly significant when one considers the growers' claim that their workers already exercise what the growers term "grass-roots collective bargaining power." According to *The Delano Grape Story*, growers meet often with their workers to discuss wages, working conditions and grievances. The manner in which growers resolve workers' complaints through "grass-roots collective bargaining" is demonstrated by the fact that more than half of the workers interviewed in growers' camps had never worked for their current employer before 1968. Many of the pickers interviewed did not even know the name of the grower by whom they were employed; they only knew the name of their crew-boss or supervisor.

C. Year-round Employment.—"Between harvests," says *The Delano Grape Story*, "Delano growers employ approximately 2,500 workers in such tasks as pruning, irrigating, cultivating, etc. . . . For many—mostly family heads—Delano vineyards provide almost year-round employment." Weekly figures on farm labor in California show that employment in table grapes is far less consistent than growers' statements would indicate. According to reports filed by the Kern County Farm Labor Service of the State Department of Employment, personnel requirements for table grapes in Kern County during the 1967-68 season fluctuated in the following manner:³

Dec. 2, 1967: 200 workers.

Dec. 18-Jan. 27: Pruning and tying plants—3,200 workers peak requirement.

Feb. 24, 1968: 200 workers.

March 30, 1968: 0 workers.

May 13-June 1: Thinning and gridling vines—3,500 workers peak requirement.

July 13, 1968: 800 workers.

Aug. 7-Sept. 2: Harvest—5,000 workers needed at peak.

According to Metzler, in 1961 grape workers in Kern County worked 119 days out of the year; full employment would be 250 days.⁴

II.

The earnings of the average grape worker will vary with the type of work and the labor supply available. According to one payroll described by growers as "typical," the average hourly 1966 harvest wage was \$2.19. The average for the periods when work was available during the remaining nine months of the year was \$1.57 per hour. (These figures indicate that if a grape worker in the

¹ If the figures listed above are weighted to take into account the ratio between workers living in labor camps and workers living in communities in the Delano vicinity, 46% listed no other areas lived or worked in during the past two seasons; 40% listed one other area; 14% listed two or more areas. The data gathered for this study indicates that if questions concerning other areas lived or worked in had been stressed by interviewers, the percentage of workers listing other areas would have been significantly higher.

² William H. Metzler, *Technological Change and Farm Labor Use, Kern County, California, 1961*, (Berkeley: Giannini Foundation, 1964), Pt. I, pp. 38, 40, 90; Pt. II, p. 46.

³ *Weekly Farm Labor Report*, #881-A.

⁴ Metzler, *op. cit.*, Pt. II, p. 27.

Delano area worked twelve full weeks at harvest rates and were fortunate enough to find work in the vineyards for three-quarters of the remainder of the year, his annual income would still fall below \$3,000.—)

The Delano growers boast that during the 1967 season more experienced pickers earned \$2.50 and more per hour. It should be remembered that when growers cite rates of pay, they are usually speaking of their best workers on the best days of the peak harvest. Because picking is conducted on a piece-rate basis, harvest wages vary widely and most workers earn far less than the optimum figure. By comparison, during August 1968 the average industrial worker in California earned \$3.46 per hour.¹

Although the average earnings of California farm workers—including Delano grape pickers—are higher than those of farm workers in most other states, the wages paid by California farmers leave their workers almost at the bottom of the economic and social ladder, below everyone but the more destitute farm workers in other states. According to a 1963 state report,² California's agricultural workers "remain among the most poorly paid, poorly fed and poorly housed California citizens". Moreover, the gap between the farm workers and the rest of society is widening: In 1948, the average California farm worker earned 62% of the hourly wage received by his counterpart in manufacturing. In 1965 average farm worker hourly earnings were 46% of the wage earned by the average worker in manufacturing.³

According to *The Delano Grape Story*, one reason that growers oppose unionization is that labor prices must be kept down in order to compete with increasing grape imports from South America. Official figures on U.S. imports do not substantiate the growers' case: Over the past three decades, grape imports have never amounted to more than one per cent of domestic production.⁴ Furthermore, U.S. grape imports for fiscal 1967 were slightly below the 1965-67 three-year average and grape imports from South America declined in each of those years.⁵

MR. KIRCHER. I think there is a tendency on the part of those who are highly partisan, and I am not like the Defense Department. I make no claims to neutrality. I am a partisan and, of course, my adversaries are equally partisan, and I am sure that both of us are guilty of, where we can, maybe not misstating facts, but at least presenting them in such a way as to try to persuade people like you, and I think maybe this study will help you to wend your way in between what each of us may be saying to you.

I want to say that AFL-CIO's position has never been one of attacking the immigration policies except that their misuse or misapplication of the law provides union-busting machinery.

In its pure and simple form the green card is a demonstration of the U.S. open-door policy on immigration, and the AFL-CIO, believing in liberal immigration, is in favor of the concept of the green card.

But in practice the green card has been used as a commuter ticket to cheap jobs, strikebreaking, scabbing, substandard wages, and all the things that undermine the U.S. economic base and erode the standard for which U.S. workers have fought for so long to establish.

¹ *Los Angeles Times*, Oct. 14, 1968, pt. II, p. 6.

² *Governor's Advisory Commission on Housing Problems* (Sacramento, State of California, 1963).

³ U.S. Department of Agriculture, Human Resources Division; U.S. Department of Labor, Bulletin No. 1370-5. Cited in Correspondence from the Special Assistant to the Director, Bureau of Labor Standards, U.S. Department of Labor, Oct. 29, 1968.

⁴ U.S. Federal-State Market News Service, *Grapes, Raisins, Wine, 1966 Season* (San Francisco, 1968), p. 75. Five-year averages for grape imports as percentage of total domestic production:

1936-40, 0.7%.

1941-45, 0.1%.

1946-50, 0.4%.

1951-55, 0.7%.

1956-60, 0.5%.

1961-65, 0.7%.

⁵ U.S. Bureau of the Census, *U.S. Imports, TSUSA Commodity by Country*, annual rept. no. FT 246 (Washington: Government Printing Office, 1965-1967).

The U.S. imported 1,430,009 cu. ft. of grapes in 1967, compared to a 1965-67 three-year average of 1,437,680 cu. ft. Imports from South America totalled 642,861 cu. ft. in 1965, compared to 592,704 cu. ft. in 1967.

We don't think you have to tolerate a policy in international relations which has the effect of providing an endless stream of strikebreakers. We think that we can justify our position as it relates to what the Government and the Immigration Service should be doing in the framework of existent immigration policy, within the spirit and intent of the law, because the law says, you know, that nothing shall be done by immigrants that has an adverse effect on wages and standards in this country, and strikebreakers have that kind of an effect.

Strikes are a recognized part of the collective bargaining process and the concept of collective bargaining is a well-established part of our system, enunciated as a public policy of our Government. I don't think there is any rational person who would deny the contribution that unions, through collective bargaining, have made to the economic, social, and cultural progress of this Nation, particularly in the past 30 years.

It therefore follows that to break strikes is to impair the effectiveness of the collective bargaining process and to impair that process is to impede progress and thus contribute an adverse effect to the economic standards of American workers.

I think this is simple and direct legislation, Mr. Chairman. I don't think anyone would quarrel that something should be done about the illegals. I am sure you have statistics with respect to the 1968 performance on the illegals. I have included some of them in my written testimony here.

The fact that the number is going up, and the number of illegals is going up in relationship to those who are involved in the work force in this whole problem that we are talking about, rather than those who are involved in criminal or illicit or dope traffic and that sort of thing.

The increase in the traffic in human cargo, the increase in the business of people paying \$150 and \$200, you know, to get spirited into this country is going up.

They have a new gimmick now. They have developed in the last few years what they call a white card. They have a card which is sort of a temporary pass into this country. You have to have one of those to get in for 3 days, and of course all they do is walk in and show this. You have to stay within a certain area, close to the border, and they have a little gimmick now where the Mexican resident comes across and shows that card, and that, of course, gets him into this country, and the first thing he does is go to the post office, and he mails that card back to himself at his home in Mexico, and then he goes on up through California, Colorado, or wherever it is.

At such time as he gets caught, because he is an illegal at that point, whether it is a month, or 2 weeks, or what, he is shipped back to Mexico. I don't have to tell you what happens. He opens the envelope that is there, takes the white card out, comes across the border again.

What we have done is make it unnecessary for the wetback to have to swim the river any more. We put water wings on him, so to speak, with this particular mechanical development.

I have, in my testimony, Mr. Chairman, referred to the problem of the border industrialization situation, which is a sort of a companion problem. I notice that you have referred to it. I thought you might be helped by having the official statement of the AFL-CIO executive

council which was issued in February after some rather lengthy investigation.

I would like to attach that and make it part of my presentation. I think it will give you a very clearcut picture.

Mr. THOMPSON. Without objection, we will do so.

(The information referred to follows:)

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON UNITED STATES-MEXICAN PROBLEMS, BAL HARBOUR, FLA., FEBRUARY 20, 1969

The Mexican Border Development Program, heralded in 1965 as a vehicle for improving United States-Mexican relations and dissolving joblessness in high unemployment areas, is a complete failure on both counts in both countries.

These failures are compounded by another and interrelated problem—widespread abuse of the “permanent resident” myth accepted by the United States Immigration Service. Using “green cards” which certify them as permanent residents of the United States, scores of thousands of Mexican residents commute to jobs in the United States. These “green card” holders and other border crossers are used as pawns in strikebreaking and other anti-labor activities by ruthless employers in the border areas of the United States.

These greedy businessmen have used the so-called border development program and the “green card” myth to create a system of exploitation on both sides of the border affecting tens of thousands of North American and Mexican farm workers and unskilled laborers.

The term “border program” is itself misleading since its abuses extend far north and south of the United States-Mexican border.

It has provided an ever-increasing number of large North American companies and small runaway sweatshops with soaring income and the opportunity to evade both Mexican and U.S. laws.

The basic lure is a so-called “twin plant” scheme. This means a firm can make parts in a U.S. plant, ship the parts to a Mexican plant for assembly and re-import the assembled product almost duty free. The advantage is the use of low-wage Mexican labor for unskilled work. U.S. tariff law encourages such foreign assembly.

The record shows that while these companies enjoy the customs, duties and tax dispensations given to border location plants, unemployment has worsened on the southwest United States border—the very area the program was designed to help.

Instead of improving relations between the two nations, the so-called border program has become the apex of a pyramid of troubles involving the United States and Mexico.

It has victimized thousands of unskilled Mexican jobseekers attracted northward to an already glutted employment market.

It has affected at least 20,000 U.S. workers already, and threatened millions more. U.S. employer organizations are advertising plans to relocate jobs now held by nearly three million workers in the United States to the Southwest, northern Mexico and beyond.

The Development Authority for Tucson's Expansion, one development authority, uses as its principal argument “inexhaustible” Mexican labor at 30 cents per hour to attract “twin-plant” employers to Tucson and the Mexican side of the border of a state which already has unemployment problems.

U.S. firms on the border are mostly non-union and usually pay Mexican minimum wages as low as 29 cents hourly.

Neither Mexican nor United States workers or consumers share in the vast savings realized by border companies.

U.S. companies are exempt for three years from the Mexican law requiring profit-sharing with employees.

The program has precipitated industrial strife including a three-week strike by 1,400 frustrated Mexican workers.

The two governments involved have only the vaguest details on how these companies operate. Many are slipping out of the border area and setting up operations deep in Mexico, where wage levels are even lower.

To circumvent Mexican prohibitions against foreign ownership, some United States industries are using the names of Mexican nationals.

The North American firms include companies holding millions in defense contracts or receiving other U.S. government funds.

Some companies are frustrating the intent of the U.S. Labor Department by using Manpower Administration funds to train a handful of American workers in a broader area while employing thousands of Mexican workers at substandard wages.

The border program and U.S. industries in other locations in Mexico add to the staggering increase of Mexican imports into the United States.

When the program began in 1965, for instance, Mexican apparel imports totaled \$174,000. In the first 11 months of 1968 they jumped to nearly \$9 million. Electric machine and apparatus imports from Mexico soared from slightly more than \$350,000 in 1965 to nearly \$34 million last year.

Clearly, immediate action is needed to remedy this festering source of inter-governmental anxiety.

The AFL-CIO Executive Council believes such action can be taken without jeopardizing friendly relations between the two nations. We are convinced friendly relations between nations cannot and should not be built upon the suffering and privation of workers.

The Council believes that widespread abuses by U.S. companies at both countries' expense must be terminated now.

We urge the U.S. State, Treasury, Commerce and Labor Departments to end their cooperation with concerns who increase this nation's employment problem by crossing the border into Mexico.

We call upon the United States government to request the Mexican government to keep North American firms from locating there under these circumstances.

We call on Congress to repeal Section 807 of the U.S. Tariff law which encourages and rewards U.S. production abroad.

We further appeal to Congress to enact laws which require adequate labelling of products partially made or assembled by foreign workers but sold under U.S. brand names.

This Council believes the United States government must act quickly to stop strikebreaking and eliminate the other anti-labor effects of border crossings by Mexicans. These desperate workers undermine the standards of non-farm workers and add to the troubles of such exploited groups as the California grape workers now struggling for decent wages and conditions.

This Executive Council strongly believes that the Long-Term Cotton Textile Arrangement must be broadened to include wool and man-made fibers. These latter two products were responsible for a considerable part of the apparel import increase between 1965 and 1968. The cotton quota with Mexico should be enforced in such a way as to prevent abuse of its provisions.

Until these recommendations are implemented, existing regulations on customs, trade and immigration and the labor laws of both countries must be strictly enforced.

Defense and Labor Departments should take administrative action to plug the gaping loopholes in the use of government money to export U.S. jobs and undercut U.S. minimum wage and other laws.

These concerted actions can eliminate both the "green card" myth and a program which greedy men have degraded into a cruel hoax on the very people it was designed to help.

Mr. KIRCHER. With respect to our position, you know, the industrialization program is really sort of—instead of importing cheap labor to the United States through some of these processes, it sort of imports the job, or exports the job to the cheap labor.

One of the things that we find has happened that has attracted a great deal of incountry migration from the southern parts of Mexico, where there is even a greater degree of poverty than in the northern part along the border, so that the population and the number of people seeking work in the the border areas of Mexico has increased rather drastically, and this, of course, means that the green carders that we are dealing with here have fewer opportunities to find work in Mexico, and he is therefore encouraged because of the condition created by the border industrial program to take greater chances in terms of violating the law and thereby undermining standards in this Nation.

I would like to read some concluding remarks, Mr. Chairman, to say that I appreciate this opportunity to appear here today and I want

to commend your subcommittee for its work in this field, but most particularly I want to congratulate you.

As you know, I spend a great amount of my time in the field assisting organizational endeavors. Most of it, in recent years, has been with the farmworkers and with other groups of workers in the lower rungs of the economic ladder.

It is those experiences which cause me to urge you to continue to focus your personal attention and legislative energy to the various phases of this broad problem today. What you are dealing with in this legislation is a problem which is symptomatic of one of our greatest problems, and, as it exists, one of our greatest national disgraces.

A market retrogression in national practices where workers' organizational rights are concerned have brought us to a point today where we tend to be saying to the impoverished worker—those who have jobs at, or near, the poverty level—that they must remain poor because we permit their right to organize and to act collectively to better themselves, to be limited.

It is limited in some cases by the inexcusable nonexistence of protective and procedural laws. It is limited in other cases by the devastating effects of intimidative and coercive antiorganizational practices by employers, even where laws exist.

Does it not strike you as shameful, Mr. Chairman, that the Chairmen of the National Labor Relations Board over the past 14 years—whatever their political persuasion or that of their superior in the White House—have felt constrained to periodically wring their hands in public and lament the massive law-violating tendencies of American management where the rights of workers to organize is concerned?

Mr. Chairman, there is no better expert in the Congress on these matters than you. No one knows better than you how effective these evil management practices are upon impoverished workers, whose skills are limited and whose job expectancy is so restricted that they cling to the little bit of poverty of the job they have rather than to expose themselves to the greater poverty of no job at all.

I may be imposing upon your hospitality but I want to say these things to you and I will never have a better chance.

I was here when the poor textile workers broke down and cried before this committee, and I am sure you remember these experiences very, very well. I will never forget them.

I do not see how we can consider ourselves to be honestly concerned with the plight of the poor and yet fail to do all in our power to make the right to self-organization, and therefore self-help, actually and honestly available.

We cannot, as 20th-century Americans, give leadership to programs designed to make equality of opportunity a reality for all of our country's citizens without wiping out the kind of obstacles that make their organizational progress remote if not impossible.

Mr. Chairman, your subcommittee and, therefore, you are sensitively placed as an affirmative factor in this broad matter. Much rests upon your shoulders. We fervently hope that you continue to give aggressive leadership to this critical area in the continuing crusade for justice.

Thank you.

Mr. THOMPSON. Thank you very much, Mr. Kircher. It is really a pleasure to see you again, and it is a very fine thing to have your expertise before us.

You have indicated some of the dimensions of this problem. This proposed legislation really would do quite little, and yet it if were to become law, it could be an effective instrument, assuming, of course, that the Departments of Immigration, State, Labor and the Board and the courts made effective the existing remedies.

Mr. KIRCHER. It would do very little, but when you have nothing, that is a great deal.

Mr. THOMPSON. It is like the worker you talked about in the last sentence. He would rather have a little poverty than nothing at all.

I wasn't surprised to learn about the attitude of Mr. Chavez, of whom I am a great admirer, and his people, following the reading of the Thompson report.

We had a very, very vivid demonstration of the ingenuity, of the skill, of the brazenness, if you will, of the employers in the textile hearings 2 years ago. It is perfectly obvious that they would rather spend hundreds of thousands of dollars on highly skilled counsel, and run the risk of fines and other economic sanctions that might be the result of their breaking the law than for the workers to organize in this industry.

After all, they work 24 hours a day in that industry. They have thousands of workers, and 5 cents an hour, not to mention 25 cents an hour, covering the whole industry is a tremendous amount.

They tell me privately that they could afford to go on forever resisting.

That doesn't mean, however, in an agricultural situation that the grower would have that kind of financial resource, and it certainly doesn't get to the moral question involved—the obligation that we not only have a liberal immigration policy, but also to see that the American worker has the opportunity under our national policy to organize and bargain collectively and that his wages and hours and working conditions be protected.

The thrust of this legislation is simply to get at that problem. It is obvious, also, that these "twin plants" being constructed on the Mexican side of the border can have nothing but an adverse economic effect here, including the flow of money out of the United States.

So, this is indeed a very serious problem.

Mr. KIRCHER. If I could add one thing, you are, of course, aware of the situation in recent months in Charleston, S.C., and I was deeply involved in that situation, in the settlement at this State hospital. As a matter of fact, we had to threaten to close the entire port in South Carolina to get the people to move down there.

The similarity of the problem in this case, of black hospital workers in South Carolina, and brown farmworkers in California was rather striking.

I marched with hospital workers 1 day, and 3 or 4 days later I was marching with the farmworkers, and not only the similarity, which is created in this case by the combination of things, the political climate in which they find themselves, the tradition of downgrading them, the attitude of the power structure, and the lack of any kind of law or procedure.

We sort of say to people like this today who work at the poverty—who are working poor, so to speak, and I don't know, there may be 20 million of them in this country—but we sort of are saying to them

today, Mr. Chairman, that they can have these rights of self-organization through the law of the jungle.

It is sort of implicit in what we say to them, a sort of a challenge to develop the kind of muscle and create the kind of trouble and disruption in the community that makes us so uncomfortable that we finally give to them as a result of what they do to create disturbances the things that we give to other citizens through normal, proper, and reasonable processes.

I think that particularly your committee could well afford to take a broad look at this question today, not just in terms of those elements of the work force that do not have procedures, but the impact on those kinds of areas of the work force of the practices that go on today where there are such procedures, because I am really very much concerned about it.

I find in my experience, and I say my experience because I don't want to represent this to be a scientific or statistically reinforced statement. In my experience, at the working poor level, there is a disproportionately large number of minority, either Negro or Spanish speaking, the two great minorities in this country, and these people have been very closely identified either in person or in terms of their interests with the civil rights revolution of the last 10 years.

They have watched the processes and the machinery of union organizing, they have watched the processes and machinery of the civil rights revolution, and I think the day has gone by when they are going to accept second-class citizenship that is inflicted upon them because of their right to organize and help themselves being restricted or impaired.

I think it is pretty dangerous to put all of these circumstances together, and not take a look at what can result, because it is just that that puts Sherman tanks in the streets of Charleston, S.C. It is just that that puts the National Guard there. It is just that that puts a curfew into that town, and I think that this problem has defined itself so clearly that we need to take a real close look in terms of our interest in poverty and equality of opportunity.

Mr. THOMPSON. I agree with you. We have had many discussions about the type of situation that exists in Charleston, and whether or not charitable and eleemosynary institutions and their policy shouldn't be carefully examined with respect to their labor practices. These are extremely difficult problems, as you know. You have indicated them.

Mr. Ashbrook?

Mr. ASHBROOK. Thank you, Mr. Chairman. I listened with interest to the testimony, and I have several questions.

We mentioned here both illegal and the green carder situations. I think for our purposes we are pretty well limiting our interest at this point to those who are legally in the country, is that not right, Mr. Chairman?

I think you properly, even in that area, delineated the bill's scope to those practices where the green carder would commute back and forth.

Do I take it the green carder who takes up residence in this country would probably not come under the coverage of this bill at this time?

Mr. THOMPSON. That is right.

Mr. ASHBROOK. It is basically the commuter, so we have pretty well differentiated between the illegal and the legal traffic, and within the area of legal traffic, between those who use the card to maintain a residence in this country and those who commute.

Mr. THOMPSON. We did that to maintain a consistent position with respect to the immigration laws in general. The green carder is here legitimately and has a right to be. The commuter is a different problem, because he is used for purposes which this act would make an unfair labor practice.

Mr. ASHBROOK. I am glad you mentioned that.

You say you are partisan, but I take it that obviously you feel that what you have advocated is fair and just. I have listened to your testimony, and I certainly gathered that this is the way you believe.

I would go one step further: If we would deem it feasible—the preamble states to make it an unfair labor practice to employ aliens, and it goes on to tell about the use of the aliens in a labor dispute.

Would this same spirit of fairness move you to support what would seem to be a fair approach, to say that if they cannot be employed, they also should not be used in union organizing activities, used to picket, used to boycott Safeway stores, and so forth.

Would you find it the position of your organization to just take the green carders and just say they should not participate in these activities, or are you going to say they can participate on one side and not the other?

Mr. KIRCHER. I think on the surface it appears to make sense, but I think it is a nonsequitur, because I don't think you have examined it closely enough, Mr. Congressman.

When you put these things in the scale to get a balance, you haven't really looked deeply enough at what is implicit in both sides.

If you make an unfair labor practice out of the right of an employer to hire a nonresident green carder during a strike, you encourage the nonresident green carder to do that which he promised to do when he got his green card, and that is to become a resident, you see, which would then put him in a category with his brothers in this country.

What you say would have the effect of discouraging him from being part of an effort which is designed to promote his being part of this country by living—it would actually encourage him to remain outside of the mainstream of an operation which is designed to do that which the law in the first instance says.

Mr. ASHBROOK. I don't think that necessarily follows. That is like prejudging and saying your side is absolutely right and their side is absolutely wrong.

Mr. KIRCHER. No. As a matter of fact, if I could tell a green carder that he could not be part of a movement in this country of self organization to improve himself, which is the guts of what you are saying, then if I felt that that was going to encourage him to live up to the conditions that he promised himself to when he got his permit, I would be in favor of it.

But it goes in the other direction.

Mr. ASHBROOK. I am well aware that while you say it sounds one way in the context, in practice it is another thing. I am aware of what the bill looks at.

It seems that if we are going to say they should not be pawns, should not be used in such a controversy, that it isn't quite fair to say they could be used by one side and not the other. It isn't realistic, either, that a green carder would come to this country and engage in these activities and not be paid.

If a green carder should happen to be paid for picketing-boycotting, Safeway stores and so forth, wouldn't the same situation tend in that circumstance?

Mr. KIRCHER. I am not really sure I follow. If you are suggesting that the union hire nonresident green card pickets, if this has happened, I would not know about it.

Mr. ASHBROOK. I was not necessarily suggesting the union did, but I imagine Mr. Chavez' organization—

Mr. KIRCHER. Mr. Chavez' organization is the union.

Mr. ASHBROOK. It hasn't been indicated that it represents the majority of the workers. Do you think it is fair to say Mr. Chavez' organization represents the majority of the workers?

Mr. KIRCHER. Mr. Congressman, I have spent 30 years in organizing. I have never known an employer or employer organization which did not deny the fact that a majority of his employees wanted to have a union. That, in fact, is why we have that kind of procedure set up in the law.

I most certainly would say that Mr. Chavez' organization, to use your words, and call it the AFL-CIO Farm Workers Union to use my words, does in fact represent an overwhelming majority of the farmworkers in the valleys and the fields of California.

Mr. ASHBROOK. I think you would say in fairness that you have never run into a union that did not say that in truth it represented a majority—

Mr. KIRCHER. On the contrary, you should know the number of times I have got organizers who call me up and say, "You know, we can get about 35 or 40 percent of the people to sign up. That is enough to file, but not enough to win the election. What do you think we ought to do?"

From a pragmatic point of view, it is to the advantage of the union to be honest about those situations.

Mr. THOMPSON. If you will yield for a moment, in the California situation, there have been a number of secret ballot elections, have there not?

Mr. KIRCHER. Yes.

Mr. THOMPSON. What have the results of those elections been?

Mr. KIRCHER. The elections that have been held, the Farm Workers Union has won overwhelmingly, and as a matter of fact, if you want to talk about the most dramatic and best known election, which was on the Sierra Vista Ranch of the DiGiorgio organization on August 30, 1966, there were two unions.

As long as we are talking about this context of unions generally, instead of particular unions, there were, as I recall, something like five votes out of some 1,300 or 1,400—now, don't hold me to those figures—that were cast against a union. All the votes that were cast by the workers were cast for one of the two unions involved in the election.

So, I would say that every actual indication of the attitude of the farmworkers toward unions has been overwhelming, almost unani-

mous in terms of the work forces prounion attitude, and that attitude has been an overwhelming majority of favoritism for Mr. Chavez' union.

I might finally say as a real reinforcement, that the only way the growers have found to develop the machinery to fight the union at the worker level is to develop their own union.

The attitude of the workers is so overwhelmingly prounion that the only way the employers have been able to set up a counter operation is to do it through the machinery of a so-called company union.

Now, this is not new in this country. If you will look back to the days of the NIRA and the Wagner Act, from 1935 and 1936 until 1942, the number of unions that sprang up under the domination and instigation of companies was astronomical. Many of the elections that took place in the early days of the Wagner Act were not the kind of elections that we are used to today as between a bona fide union and no union. They were elections between the recently established company union and the bona fide union.

I think it is a very, very important point, that the attitude of workers is normally and naturally so prounion that the machinery that managements use to fight the bona fide union is the creation of their own dominated union.

Incidentally, let me close by saying you don't have to take my word for it, it is all documented by the Labor Department.

Mr. MAYER. May I say something else?

Mr. ASHBROOK. I don't want to take all the time, but they are answering things of general interest. I will yield the floor.

Mr. MAYER. I think it is significant that when this committee considered farmworker legislation, it was the opposition of the growers, the opposition to elections which prevented that legislation from passing.

From that, I conclude that the growers agree with Mr. Kircher that farmworkers do want organization, because they certainly did everything possible to prevent elections, elections that would be held objectively, that would be held by the NLRB, that would be held as they are in other industries. It is unfortunate that that legislation did not pass, because then we would have a way of telling whether workers wanted a union and whether they wanted a particular union or whether they didn't.

Mr. KIRCHER. Mr. Chairman, could I add something?

Because the Congressman has opened it, it really is at the core of the attack that is being waged against the Farm Workers Union by its adversaries all over the Nation, and that is the extent to which it does in fact represent the wishes of the workers.

I think as long as that has been opened that it ought to be completely and totally explained, and I would like to then, add this:

That the necessity of a boycott flows from the manner in which the immigration policies and the inept administration of those policies by the Immigration Service, the very thing we are studying here today, provides an endless supply of strikebreakers, so that the strike machinery which is the first organizational machinery which is left open to farmworkers because of a policy which places them outside of the procedural and protective aspects of the law, is rendered ineffective from the beginning.

Let me come back the other way. They can't have the law with procedures and protection to organize. So you inflict upon them as an organizational device the strike, and because of the immigration practices, you render the possibility of the successful strike. It is very weak, because of the endless supply of strikebreakers, and so they must move to the next phase of the organizational process, which is to reach out and ask the help of well-meaning people all over the country to understand their plight, and help them organize a consumer boycott of the goods produced by the employers against whom they have originally gone on strike.

That is the picture, and it is not by choice that the farmworkers have had to deploy all over the United States all of their leadership. Every city in this country, Boston, Providence, New York, Albany, Philadelphia, Newark, Washington, Chicago, Milwaukee, Detroit, Minneapolis, Seattle, Portland, Denver, Atlanta, Fort Worth—every major city has a farmworker living there with his family, and some times more than one.

This is the leadership that they had to send out of California to make their boycott effective.

Now, because they are out of California, they don't have the leadership there to carry on the level of direct organizational activity that they normally would, so now what does the opposition say?

"They don't represent the workers," because they don't see them all there organizing, and so forth.

I just want you to understand these things, because there is no question of a doubt of the response of farmworkers to the leadership of this union and the determination to have a union status.

I have gone through this with the employers. I sat down 1 day with an employer in Delano who happens to be also a lawyer. I don't know which comes first, being a grower or a lawyer, but I went into his office, and I happened to note as I went in a copy of the *Columbian* magazine. I real quickly looked at it, and noted that it was to him, and not to his partner.

Well, the *Columbian* magazine is the magazine of the Knights of Columbus. I happen to know because I am one, I at least had that edge on him. I knew he was a Catholic.

As I talked to him, he said, "My employees don't like Chavez. They don't want this union. I know them all."

The old business, you know. "I talk to them and they tell me."

So, I said to him, I said:

I will tell you what we'll do. You are doubtlessly honestly representing what you think, and I am honestly representing what I think. The only way we can settle this is by a third party in whom we have confidence.

Why don't you pick up a telephone and call Monsignor over at St. Mary's Church and have him come over here. You give him your payroll list, and I will give you our signed authorization cards. He won't let either of us see the others papers, but he will check them, and if he is satisfied that we represent 60 percent or more of your workers, will you sit down and recognize this union and negotiate a contract?

Well, he said:

You know, I don't keep payroll lists around.

I said:

OK, don't embarrass yourself any more. We understand each other. Just don't bother giving me that malarkey.

I tell you that story just so you can understand, Mr. Congressman, if you are getting fed this line by employers, that is the kind of malarkey it is.

Mr. ASHBROOK. I know in a situation like this, that is emotional, there is a lot of difference in being for union representation and signing a card under pressure.

I know of cases where people come to me and say they were forced because of the pressures of their fellow employees to sign the card. So there is a difference.

Maybe that is why—I am reading some of the testimony of Mrs. Huerta, who will testify later. She was vague when they asked in the Senate how many they represented. They are so busy selling the boycott, they can't tell how many they represent.

Mr. KIRCHER. Will you excuse me just a minute? You slipped by one point. I heard you make a little pitch there on the authorization card and so forth, sort of, apparently, a discrediting of the effect of the authorization card.

Mr. ASHBROOK. In some situations.

Mr. KIRCHER. All I want to say is that it is my understanding that the Supreme Court in the *Gesell* case made a ruling that goes to the heart of the argument. I am willing to rest my case with the Supreme Court. I must, whether I like it or not.

Mr. ASHBROOK. You are talking about whether they truly want a union. I am saying there are situations where a person will sign a card under pressure which may not represent what he will do later at a vote.

Mr. KIRCHER. Isn't that precisely the argument made to the Supreme Court to try to discredit the authorization card? The Supreme Court turned it down.

Mr. ASHBROOK. Sure.

Mr. MAYER. In that case, why not have a NLRB election for farm-workers the same as other workers? This would be a fair way of testing.

Mr. THOMPSON. I don't gather from Mr. Ashbrook's line of questioning—I am not speaking for him—but I don't gather from his line of questioning that he would object to a properly conducted election.

Mr. ASHBROOK. It would settle a lot of things.

Mr. KIRCHER. He should know, if he doesn't know, that in the beginning every employer involved in the strike, in the boycott, in the beginning, was offered, however you would say it, the election process. It was turned down.

Today, after 2 or 3 years of their resisting the union, intimidating their work force, as they can, you know. In farm labor, you don't have to worry about any of the sections in the NLRA. You can go out and give the guy an affidavit that you are firing him because he had a brother who walked past a bookstore that had a pamphlet on how to organize a union.

Mr. ASHBROOK. It works both ways.

Mr. KIRCHER. You will find the attitude today is a little more receptive to an election, but this is after 2 or 3 years of refusal on the part of the employers to submit to an election to determine this question.

Mr. THOMPSON. Mr. O'Hara?

Mr. O'HARA. Mr. Kircher, I appreciate your testimony.

I think we have finally gotten to the essence of this thing.

We have not yet; in this session, held any hearings on—though I hope we soon will—the bill which my colleague from New Jersey, and I, and a number of other Members of the House sponsored, which would remove the exemption that keeps agricultural workers out of the National Labor Relations Act, and under which we would have a system established by which the union could petition for an election. It must be a showing of 30 percent, and then if they make that showing, what do they get? They don't get to organize. They get a secret ballot election, which is really all that those of us who have sympathized with the cause of the workers have ever asked for in this Congress, a chance for the secret ballot election, in a chance for the workers of a particular employer to make up their own mind to decide whether or not they want to be represented by the United Farm Workers Organization in collective bargaining with the employer.

In other words, it is the same right that all other Americans have enjoyed since the enactment of the Wagner Act.

I think that is the point.

So, what do we find? Well, we find the employers who are resisting this. Why?

Well, because they just want to defend their employees from this terrible union. It is purely selfless. There is not self-interest at all. They are only doing it because they know their employees don't want that union, so they are out there trying to protect them.

That doesn't make any sense, Mr. Kircher. All they have to do is have an election, and if their employees don't want the union, the election would demonstrate that fact, and then they are out from under.

They are willing to make up their mind for the employees. They don't want to find out, they don't want to have an election to determine that. They want to say, "Look, I know my employees, I know Jose, I know Paco, and they don't want the union, so go ahead. Don't ask them. I have told you."

I hope that we can move on very quickly to hearings on that legislation, because I think it is more important than this legislation, even though I want to compliment the gentleman from New Jersey on the legislation he has introduced, because I think it is the best and most practical solution to this green card situation that I have yet seen.

As you know, Mr. Kircher, I have gone down to the border and watched the green card workers come through. I have talked with the Immigration people, and I recognize that it is a pretty tough chore for them to determine exactly where that fellow is going to work and whether or not that particular farm is one that is involved in a dispute, and whether or not the wages of that particular worker—well, it involves a lot of judgments by people that provide all the difficulties.

If you put the burden on the employer and then really, only on the employer who is engaged in the labor dispute, you know, it would really sort of narrow the thing down to the point where it is manageable, and you have recognized the right, too, of farmworkers. Some of these green carders have been here 20 or 30 years.

So, fine, let him have a right to come on and work. But the burden is on one man, and it is on the employer, and he cannot hire replace-

ments from the illegal green carders. Let's not call them illegals, because that confuses it. The green carder is a fellow who has been admitted for permanent residence and then doesn't come. He hasn't done what the Immigration Service and everybody else thought he was going to do when they gave him the card.

So, that is one of the points.

Mr. KIRCHER. Congressman O'Hara, talking about the law, the National Labor Relations Act and the attitude of employers, you may or may not know this: This is a very interesting observation on the management attitude. The same law that is denied to the farmworkers for purposes of its affirmative provisions is used, or an attempt is made to use it, to apply the negative aspects of the law to the farmworkers by employers.

The secondary boycott provisions of the National Labor Relations Act, has been the basis for four different massive unfair labor practice charges against the farmworkers.

I am not an attorney, but it seems to me that there has to be some kind of a balance involved, and if here you have a law that half of it is to help, and half of it is to, how would you say, restrict, that you can't tell a guy, "You can't have the good half, but protect yourself, because we are going to use the bad half against you."

Now, four different times, the National Labor Relations Board, its General Counsel has acted in three of these cases, and each time it has taken the position, and I am just characterizing the position, that the Farm Workers Union does not have any members who are covered for the purposes of the representation decisions of the law, and therefore, the Farm Workers Union is not a union under the act for the application of the secondary boycott sections.

That has not kept the employers from filing a new case every time a decision is made doing away with one. Another group comes along and files another.

I can't tell you the exact dates, but the last case, which arose through the regional office of the NLRB in San Francisco was denied, finally, at the national board level, about 2 months ago.

Well, I think that the deadline for appeals was on June 30, and on July 7, the Giumara Corp. filed a similar case. So that they have had a live case in the stream, an unfair labor practice complaint, trying to use the law that they would deny the farmworkers on the one hand, to penalize and impair the only reasonable organizational device that they have left, the boycott, and I think this is a pretty good mentality on fair play and justice as it relates to this problem generally.

Mr. THOMPSON. Mr. Dellenback?

Mr. DELLENBACK. Thank you very much, Mr. Chairman.

I would like to return to H.R. 12667, instead of the broader areas of this field, if I may.

I am favorably impressed by your testimony. I think it is good testimony. I am impressed by your obvious knowledge in this field, and by your dedication of over 30 years.

I mean it very sincerely. When I compliment you for your statement of partisanship. That is the way the system works. It is on both sides.

Mr. KIRCHER. We will be in trouble when we don't have it.

Mr. DELLENBACK. There are individual roles that are played, and sometimes the roles change. A person has been a partisan of one side,

on occasion, may become a partisan on the other side, or become a judge, or whatever it is; but at the moment, you are a partisan on one side, and I think an effective one, from what I have heard and had a chance to see this morning.

There are two things, though, that I would ask about this. I would ask these not to argue the case, because quite frankly, we are in a quasi-judicial position in this case, and I don't consider myself a partisan on either side.

But I am intrigued by this suggestion of Mr. Ashbrook. What about making a law like this, if it is to affect the green carder, have the effect of saying, "If this person comes over with the green card and there is a strike involved, he just can't get involved in the issue at all."

Wouldn't that be fairer than either the opening inquiry that was asked, or even your reply?

You indicated in reply to Mr. Ashbrook's question, that you felt that would be undercutting the role in the society of the green carder, because he ought to be here by virtue of what he said as a green carder, that he intends to become a resident.

Therefore, he will immediately have to begin to be backing up the elements in the society that are important.

Isn't that a possibly important basic attitude that underlines even your argument, and that is that the man who comes over with the green card, backing up his intention to become a permanent resident, really should be tied to the fundamental concept of freedom of choice?

If the man is to come in and add here to our standard, and one of those basic standards is not only freedom of speech, but that the man is to be free, just as you are free, to come down on one side or the other of this constant, dynamic situation.

Shouldn't he be free to come down on his choice of sides, and if we are going to say to him:

You can't come down on one side of this by hiring yourself out, so therefore, even though that might be what you want to do, if you were given a choice, so also you can't come down on the other side, even though that is what you might want to do if given a freedom of choice.

What would you say in reply to that?

Mr. KIRCHER. If I understood you right, you really outlined our position. The green card holder who comes into this country and becomes a resident, then he has all of the things that you talked about.

You have to, I think, very clearly distinguish between the two classes of green cardholders.

Now, I don't mean that there are two classes in terms of the types of green cards, but two classes in terms of how they use them.

We are not talking here today about the green carder who actually makes his residence in the United States. We are talking about the green carder who gets the green card, ostensibly determined to make his residence in the United States, and then maintains his residence outside the United States and commutes, either on a daily, weekly, or whatever the community interval might be.

Mr. DELLENBACK. When you are dealing with the first one, you are willing to take your chances on the economic situation.

Mr. KIRCHER. He has all the freedoms to try to break a strike that the American-born citizen has, and all the freedom of choice that pertain to a native born citizen. We are not contesting that.

We are only talking about the guy who has, at least on the surface, misrepresented his intentions when he gained entrance to this country and is using his visa as a work permit to go back and forth through the day. That is the person we are talking about.

Now, let me respond to your question with respect to him.

From the union's point of view, from an organizational point of view, we would have no particular objection to outlawing the situs of the struck down field from employment from which he was ejected because of this legislation, and I understand this is precisely what you are asking.

In terms of organizational effectiveness, it would have not that kind of meaning, but I would respond more in the context of the treatment that you give him, because you, in effect, I think, limit the freedom that you are talking about, because this legislation deals with the act of the employer in hiring him, and to say that because an employer committed an unfair labor practice that subsequent rights of the worker should be limited, I think, well, it is a problem that you would have to sort of grapple with in terms of limiting the very kind of freedom that you have talked about.

Mr. DELLENBACK. We are dealing with a practical situation though Mr. Kircher. I don't want to beat this to death; it was an intriguing idea when I heard it thrown out, and I don't feel of necessity that your answer was 100-percent effective in killing the idea. I think the answer was responsive and right to the point, but I wasn't satisfied that you really laid the problem to rest, at least in my mind.

I still want to put this type of question. You say this limits the employer, and therefore, this green carder could not get a job even though he might want one. So since his rights are effectively limited, because he would say, "I want a job," and the employer would say, "I can't hire you, because of the circumstances."

Mr. KIRCHER. Let's examine the circumstances. That is what we are talking about, the circumstances.

Mr. DELLENBACK. Let me finish. Because of the situation, because of the labor dispute, and because of the fact that this green carder has a principal place of residence in a foreign country, the employer says, "I can't hire you," therefore, the would-be employee's rights are limited.

Wouldn't it be fair to say that, since your rights are limited on this side, we are also, under the circumstances, going to limit your rights on the other side?

In other words, you just can't be involved in this thing on any side.

Frankly, it would seem to me, and I don't know anything about the statistics of this type of situation, but I would be very surprised if this type of person played a tremendously important role. It might well be, however, that there is some practical stand for you to take on it.

Mr. KIRCHER. That is what I said.

Mr. DELLENBACK. When we are dealing with the green carder who is really trying to make this his place of residence, we will take our chances on the circumstances here, and we assume he will be with us. I assume that is what you are saying.

Wouldn't it be sound to follow it the rest of the way and say, "In the circumstances where we are dealing with the green carder who isn't making this country his place of residence, who can be involved on either side, that this man can't be involved at all."

Wouldn't this lay to rest the argument of the lack of equity in the bill?

Mr. KIRCHER. I honestly don't think so. Earlier, you said that, with respect to partisans, that sometimes we even have a right to change sides, you see. It seems to me that you are deaying to some extent the right of the strikebreaker to voluntarily want to change sides when you say this. It is entirely conceivable that he was hired on at the ranch in a strike situation, not knowing at all what he was getting into.

The process of this legislation could be an educational experience for him, and I mean it in the best context. He finds out for the first time what unionism here is about, what the other farmworkers are fighting for, what it could mean for him. He finds out, for example, that a union contract could conceivably mean that the economic conditions which press upon him the need to work in this country at starvation wages and to live in that country because that is the only place you can live on starvation wages, can be somewhat ameliorated and relieved by a union contract that could tell him, "Here is a job you have every season, at this rate, which is better, and not only that, the longer you are here, the better chance you have of getting that better job which you have never had."

This might be encouragement for him to live up to the conditions of that visa and to come into this country and to put down his roots, and to help to eliminate some of the family and cultural problems that flow from migrants. I think this has to be taken into consideration.

Mr. DELLENBACK. Even if this bill were amended as, in effect, Mr. Ashbrook implied, that wouldn't block that avenue for him at all, because all he would have to do would be to eliminate the qualification that he resided in a foreign country, he could become a resident here, and he could choose whichever side he wanted to come down on.

Mr. KIRCHER. I think the balanced tendency is to cast him as a continuing adversary with the union movement.

Mr. DELLENBACK. All I am searching for in my mind is, in the analysis of this legislation, wouldn't it, from both the theoretical and practical standpoint be sounder if it were brought into balance, and say that it applies only to one group, and so far as that group is concerned, the man can't come down on another side of the controversy, either as an employer—as an employee, I mean—or as one who involved himself on the strike. He could eliminate himself from that situation by becoming a resident in fact and under those circumstances, he is free to come down on either side.

In one instance you can't be on either side.

Mr. O'HARA. Would the gentleman yield?

Mr. DELLENBACK. Yes.

Mr. O'HARA. How are you going to do that? Are you going to say that a commuting green carder can have no choice but to continue to work at a place where a strike is going on? He has a replacement. Are you saying that if a green carder working on a particular farm, and

the workers on that farm go out on strike, he has to keep on working there? Would we have involuntary servitude under your proposal?

Mr. DELLENBACK. No; I won't suggest he be forced into those circumstances, and I would have to look at sanctions. I was merely pursuing this line of inquiry. Maybe a practical suggestion would block it, but I am, from a theoretical standpoint, intrigued by the standpoint.

Mr. O'HARA. I would say—

Mr. KIRCHER. As I understand it, what you are suggesting is that he would have to be fired under this, but if he were fired, he couldn't go out and join the picket line. That is really what you are saying. He couldn't join the picket line. He couldn't identify with the union.

Mr. DELLENBACK. Mr. O'Hara raised the question of how do we effectuate that.

Mr. KIRCHER. All I am saying is that from an organizational point of view, that wouldn't create a great hardship. It wouldn't weaken the organizational campaign, but I don't think it should be discussed in that context. I think it should be discussed in the context of this worker's rights.

Mr. DELLENBACK. But that very argument is where you lose me, Mr. Kircher, because this worker is not able to work, so you block him at this road anyway.

Mr. KIRCHER. You know that there are several States in this country that have anti-strike-breaker laws. You know that. You know that a person can't cross the State border and take employment in some States in a strike-bound plant.

What would you suggest, that they attach to that law the fact that anybody who does that and gets caught and is fired can't go out and join the picket line?

I will tell you that there are some active union people who exist today who got their union education as a result of being taught the difference between right and wrong when they were breaking strikes, and what you do in this kind of a suggestion is to take away from that person the right to change his mind.

Mr. DELLENBACK. This has been very helpful and educational in a broad sense. Unfortunately, all of the right isn't on one side in this matter. There are tough decisions.

Thank you, Mr. Kircher. Thank you, Mr. Chairman.

Mr. THOMPSON. Thank you, Mr. Kircher.

Mr. Mayer?

Mr. MAYER. Mr. Chairman, I have a statement I would like to make for the record, but I would like to read portions of it.

Mr. THOMPSON. Without objection, your statement will be made a part of the record in full at this point, and you may make comments. (The document follows:)

STATEMENT OF ARNOLD MAYER, LEGISLATIVE REPRESENTATIVE, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN (AFL-CIO)

My name is Arnold Mayer. I am the Legislative Representative of the Amalgamated Meat Cutters and Butcher Workmen (AFL-CIO).

The Amalgamated is a labor union with 500,000 members organized in about 700 local unions throughout the United States and Canada. The Amalgamated and its local unions have contracts with thousands of employers in the meat, retail, poultry, eggs, canning, leather, fish processing, sugar and fur industries.

END OF BRACERO PROGRAM

Mr. Chairman and Gentlemen of the Committee, you will recall that in 1963-64, Congress decided to end the Mexican Farm Labor Importation—or bracero—program. It took this action after a decade of off and on-again debate because this pernicious program set hundreds of thousands of extremely poverty-stricken Mexican farm workers into a desperate job competition against almost equally penurious U.S. agricultural laborers. The result of the competition was the creation of still more poverty and suffering.

The end of the bracero program did improve somewhat the conditions of U.S. farm workers. Employment opportunities and wages did increase, but not to the extent which many of us had hoped when we battled the program. Very sharp improvements failed to develop because although the bracero program, as such, ended, other programs which tapped the unemployment and poverty of Mexico for U.S. labor exploitation did not. In fact, some became bigger.

The unfair competition for jobs between residents of Mexico and residents of the United States in the southwest border areas continued. Congress ended a program, but it did not finish the job by eliminating the destructive effects it originally set out to ban.

GREEN CARD EVILS

Among the poverty-causing labor importations which remain is the green card system. It is literally based upon a lie. It has operated for decades under the cover that the poor and hungry Mexican worker intends to live in the United States and becomes a citizen. He is only temporarily residing in Mexico, the fiction goes. The fact that the hundreds of thousands of workers have commuted for 20, 30, 40, 50 or more years—partially because they cannot possibly live in the U.S. on the low wages they earn—fails to end the myth.

But the myth is not a happy one. It does not provide a happy ending. Instead, the green card system does tremendous harm to workers in the southwestern areas of the United States—to farm workers, to industrial workers, to unskilled workers, to skilled workers, to all workers.

It is used to cause unemployment. It is used to keep down wages. It is used to destroy union organizing drives. It is used to break strikes. It is a magnificent boon to employers, who want and are able to exploit Mexican poverty to maintain American poverty.

COURT FAILURES

A decade ago—during a four year long strike at the Peyton Packing Co. in El Paso, Tex.—our Union challenged the legality of an aspect of the green card system. We sought remedies against commuting to break strikes through a court suit. We did win a limited victory against the particular strike breaking which was occurring at Peyton.

But when the Texas Federation of Labor attempted to use that decision as a means for overturning the entire border commuting operation, the State Department—demonstrating its usual concern for American workers—stymied the effort. The Department entered a “friend of the court” brief charging that if the Court found in favor of the plaintiffs, it would destroy the Alliance for Progress, which was then burgeoning as a program.

The Court apparently did not want to take responsibility for killing a major U.S. foreign policy effort. It did not rule on the legality of the commuting. Instead, it found that the 16 U.S. residents who claimed they were economically hurt by the system and on whose behalf the Texas Federation of Labor brought the suit had no standing in court as plaintiffs. It became clear that no one would.

The Alliance for Progress died anyway. But the green card system is still going strong and is probably getting stronger. It is very useful and profitable to a few; it is a disaster to millions of men and women in the U.S. border areas and other parts of the Southwest.

LETTER FROM THE RIO GRANDE VALLEY

Mr. Chairman and Gentlemen of the Committee, I would like to read two letters to you. They describe far better and far more dramatically than I can the extremely harmful effect of the green card system on union organizing and collective bargaining efforts. They are from men who are working in the border areas in the face of the green card system.

The first letter is from Harold Shapiro, an International Representative of the Amalgamated Meat Cutters and Butcher Workmen (AFL-CIO) in the Rio Grande Valley of Texas. The letter is dated July 10, 1969 and is addressed to Richard A. Twedell, a Vice President of our Union, in response to a request for recent information about the effect of the green card system. He writes:

"How do you go about documenting the disastrous effects of the green card system upon the wages and conditions of the workers here? It should be glaringly apparent to the whole world that when you have an *unlimited* supply of cheap labor, employers will pay the absolute bare minimum and cheat on that when they can get away with it.

"And they do get away with it! A green carder who would normally make 30¢ an hour in Mexico will not complain if he is paid \$1.00 in Brownsville, McAllen or Edinburg and won't run to complain to Wage and Hour if he is worked 10 hours a day with no overtime pay. It's still a helluva lot more than he would get across the border.

"Thus, enforcement of the Fair Labor Standards Act became enormously difficult and even legitimate employers are tempted into violations because of the ease of so doing and because of the unfair competition from employers who have no scruples.

HIGH UNEMPLOYMENT

"I think the next point to emphasize is the unemployment situation. The latest figure for the Rio Grande Valley is 7%. This is about double the national average! Now, how in the hell can anybody justify bringing in foreign workers to take jobs here when 7% of the American work force is unemployed? Actually that 7% figure is far too low. It does not include thousands of women who would gladly work—if there were work available. Since there is no work, they stay at home and "not actively seeking employment," are not counted as unemployed. The same is also true of many young people coming into the labor market.

"That's the overall view. Now for specific examples.

"Every single contract negotiation we have had in the Valley is faced with the argument from the employers that any demand for wages above the federal minimum or for fringe benefits is excessive because they can get all the workers they can possibly use (green carders) who would jump at the opportunity to work for \$1.60. And they are telling the absolute truth. We were compelled to settle the Booth Fisheries contract for a lousy 2½¢ over the minimum and now after a year and a half we have a magnificent 5¢ over the minimum. This same company has the *identical* operation in New Hampshire, where they pay nearly a \$2.00 minimum . . . even without a Union.

STRIKE IMPOSSIBLE

"Five months of negotiations with United Food in Brownsville produced not even a proposal of a 1¢ increase for the first year of the contract. Two thirds of their present 600 work force are green carders. As a result we cannot strike and we cannot accept a contract that provides no better than the bare minimum provided by law. If we were to strike, the green carders would work and under present law and regulations would be protected by the government in scabbing on American citizens; destroying their Union and all hope for improvement of their conditions.

"The final irony is that the green carders then take their \$1.60 back across the river and spend it in Mexico where it provides a good standard of living and even the stores and economy of the Valley are hurt by this unconscionable traffic. If green carders were banned—all of this payroll would be spent here and result in a boom in the local economy.

"The same frustration and similar results occurred in the negotiation of the contract at Elsa Canning Co. in Elsa; Texsun in Weslaco; Armour Co. in Brownsville and Swift in Harlingen. In each case, we were compelled to accept inferior contracts because of the menacing presence of the green carders.

ORGANIZATION FRUSTRATED

"Attempted organizational campaigns at National Shrimp Processors and Trade Winds, two large shrimp plants in Brownsville, competitors of Booth, were defeated when the word was passed to the green card employees that if the Union came in, the Company would employ only American citizens. Since more than

50% of the work force are green carders, you can imagine what this did to our campaigns.

"In El Paso, 6 months of negotiations with Tony Lama Boot Co., failed to produce agreement on a contract. The workers voted to strike and did so; 70% of the workers walked out. The 30% that remained were almost exclusively green carders. They enabled the Company to hold out and we were eventually compelled to settle for little more than had been offered prior to the strike. If not for the green carders, there would have been significant improvement in the wages and conditions of these 350 workers on the border.

"The conclusions are inescapable: (1) The green card system has acted to depress wages and working conditions along the Border; (2) It is directly responsible for an ostensible seven percent unemployment rate (actually much higher); (3) It has acted to frustrate the organization of the unorganized; (4) It has been instrumental in defeating strikes for economic improvement and in deterring militant action by the unions which would have improved conditions; and (5) It has been deleterious to the entire border economy."

LETTER FROM SAN DIEGO COUNTY

The other letter is from Max J. Osslo, a Vice President of our Union and the District Director for California, Arizona, Nevada and Hawaii. It is of July 9, 1969 and is addressed to me. Mr. Osslo writes specifically of the experience of unions in the San Diego area of California, where he also heads our Local Union 229.

He writes:

"Please be advised that the biggest problem we face plaguing the workers in San Diego County is the unfair competition for jobs by the green card commuters from Baja California, the principal cities of which are Tijuana and Mexicali.

"These green carders will work for wages on which the local American worker will not and cannot survive. The organized workers in San Diego County are faced with a large group of green card workers who are used as strike breakers in case a walkout is called at any given plant. This is even more acute when semi or unskilled labor is used.

"In a recent strike by the laundry workers of Local 259, the strike was broken at the California Linen Laundry and Cleaners by the importation of green card workers from Tijuana, Baja California. The move was instigated by the employer.

"In 1965 the members of the Agricultural Workers Organizing Committee (AFL-CIO) struck the following farms in San Ysidro and Chula Vista: Samuel Vernon Farms, Richard Takashima Farms, Hosaka Brothers Farms, and William F. Wright Farms. This strike was broken by the importation of green card workers from Tijuana, Baja California."

STRIKES PROLONGED

"The following companies were able to prolong a strike by the importation of green card workers: Rask Shipbuilding, San Diego; American Electric, El Cajon; a city adjacent to San Diego, and the American Maintenance Company at the National Steel and Shipbuilding Company in San Diego.

"In the construction industry, demolition work and house moving has been virtually taken over by the green card workers. We find that in this case they work for \$1.00 to \$1.25 per hour, whereas the union companies pay \$3.85 per hour and up. We find further, the employers are able to recruit the green card workers by using devious threats, i.e., if the green card workers don't cooperate, the employer threatens them that he will take away their cards.

"In recruiting green card workers, the employer uses very devious methods to secure them. We find the employer informs them that by working the San Diego County, they will make much more money than by working in Tijuana or Mexicali. This is true even if the green card worker receives only \$1.00 per hour.

"As you well know, \$1.00 in American money is twelve and a half pesos in Mexican money. We find that the highest wages paid in Tijuana in industries which are run away plants, such as; Mattel Dolls, Fairchild Camera, etc., a worker receives forty pesos per day or approximately \$3.20 for eight hours work. Across the Border, this is considered to be an exceptionally high rate of pay.

"In closing, let me state that because green card workers are able to come across the Border on a daily commuter basis, it makes it most difficult to organize in San Diego County any employer who operates his business using green card workers as his source of labor supply.

"It is not common for us to find that if a green card worker decides to sign up with the union, his employer, if he finds out, will fire him for doing same. He is advised by many devious ways, if he signs up with the union, his green card will be taken away or the employer will fire him for joining a trade union organization.

"Recently, the Teamsters and the Amalgamated in San Diego County attempted a joint organizing program on Foodmaker of San Diego County. Foodmaker produces all of the food products for Oscars Drive In's and Jack in the Box Drive In's. The latter is expanding rapidly through California and the United States, 95% of the workers in Foodmaker are green card workers, and because of reasons already stated, it is impossible to organize this firm, under present conditions."

Mr. Osslo adds in a handwritten postscript, "They (the green card workers) are now being used as strikebreakers in Phoenix, Ariz., in the cantaloupe harvest."

POVERTY AND ANGUISH

Mr. Chairman and Gentlemen of the Committee, I have quoted these letters exactly not only because of the information they provide but also because of the intensity of feeling they show. They provide a flavor of how it feels to see efforts to improve incredibly low wages and fantastically subnormal working conditions completely destroyed because of a legally sanctioned importation system based on a lie.

The executive branch of the federal government has refused to deal with the problem. The judicial branch, as we have previously stated, has been scared off. We sincerely hope the legislative branch will deal with it.

VITAL LEGISLATION

We therefore welcome the introduction of H.R. 12667, which would make an unfair labor practice the hiring of aliens as strikebreakers. We are delighted that these hearings are being held on the legislation.

H.R. 12667 is not a panacea. It obviously will not solve the green card problem. It will not prevent the artificial creation of an oversupply of labor in the border areas. It will not curtail the number of easily exploitable, easily threatened foreign workers available. It will not directly deal with the harm the green card system does to organizing drives. It will not directly prevent wages from being driven down.

It is limited legislation in scope and effect. It will deal with only one aspect of the green card problems: It will seek to stop the recruitment and use of aliens as strikebreakers.

But that goal is very important, for it can make a U.S. citizen's legal right to strike an *actual practical reality* in the border areas. It can make it possible for unusually poverty-stricken workers to do something about their own penury.

WETBACK PROVISION

In addition, H.R. 12667 would make an unfair labor practice the hiring of an alien who has illegally entered or remained in the U.S. This provision is also beneficial, for the number of these illegal entrants—the wetbacks—is large. They are an even more captive labor force than the green carders, for they know that they have no rights whatsoever. They are exploited by employers even more than any of the other Mexican workers. In an effort to avoid being sent back to the poverty of Mexico or to long sentences in prison—as many believe—some wetbacks are willing to work in semi-slavery.

We therefore strongly support the provisions of H.R. 12667 and urge the bill's speedy enactment.

Mr. MAYER. In the first place, Mr. Chairman, I think it is important that we understand that we are not talking about a few individual workers crossing the border to break strikes.

We are talking about hundreds of thousands, and perhaps even more than that, workers who regularly cross the border and many of them specifically, in cases of strikebreaking situations.

There are cases of organizing these workers for the strikebreaking itself, so this question of equality is not just how do you treat an indi-

vidual worker, but also it is a matter of dealing with the really organized situation on the employer's part.

We have had such experiences.

Now, the second point of that equality is—the question of equality—is that the immigration law specifically forbids people coming into the United States to be brought in in order to lower wages and working conditions, or even prevent them from rising.

Now, obviously, if a man comes in to break a strike, he is lowering working conditions. He is obviously preventing an increase, an improvement in the working conditions, so he, in strikebreaking, at least breaks the spirit of the Immigration Act, and probably, the specific provisions of the Immigration Act.

Mr. THOMPSON. In connection with the numbers, I might point out that on counts taken on two specific days in January of 1966, there were 43,687 commuters in 1 day—now, these aren't all the green carders, but just commuters—and on the second day there was a count, there were 42,641. That is really a tremendous number.

Mr. MAYER. Mr. Chairman, this situation affects not only farm-workers, it also affects workers in other industry, and our testimony tells about some of those situations.

We, in organizing and doing collective bargaining along the border have been hurt by this situation. Our members have been hurt by this situation.

A decade ago—during a 4-year-long strike at the Peyton Packing Co. in El Paso, Tex.—our union challenged the legality of an aspect of the green card system. We sought remedies against commuting to break strikes through a court suit. We did win a limited victory against the particular strikebreaking which was occurring at Peyton.

But when the Texas Federation of Labor attempted to use that decision as a means for overturning the entire border commuting operation, the State Department—demonstrating its usual concern for American workers—stymied the effort. The Department entered a “friend of the court” brief charging that if the court found in favor of the plaintiffs, it would destroy the Alliance for Progress, which was then burgeoning as a program.

The court apparently did not want to take responsibility for killing a major U.S. foreign policy effort. It did not rule on the legality of the commuting. Instead, it found that the 16 U.S. residents who claimed they were economically hurt by the system and on whose behalf the Texas Federation of Labor brought the suit had no standing in court as plaintiffs. It became clear that no one would.

The Alliance for Progress died anyway. But the green card system is still going strong and is probably getting stronger. It is very useful and profitable to a few; it is a disaster to millions of men and women in the U.S. border areas and other parts of the Southwest.

Now, Mr. Chairman, I would just like to read one more thing, and that is a letter from one of our international representatives who works in the Rio Grande Valley of Texas. I think this letter not only provides some information about the problem we are talking about, but also the flavor of this situation, how a man feels when he sees his efforts to try to improve wages and working conditions completely destroyed by a legally sanctioned system that is actually based on a lie.

Let me explain that 1 minute. This green card system is based on a lie. It has operated for decades under the cover that the poor and hungry Mexican worker intends to live in the United States and become a citizen. He is only temporarily residing in Mexico, the fiction goes. The fact is that the hundreds of thousands of workers have commuted for 20, 30, 40, or 50 years, partially because they cannot live in the United States on the wages they earn fails to end the myth.

Mr. Chairman, I would like to read the letter by Harold Shapiro, who, as I said, is one of our international representatives in the Rio Grande Valley.

He was asked for recent information on the situation, the strike breaking, and here is what he writes:

How do you go about documenting the disastrous effects of the green card system upon the wages and conditions of the workers here? It should be glaringly apparent to the whole world that when you have an unlimited supply of cheap labor, employers will pay the absolute bare minimum and cheat on that when they can get away with it.

And they do get away with it. A green carder who would normally make 30 cents an hour in Mexico will not complain if he is paid \$1.00 in Brownsville, McAllen or Edinburg and won't run to complain to Wage and Hour if he is worked 10 hours a day with no overtime pay. It's still a helluva lot more than he would get across the border.

Thus, enforcement of the Fair Labor Standards Act became enormously difficult and even legitimate employers are tempted into violations because of the ease of so doing and because of the unfair competition from employers who have no scruples.

I think the next point to emphasize is the unemployment situation. The latest figure for the Rio Grande Valley is 7 percent. This is about double the national average. Now, how in the hell can anybody justify bringing in foreign workers to take jobs here when 7 percent of the American work force is unemployed? Actually, that 7 percent figure is far too low. It does not include thousands of women who would gladly work if there were work available. Since there is no work, they stay at home and "not actively seeking employment" are not counted as unemployed. The same is also true of many young people coming into the labor market.

That's the overall view. Now for specific examples.

Every single contract negotiation we have had in the Valley is faced with the argument from the employers that any demand for wages above the Federal minimum or for fringe benefits is excessive because they can get all the workers they can possibly use (green carders) who would jump at the opportunity to work for \$1.60. And they are telling the absolute truth. We were compelled to settle the Booth Fisheries contract for a lousy 2½ cents over the minimum and now after a year and a half we have a magnificent 5 cents over the minimum. This same company has the identical operation in New Hampshire, where they pay nearly a \$2.00 minimum * * * even without a union.

Five months of negotiations with United Food in Brownsville produced not even a proposal of a 1-cent increase for the first year of the contract. Two-thirds of their present 600 work force are green carders. As a result we cannot strike and we cannot accept a contract that provides no better than the bare minimum provided by law. If we were to strike, the green carders would work and under present law and regulations would be protected by the Government in scabbing on American citizens; destroying their Union and all hope for improvement of their conditions.

The final irony is that the green carders then take their \$1.60 back across the river and spend it in Mexico where it provides a good standard of living and even the stores and economy of the Valley are hurt by this unconscionable traffic. If green carders were banned—all of this payroll would be spent here and result in a boom in the local economy.

The same frustration and similar results occurred in the negotiation of the contract at Elsa Canning Co. in Elsa; Texsun in Weslaco; Armour Co. in Brownsville and Swift in Harlingen. In each case, we were compelled to accept inferior contracts because of the menacing presence of the green carders.

Attempted organizational campaigns at National Shrimp Processors and Trade Winds, two large shrimp plants in Brownsville, competitors of Booth, were defeated when the word was passed to the green card employees that if the union came in, the company would employ only American citizens. Since more than 50 percent of the work force are green carders, you can imagine what this did to our campaign.

In El Paso, 6 months of negotiations with Tony Lama Boot Company failed to produce agreement on a contract. The workers voted to strike and did so; 70 percent of the workers walked out. The 30 percent that remained were almost exclusively green carders. They enabled the company to hold out and we were eventually compelled to settle for little more than had been offered prior to the strike. If not for the green carders, there would have been significant improvement in the wages and conditions of these 350 workers on the border.

The conclusions are inescapable: (1) The green card system has acted to depress wages and working conditions along the border; (2) it is directly responsible for an ostensible seven percent unemployment rate (actually must higher); (3) it has acted to frustrate the organization of the unorganized; (4) it has been instrumental in defeating strikes for economic improvement and in deterring militant action by the unions which would have improved conditions; and (5) it has been deleterious to the entire border economy.

That concludes my testimony.

Mr. THOMPSON. That is a fascinating and informative letter, and I have looked over your whole statement, and I find it to be excellent.

I am going to move on now, in the light of the time, after thanking both of you gentlemen for your valuable testimony.

Mr. KIRCHER. I have some documents I referred to in my testimony. I would like to leave them.

Mr. THOMPSON. Thank you.

(The documents follow:)

[From Dateline, Tucson, Ariz.]

INEXHAUSTIBLE LABOR SUPPLY: 30 CENTS AN HOUR

U.S.-based apparel manufacturing firms, especially those considering operating an overseas plant, are taking a long, hard look at the inexhaustible inexpensive labor market available to them minutes away from Tucson, Arizona. In their quest for increased quality and quantity of products at a lower cost they are finding what numerous other U.S. manufacturers have already discovered—that you don't have to go to Hong Kong, Taiwan, South Korea or Japan for low cost easily trainable foreign labor.

It's available right here in North America along the Mexico-Arizona border for as low as 30 cents an hour in virtually inexhaustible numbers. Mexican labor is competitive with foreign labor . . . easily recruited, quickly trained and equally as productive. It affords lower shipping costs and a full spectrum of transportation services.

These advantages and others typical of cooperative U.S.-Mexican border operations, such as low absenteeism and a proud, cheerful attitude toward work, are offered under the Twin Plant concept which is being fostered by DATE—the Development Authority for Tucson's Expansion.

The concept is simply this. Components are manufactured in Tucson, Arizona, U.S.A., assembled in Nogales, Sonora, Mexico and returned to Tucson for final inspection, packaging and shipping. When finished products leave Mexico for the U.S., duty is imposed only on the added value of the assembly. Note: Nothing else is dutiable.

All in all, Tucson's proximity to Mexico, its own labor pool of 6,000 prospective garment workers, its incomparable climate, its world famous recreational, cultural and educational advantages, its Old West charm and New West vigor . . . all add up to a combination appealing to the apparel industry entrepreneur. It's a combination enhanced further by the lack of restrictions on the flow of materials and equipment across the border, plus a history of friendship between Tucson and its sister city along the international line.

TWIN PLANTS BRING INCREASED PROFITS

As an apparel manufacturer who operates or has operated an overseas plant will tell you, it takes more than just low wage rates to come up with greater profits for stockholders.

You must have low transportation rates, too, and you need freedom from uncertain sailing schedules and port tieups that cause unproductive inventories. Freedom, too, from the "Yankee, go home" problem.

That's why garment manufacturers are setting up shop these days just over the Mexican line to produce goods for U.S. or export markets, or both.

As Business Week magazine recently pointed out—Mexico is much closer to home. That means lower transportation costs. It also means big savings in time for the traveling executive, who can travel from his U.S. headquarters to his Mexican plant, and be back in his office before he could even get to the Far East.

Furthermore, Business Week continues, Mexico is a politically stable country—"no big anti-U.S. demonstrations in the streets or war clouds in the sky."

While enjoying freedom from such harassment . . . as well as from high transportation costs and other aforementioned shipping problems . . . U.S.-based apparel firms are finding that their Mexican plant has all the advantages of overseas operations without any of the disadvantages.

 U.S. MANUFACTURER SAYS: MEXICAN LABOR IS OUTSTANDING

The Mexico of tomorrow is here.

Here's what Dr. C. Lester Hogan, president of Fairchild Camera and former Motorola executive vice president, has to say about Motorola's Twin Plant operation in Nogales, Sonora:

"We have been able to hire all of the people we have needed to date. Not only the day labor but also the supervision and technicians necessary to maintain some rather complex and unique equipment. All of these employees are extremely high caliber by any standard."

Considering the history of Mexican excellence in manual craftsmanship, this is not surprising. The same hands which can carve an intricate design from wood, sliver or leather can successfully assemble a shirt * * * or any other product.

More than one manufacturer has cut training schedules in half and halved them again because of the speed and skill of his Mexican employees. There's more to it than just innate ability. A condition of extremely high unemployment (9,000 currently available) exists in the Sonoran border area. The resultant competition for jobs, combined with pride in workmanship and the desire to work hard to please management, add up to capable productive employees whose loyalties lie with the companies which hire them.

Motorola reports that in a 6-month period productivity in its Nogales operation equalled or exceeded its U.S. plant, with high quality workmanship and a small percentage of rejects.

 TUCSON—TAILOR-MADE FOR APPAREL INDUSTRY

Tucson's industrial climate wears well. It's tailor-made for the apparel industry.

World famous for its sunshine and western hospitality, Tucson is not all cactus, cattle, coyotes and cowboys. It is a progressive college community getting more progressive all the time. It is a place where industry is beginning to burgeon. It supports, and is supported by, such light industries as aircraft modification, electronics, optics, the graphic arts and film-making (the whole free world knows about "High Chaparral," the Tucson-based TV series).

That Tucson is an ideal place for a base plant for the cutting and fabrication of apparel components to be assembled in nearby Mexico is a conclusion easily drawn from a survey indicating the city's labor pool is more than adequate to meet the needs of the apparel industry.

There is also in full swing a continuing training program for prospective apparel workers being conducted by the Arizona Department of Vocational Education.

As for existing industrial sites, that's something the DATE people know all about. They'll advise you on what's available in land, existing buildings, or plants you can have built to specifications on any build-lease-or-own package.

Overnight shipping to west coast markets is afforded by major truck lines inbound and outbound on Interstate 8 and 10, U.S. 80, 95, 89 and 666 and State Routes 82, 83, 84 and 93.

Tucson International Airport, with full customs facilities, links Arizona's Twin Cities with all U.S. and world markets.

But only through personal visits can you really appreciate what Tucson and its Twin Plant concept have to offer by way of industrial, recreational, cultural and living advantages.

You'll find Tucson more than lives up to its reputation for Old West charm and New West vigor and vitality.

NEEDLETRADES SCHOOL OPENS IN TUCSON

An innovative educational program to turn out skilled workers for the apparel industry has been opened in Tucson, Arizona.

Known as The Industrial Needletrades School of Arizona, the new center will train apparel workers in not only the cutting and sewing of materials—but in the basic principles of how to be good employees.

Equipped with 35 commercial sewing machines, four working tables, a cutting table and a spreading machine in a 5,000 square foot building—the center will simulate actual manufacturing plant facilities.

Located close to existing apparel manufacturers, industrial park sites transportation and prospective students, the school will be taught by experienced specialized apparel workers and will provide a guaranteed and escalating source of qualified machine operators in Tucson.

Probably more flexible than any apparel school in the country—the program offers the manufacturer an opportunity to sit down with the school instructors and specify the exact type of training needed to meet his particular requirements.

Free to trainees and manufacturers alike, the school is just one more way of showing that Tucson actively supports industry.

2100 TUCSONANS APPLY FOR APPAREL JOBS

TUCSON JOB APPLICANTS

	Total respondents	Experienced in apparel field	Interested in apparel indus- try training
Male.....	374	101	245
Female.....	1,757	463	1,353
Total.....	2,131	564	1,598

Note: Over 25 percent of the 2,131 apparel job applicants had previous work experience in the apparel field.

A labor force estimated at over 6,000 people stand ready in Tucson, Arizona for any apparel manufacturer who locates here.

This estimate is based on a recent labor survey taken by DATE in which 2,131 actual applications for work in the apparel industry were received.

Experienced apparel industry workers made up over 25 percent of the 1,757 women and 374 men who applied. These included many highly skilled people with years of apparel experience and widely diversified backgrounds.

Tucson's present apparel industry work force stands at approximately 250 people—spread over four primary employers.

THERE'S PROFIT FOR YOU IN TWIN PLANTS

(By J. Karl Meyer)

DATE is prepared to work with any businessman interested in establishing a new plant in Tucson with a twin plant in Nogales, Sonora, Mexico by serving as liaison with Mexican officials and business leaders. Nogales, Sonora is most receptive and cooperative to new job opportunities and is prepared to make land

available at a nominal cost to private Mexican investors who will, in turn, build and lease to U.S. manufacturers' specifications. Also under development is an industrial park built to U.S. specifications.

DATE can direct you to responsible persons with border experience to manage your Mexican plant. The differences in labor laws and practices, tax laws, financing and accounting procedures and government regulations are minimized when you have efficient management operating on familiar ground.

In Tucson, DATE offers its services in coordinating efforts to locate Tucson plant sites, recruiting of employees, training personnel and securing financial aid and advice.

Tucson has plenty of desirable land available for industrial usage and is currently developing a municipally owned industrial park to complement the private industrial parks in the area.

Whatever your question or problem regarding the Twin Plan Operation—a phone call to DATE will bring the answer. The number is 602—623-3674. Ask for Karl Meyer.

CLIMATE FRIENDLY IN MEXICAN BORDER ZONE: CHEAP AND PLENTIFUL LABOR, EAGERNESS OF OFFICIAL TO HELP LURE ASSEMBLY OPERATIONS ACROSS RIO GRANDE; YANKIES FIND A LITTLE BRIBERY MAKES PATH SMOOTHER

(By Marvin Reid, Dallas News Bureau)

When a small Dallas-based electronics firm recently won a contract to supply 1.5 million semiconductor control components to a large Japanese manufacturer, it underbid two Japanese suppliers. The company, the Electronic Control Corp., was able to do that because its Mexican plant just over the Texas border turns out the devices for 22 to 35 percent less than is possible in the United States.

This is one of the more dramatic examples of the economic impact that the United States-Mexican border industrialization program is beginning to have in some electronics markets here and abroad.

Launched in mid-1965, the joint project is aimed primarily at relieving Mexico's chronic unemployment. Electronics firms—particularly fabricators of inexpensive items such as home-appliance control devices—are finding that the setup puts them squarely in the ballgame with all price competition in most areas.

COME ON OVER

The most important feature of the border development program is a duty-free zone for foreign manufacturers, a 12½-mile-wide strip extending along the entire boundary on the Mexican side. Foreign companies may operate manufacturing plants within the zone, importing raw materials and equipment on a duty-free basis. Output must be exported from Mexico, and the U.S. charges duty on a complicated "value-added" basis only.

While there are unique problems and business procedures, most Americans now involved say the advantages gained by utilizing inexpensive Mexican labor outweigh any disadvantages.

Growing

Twelve or so electronics firms are among an estimated 65 U.S. companies with plants along the strip. Many are small companies specializing in control devices and such; however, big names—such as Transatron and Fairchild—are represented. RCA has also been negotiating for a site. But big or small, the main attraction is inexpensive—and plentiful—labor.

Some estimates place the available labor pool at 15 million with unemployment running from 30 to 40 percent. Minimum wages are as low as \$2.55 a day. Electronics assemblers are getting \$3.20 a day or slightly better, with fringes and other "indirect" costs pushing the figure to \$3.50 to \$4.

Professional help is also plentiful at relatively low cost. Typical pay for Mexican EE's along the strip runs about \$350 a month. Several American firms there employ them as supervisory line foremen.

To evaluate the benefits and spotlight the pitfalls of Mexican border operations, the activity around Matamoros can be taken as typical of what's happening in the other cities involved—Tijuana, Nuevo Laredo, and Ciudad Juarez.

Plants in Matamoros include those of the Electronic Control Corps., Varo, Hunt Electronics, the CTS Corp., and Electro-semblies Inc. In each case, they

have assembly type operations with piece parts shipped in for partial or total assembly. The firms employ about 1,100 Mexicans.

Electronic Control was one of the first to establish in Matamoros. It now has about 225 employees assembling its devices. The payoff, says president Ed Kile, is big.

In the black

"Our labor savings at the Matamoros plant represented our profits last year," says Kile. "Without the low-cost labor, we would have lost some business and may have had to operate at an overall loss."

Harry Hoff, the firm's vice president, says that about 85 percent of the labor involved in making the company's products is performed at the Matamoros plant. He estimates the unit-hour cost of making the products in Matamoros runs 56 cents compared to \$3.60 in the headquarters plant near Dallas.

Varo, whose power-conversion product line competes with Electronic Control's, estimates that its total labor costs in Matamoros run 47 cents an hour compared to \$2.20 in Dallas.

Electro-semblies has come up with a new wrinkle in its Matamoros facility: manual assembly of products for customers who furnish the parts. It estimates assembly charges will be between \$2.50 and \$3 per worker hour.

But labor economics aren't the only lure. The Americans also are impressed by the supply and quality of Mexican workers.

Vox pop

"When we started hiring, we had block-long lines of applicants," says Bernie Cunningham, manager of Varo's Matamoros operations. "It beat anything we had seen in a long time."

The vast numbers of people seeking work enable the Americans to screen for top quality. The result is a workforce better than what some managers had expected. "We have been extremely pleased," says Kile of Electronic Control. "We learned that the old *mañana* stuff doesn't exist with the younger generation in Mexico. These people are really dedicated and they have a great deal of pride in their performance."

Girls averaging 18½ years old are generally hired for the assembly lines. Most have the equivalent of a high school education; company training usually takes 6 weeks or less. After training, says Electronic Control's Hoff, "They will out-perform what we normally expect from our lines in Dallas."

While the quality of help available is good, Electronic Control and Varo people report differing experiences on working long-distance with engineering in Dallas and manufacturing in Matamoros. One reason, possibly, lies in the approach each took.

Local talent

Electronic Control says it has experienced no difficulty. It sent two handpicked manufacturing men from Dallas to set up and operate its plant. They are still the only Americans in it. The firm views the operation as "a Mexican plant for Mexicans," says Kile. Mexican EE's do all supervisory work.

This approach may take more training initially, but the long-range benefits apparently are good. Jim McCoy, manager of the Matamoros plant, says the Mexican EE's do not have the electronics background of U.S. graduates "but they learn fast." Hoff claims that after a few months, "we learn solutions to some problems from these people."

Varo, on the other hand, has tried to handle all engineering with its own people. As a result, admits Cunningham, it has found "too big a physical separation" between its engineering in Dallas and manufacturing in Matamoros. "We haven't been too successful in getting our engineering people to move to Brownsville (across from Matamoros in Texas) but we will have to move some of them. We have had some problems and we attribute them primarily to this separation."

MORDIDO

To take advantage of the relatively inexpensive and plentiful Mexican labor, American firms must learn what channels to do business through and be prepared for the country's well-entrenched bribe system. It's known as "mordido," which means, literally,

Whether they approve of mordido or not, the Americans learn they can't bypass it. "We know some companies that tried," says one source. "They found nothing

would move, neither the processing of operation permits nor materials and equipment through customs. There are certain procedures and channels you follow over here."

Some of the companies take the philosophical attitude that this system is just part of doing business in Mexico. "You get used to it," says one executive. "We pay our mordido to the people we're told should get it. We don't know how much this amounts to at times nor do we know how it is split up. We really don't care. It's just another operating cost to us."

Whites and reds

There are two major labor union groups in Mexico. Americans label them the "whites" and "reds." The latter group is considered Communist-oriented, and, says one Texan: "You certainly don't want any part of it."

Most of the American firms affiliate with the whites—the Confederacion de Trabajadores Mexicanos. It has local chapters, and relations depend on the local leaders. For the most part, however, American management finds them much easier to deal with than their U.S. counterparts.

"By having executives follow the right procedures, if you know what I mean, the Mexican union works for management," says one American. "They become your representative to the workers instead of the reverse." The "right" relations can also help get around a general rule that employees are eligible to receive three months' severance pay if they are discharged after completing a 29-day training period.

Serious labor trouble, however, can make a strike in the United States look like a church social. "When the black flag goes up over there signaling a strike," says Kile, "there is no question about continuing operations. No one goes in or out of a struck plant. There can be machineguns and that type of thing."

DUAL OPERATIONS

Some companies that operate manufacturing plants on the Mexican strip find it advantageous to locate warehousing facilities or allied plants on the American side. Chamber of Commerce people in such Texas towns as Brownsville are pushing the idea of support plants. And in some cases, the American border towns offer almost as lucrative a labor market as those on the Mexican side.

Cameron County, which includes Brownsville and other Lower Rio Grande Valley towns, has a nagging unemployment problem: the rate has been at least 6 percent for several years. It is estimated that 61 percent of the county's residents earn less than \$5,000 a year.

Its leaders want the electronics firms to establish support facilities on the Brownsville side; they claim to have commitments from a half-dozen or so. The Cameron County people also envision allied support companies coming in to work with the electronics activities.

The future

American border town leaders see the industrial buildup on the Mexican strip as the greatest thing ever. But some of the companies are less enthusiastic about the long-range picture.

Electronic Control's Kile, for example, expects the buildup on the Mexican strip to increase at the rate of 6 to 10 percent annually over the next 5 to 7 years. After that, the pickings may not be too good, in his opinion. He thinks it will take about that long for "animosity to build up" among the people involved; as a result, companies may find operating conditions not nearly as good as they are now.

Border woes

Customs problems may become more difficult, too. Already, some companies have hit snags on importing products back to the United States. One company building TV cabinets in Matamoros, for example, found recently that it had to pay 10 percent duty to U.S. Customs because it had "changed the identity of wood" it had sent to its Mexican plant. This duty was not anticipated and swallowed the expected profit.

U.S. Customs now charges duty based on whether a company assembles, manufactures, or processes goods from raw materials imported from the United States. Those doing business in the Mexican strip say these regulations are so complicated that a company has to get customs brokers on both sides of the border to advise them.

Mr. THOMPSON. Our next witness is Mrs. Dolores Huerta, who is vice president of United Farmworkers Organizers.

STATEMENT OF MRS. DOLORES HUERTA, DIRECTOR OF NEGOTIATIONS, UNITED FARMWORKERS ORGANIZING COMMITTEE, AFL-CIO

Mrs. HUERTA. Thank you, Congressman. My name is Dolores Huerta.

Our union has always been very active in the attempt to change the lives of farmworkers in the United States.

I want to set the record straight, we are composed of many ethnic groups. I want to mention that two of the members of our executive board are green carders, alien residents of the United States of America.

We have had a great deal of experience in the whole area of immigration, and with some of the contradictions in the immigration system. We know of the type of commitment that an alien must make at the time he comes into the United States. I personally have been doing this since 1955, and the union has been doing it since 1962.

One of the first and most important commitments an alien must make, he must sign an affidavit that says, "I intend to become a permanent resident of the United States."

This is an intent to reside permanently in the United States.

If he does not say that he is going to reside permanently in the United States, the immigration visa is simply not granted.

The mockery of the whole immigration procedure is that the alien can go through this process with tongue in cheek. If he can get through the form filing, then he has a free green card ticket to work in the United States and live in Mexico.

You know, I think we have to look at a little background to understand the situation.

When the growers were anticipating the ending of the bracero slave program, they immediately began granting hundreds of letters, offers of employment to braceros. Multiply that by the number of growers, and it comes to hundreds of thousands of letters that were given to aliens so that they could guarantee their immigration into the United States.

I have a personal experience in this. In the spring of 1960, I was dispatched by the Department of Employment in Stockton to work with the David Zuckerman Co. During my short term of employment, I think I was there for about a month and a half, that grower immigrated 153 aliens to the United States of America. Many of them, on arriving to work, when they found out that the wages were only 90 cents an hour, worked for a very short period of time and left to seek other employment.

Immediately upon their leaving, that same grower began to initiate new letters of employment for another batch of workers.

Many of the growers would charge from \$500 to \$1,000 to give these letters of employment to the braceros, or to other aliens.

The traffic of letters, I think, explains, and this system explains, why the green carders, as we now know them, are the ex-braceros, and why there are so many of them.

During the same period of employment with the David Zuckerman Co., in the spring of 1960, many local farmworkers that lived in the community came to this office seeking employment. They were refused employment. They were told that there was no employment available.

However, during that same period of time, the same grower brought in 500 workers from Texas, in buses, in trucks. Some of those trucks were wired so that the workers couldn't leave, and they were only allowed to get out in the desert.

They brought them in and they promised them a wage of \$1 an hour for the first 2 weeks of work, and then they were put on a piece rate. Then they found they could only make from 50 to 70 cents an hour, so many of them began leaving.

Of course, the reasons that the growers said for 2 weeks is that in the next 2 weeks they anticipated that they would be given the braceros they needed to pick their crops, so they didn't need the people from Texas.

In addition, Calpac Corp., brought in an additional 500. This was a period of high unemployment in the San Joaquin Valley. We had there in the city of Stockton 1,000 Texans who had been brought in to work. They were charged for their transportation, their food, their blankets. They weren't making any money, so they found their first week's paycheck went to the rancher.

We found them walking to town. We couldn't find places for them to live, many of them, and you know what happened? They were put in jail, charged with vagrancy, and told to leave town.

The use of the cheapest worker, the worker that will live in the camp, is still continuing. They are bringing in the green carders, and the same practice prevails.

They will bring in the green carders and cut off the local persons from work.

The farmworker has to work all winter long in the bitter cold for very low wages, because the winter wages are low compared to the harvest rates, and then when the summertime comes and he hopes he can make money during the harvest to send his children to school, to pay his bills, to live throughout the year, what does he find? He finds he is locked out of a job, and he is locked out of a job because he will not live in the camp. He will not give the labor contractor, or the employer, the little money that he earns, so he finds—what happens is that the local farmworkers has to migrate to another part of the State or another part of the country where he can seek work.

Just a couple of days ago, one of our members, who is a green carder, Julio Martinez, who has a family of three children, who lives near Delano, migrated all the way to Oregon, only to find that the employment he had every single year since the strike started was taken by some green carders, and he was refused employment.

Tremendous profits are made on providing food and housing for green carders. They charge them from \$2.50 to \$3.50 a day. The food is terrible. They have to pay rent for the blankets. They sell liquor in the camp. They have to pay high prices, for things like soap.

The poorest of the poor are exploited.

Let's look at another condition of the granting of the immigration visas.

An alien who is attempting to go to the United States cannot enter if he is going to depress the wages and working conditions of domestic workers, or local workers.

We have done, as I said, a lot of immigration work for the members of our union, and their attempts to bring their families in from Mexico. But you know what we find? They can't bring their families in from Mexico, because they don't earn enough money. The rule of thumb for the consulate is that a farmworker must earn approximately \$600 for each dependent he has, so a farmworker who earns \$1,800 to \$2,200 a year cannot bring his family from Mexico, or if he does, he may bring one in each year.

That means that the alien that immigrates to the United States and wants to comply with the law, wants to comply with his intention to reside permanently in the United States, cannot do so, because he doesn't earn enough money, and because the immigration laws, the way they are now administered, make it extremely difficult for him to bring his family into the country.

Now, I think that that is extremely unjust. On the other hand, the alien who lives in Mexico and has no intention of ever living in the United States finds it very easy to come into the country to work those harvest jobs, to live in the labor camp, and take all of his money back to Mexico.

We have found something very strange in the last few days. Many of the people coming from Mexico have their own businesses and ranches, and actually hire workers in Mexico to do their work while they are in the United States earning money.

This happened in one of our contracts. There were three men that came up from Mexico who had been working in the harvest every year, and we found they had stocks in the utility company of their local city, that they had properties, they had large land holdings, and they were coming over here to earn money to reinvest into their properties in Mexico, and this is becoming more and more common, especially along the border States.

Now, I think that when the Immigration Service is here before this committee, I think some of these questions should be posed. I know of instances where alien residents have had their green cards removed because they were in Mexico for more than 6 months, and the Immigration Service arbitrarily took their green cards away from them.

I cannot understand this double system. I cannot understand why we say to people, "We want you to remain permanently in the country," and then make it difficult for them to bring their families in.

I think the Immigration Service is so established to keep a single labor force.

We of the United Farmers Organizing Committee believe the only way the vast numbers of minority peoples in this country now employed in farmwork can climb out of their unbelievable working conditions, their unbelievable way of life, the horrible poverty that they now live in, that the only way they can do this is by having a union.

Maybe somebody else on the committee knows another way. We have explored, we have tried legislation. We just don't think that there is another way. We think that we must take the path that other Amer-

icans took before us and try to form a labor union, and this is what we are trying to do.

But we have tremendous difficulties in doing this. We hear a lot about the boycott, about the consumer boycott of grapes. If the green carders that are being brought in, and I say being brought in, because they don't do this of their own accord, they are recruited and brought in to break the strike. If this were to stop today, we wouldn't need the consumer boycott. We could win our strikes in the fields where they take place.

I am going to give you a practical biography of how this works, and I will take the Coachella Valley as an example.

There, you have approximately a 6-week harvest for grapes. The local residents in the Coachella Valley wanted elections. They pleaded for elections. They were refused elections.

So, the local residents, these are citizens and alien residents of the Coachella Valley, came out on strike. Immediately the growers went to Mexico to bring in strikebreakers.

Now, what happens when the person from Mexcio is brought in as a strikebreaker? First of all, he doesn't have any money. He doesn't know where he is going to work.

Do you know if a farmworker asks who he is working for, if he wants to know, "What is the boss' name?" he can get fired for asking what the boss' name is.

They don't know where they are going to work, whether there is a strike or not. They are charged for their transportation, they are kept in camp. The growers, and this is a common practice, withhold 3 to 4 days in a fund, so that the first 3 or 4 days the workers work, he doesn't get paid for those 3 or 4 days until the following week. This is done intentionally to keep them, really, in semislavery to get that harvest picked.

Now, we have no way of talking to these workers except through the picket line. We cannot get into the camps to speak to the workers, because this is trespassing. I have been arrested for trespassing for trying to talk to workers.

The alien worker that is brought in doesn't have the wherewithal, he doesn't have the money to leave to go to another place to work.

If we can't get the message to them—eventually, we do, through the picket lines, through the loudspeakers. If they hear us, they come out, but it may take a week or 10 days to leave and join our picket lines. They do make this choice freely.

In the DiGiorgio election, people had to be brought in from all parts of the country, 2,500, and they went all over the country, and we had to search for them and bring them back so they could vote. These were the same people who were brought in to break the strike.

If the people come out on strike, what does the employer do? He runs down to Calexico, every morning 3,000 workers meet there trying to find work in the United States. He runs down to "El Hojo"—"the Whole"—picks up another load of workers and brings them back to work again.

We repeat the same performance of picketing. He has to do that four or five times during the harvest season to get the harvest picked. We educated the people, but we lost the strike.

Mr. THOMPSON. When he goes down to get a new bunch, does he charge them for the transportation?

Mrs. HUERTA. Yes, he does, and the board and room and blanket, he does it from their first check, so the worker at the end of the week doesn't have any money, and the worker that comes out on strike, really, he leaves that money with the employer, he never collects that money.

Just last Saturday, melon workers, 60 melon workers came out on strike at Lost Hills Produce. Those workers had to wait 2 whole days to get their checks. They waited in the Filipino Hall, sleeping on the floor. The checks they were waiting for were the 3 days that they held back.

Now, how were we able to get them to another job? We had to provide the bus and cars to be able to take them to another job. This is the amount of the work that the union has to do in order to try to win a strike.

I grant you that this was Saturday that the people came out on strike. I grant you that day that camp is full of people again, that the employer has gone down and recruited more people from Mexico to put into that camp.

Now, there is one other thing. Let's talk about the health standards. At the time that an immigrant comes into the United States he is given an extensive health examination. He had to take a tuberculosis examination, a typhoid, a venereal disease examination. If he does not get a clean bill of health, he does not get into the United States.

So what happens to the commuter? What about his health standards and health care? When that man comes back into the United States and works in a field where there is one drinking cup for 100 workers, what about his health standards? What about the health protection for the consumer that is going to be eating the grapes that are picked by those men and women that have not had any kind of a health examination?

And this is, you know, when we talk about the green carders, what about the illegals that are brought in? Thousands and thousands and thousands of them haven't had any kind of a health examination.

When you cut a grape, one of the things you are instructed to do is not to remove any of the dust from the grape, the dust that has the filth and DDT. There aren't any toilets in the field, and the people can't wash their hands; and the grapes are packed directly into the boxes and come to the people who use them.

Try to wash or peel a grape.

I am going to submit something in evidence. We sent a letter to the Department of Internal Revenue in Los Angeles. We asked them to check on the returns of people we knew that lived in Mexico. I think there are something like 36 names that we submitted. Only six of those aliens had paid income taxes.

Now, the American farmer, the residents of this country, has to pay income taxes every single year, but the aliens don't. That is not fair.

I am going to leave these with you so that you can examine them.
(The documents follow:)

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
DISTRICT DIRECTOR,
July 9, 1968.

Re your request dated June 21, 1968.

LEROY CHATFIELD,
United Farm Workers Organizing Committee, AFL-CIO,
Delano, Calif.

We have received your request for a copy of a tax return or other document, but are unable to comply with the request for the reason checked below.

- ☐ Returns or documents for the year or years in question have been destroyed.
- ☐ No record that the return or document described in your requests was filed with this office.
- ☐ Request was not signed by taxpayer or authorized agent. Please have it signed.
- ☐ When returns are first filed they are not available for copying during the normal 60 day processing and indexing cycle. Please advise if you still desire a copy in spite of the anticipated delay.
- ☐ The return cannot be located. We will be glad to search again, if you will return this letter with the information requested below.
- ☒ Our records for 1966 and 1967 indicate for the lists of taxpayers as follows:
- No—No record.
- Yes—Record on file.

There is a charge of \$1 per copy for each page copied and \$1 for certification of copy if requested. A bill for the copies provided will be mailed to you.

Very truly yours,

CHIEF, TAXPAYER SERVICE.

Name	Address	City	1967	1966
Renaldi G. Trevino	9808 Kenmore Ave	Lamont	No	No.
Rolando G. Trevino	do	do	No	No.
Ivan R. Rodriguez	9905 Kenmore Ave	do	No	No.
Miguel Ramos (570-42-3466)	do	do	Yes	N.R.
Paula Ramos	do	do	No	N.R.
Francisco Varela (453-42-8945)	9912 Houston Ave	do	Yes	No.
Roberto R. Salinas (552-60-6810)	do	do	Yes	Yes
Guadalupe Sanchez	do	do	No	No.
Ely Santiago	do	do	No	No.
Emilia Ramos	9716 1/2 Houston Ave	do	No	No.
Alfonso Rea	10000 Habecker Rd	do	No	No.
Alfonso Rea, Jr	do	do	No	No.
Alberto Valdez	10317 Habecker Rd	do	N.R.	No.
Raul Valdez	do	do	N.R.	No.
Jesus Reyes (458-09-9011-0)	11317 Rose St	do	No	Yes.
Maria M. Reyes (572-50-5347-0)	do	do	No	Yes.
Valentin Vela and Alicia (541-58-7093)	8321 Bonita St	do	N.R.	Yes.
Cruz Rodriguez	8713 Bonita St	do	No	No.
Estevina C. Ramos	8201 Bernard St	do	No	No.
Gladys C. Ramos	do	do	No	No.
Mike V. Rivera	8605 Paradise	do	No	No.
Guadalupe Rodriguez	9713 Paradise Rd	do	No	No.
Maria del S. Romero (557-80-2440-0)	9917 Myrtle Ave	do	Yes	Yes.
Olivia L. Romero	do	do	No	No.
Oralia L. Romero	do	do	No	No.
Ricardo Soza	8412 Panama Rd	do	No	No.
Fidel Valenzuela	863 Panama Rd	do	N.R.	No.
Leonardo Solis	8600 School St	do	No	No.
Santos S. Soriano and Saledady (546-20-5772-0)	371 Laurel Ave	do	No	Yes.
Daniel Valles	9708 Elmco Ave	do	N.R.	No.
Pedro Valles	9708 Elmidio Ave	do	N.R.	No.
Matilde Velasco	10420 Tatum St	do	No	No.
Bobby Saco	9812 Primrose	do	No	No.
Reynaldo Valdez	Box 113	do	N.R.	No.
Juan Rendon	Post Office Box 135	do	No	No.
Elvira Reyna	Post Office Box 136	do	No	No.
Macario Rendon	do	do	No	No.
Maria L. Rendon	do	do	No	No.
Modesto Rendon	do	do	No	No.

Mrs. HUERTA. In our bill that we have here, the bill speaks about aliens unlawfully present in the United States—

to employ any alien unlawfully present in the United States; or to hire during a labor dispute as replacements for a person or persons ordinarily employed by such employer any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States.

I don't know how we can determine that.

The reason I say this is because of our own experience. We, in the community, know what the practice is. Everybody knows what the practice is. People live in Mexico, work here, and go back.

Every single alien resident has a mailing address in the United States, and he does it for purposes of the draft board, he does it for purposes of his alien registration. He is not going to list an address in Mexico, because if he does, he is in danger of losing the visa, which he paid for. He probably had to hock his home in Mexico to get that card.

Many have lost their rights in Mexico because they got cards to work in the United States.

Mr. THOMPSON. Who does he have to pay to get the card?

Mrs. HUERTA. What they actually pay for is the offers of employment that the growers give them. I have a tremendous amount of experience in this. The employers give a letter that says, "I will offer employment to John Doe, and the wage will be so and so, which is the prevailing wage of the area."

He gives this to the alien, and the alien presents it to the American Consulate.

He may go even further, he may say, "I will not only offer employment, but I will guarantee that John Joe will not become a public charge during his stay in the United States."

So, he is actually guaranteeing the support of this alien for an indeterminate period of time.

Mr. THOMPSON. At what stage, though, does the alien have to pay anyone to get the card?

Mrs. HUERTA. He has to pay the employer for the letter. There is a tremendous amount of traffic in this. I think that Mr. Sigmund Diaro, who was formerly the labor commissioner of the State of California, investigated this. There have been a couple of people who have been sentenced to prison for this traffic in these letters. It is a common practice, and a lucrative practice.

Where we have made investigations and have turned over the names and addresses in Mexico to the Immigration Service to prove that these people were living in Mexico, all they would say is, "They also have an American address."

You can imagine how confusing this becomes when you mix this group of workers in with the farmworkers locally who have to migrate all over the State.

It is difficult to find a farmworker who will have a single address for 12 months of the year. Or he will have it, but whether he lives in that house is another thing.

Frankly, I believe that the whole basis on which people are allowed to immigrate into this country, the whole principle, should be examined.

First of all, are they or are they not supposed to become permanent residents? Are they or are they not depressing working conditions?

I think those are the things that have to be determined. I think that the existing laws should also be looked at.

Mr. THOMPSON. Thank you very much. I certainly agree that the whole situation has to be looked at.

Mr. ASHBROOK?

Mr. ASHBROOK. Yes; I think Mrs. Huerta has brought up some very interesting points.

One that you touched on briefly was your observation of the difficulty of determining the green carders who actually are commuters.

For our information and background, the person that we are obviously directing our attention to in this legislation is the one that we are saying has a principal dwelling place in a foreign country.

By principal, I assume Mr. Thompson must mean that he either returns with a frequency, or resides in the foreign country enough that that would make it his principal dwelling place.

The person you are talking about, how often does he normally return to Mexico?

Mrs. HUERTA. You are talking about the international commuter?

Mr. ASHBROOK. Yes.

Mrs. HUERTA. You have more than one kind of person. Some live along the Mexican border. These people commute daily. They come into work in the morning and go back in the evening.

Mr. ASHBROOK. You mentioned a camp.

Mrs. HUERTA. All right. The growers in Delano or Coachella, they may go to El Paso, or they may go way into the interior of Mexico for workers.

Mr. ASHBROOK. These workers might stay at the camp for an extended period of time?

Mrs. HUERTA. They may. They usually go home on weekends. But the residents of the United States will not live in a labor camp. He will find some place to rent in town.

Mr. ASHBROOK. That is basically not the type of person that we would be attempting to reach by H.R. 12667. A permanent resident who came and signed the affidavit that he will reside here basically considers himself a resident alien or a permanent alien of this country.

But in trying to determine a person whose principal dwelling place is in a foreign country, I am intrigued by this idea of how your organization would look upon these people as to what would qualify a green carder as coming under this legislation, that a person who goes home on weekends, or immediately after the work is gone, or—

Mrs. HUERTA. I think a person that goes home on weekends, if that home is Mexicali, or Tijuana, should be covered. He is not living in the United States. The rest of the time he is living in Mexico, when he is not working. He is spending his money and paying his taxes in Mexico, not in the United States. I don't think he is a resident of the United States if he goes home on weekends.

Mr. ASHBROOK. What about the person who would come to southern California, stay for the harvest season and then return afterward. Would you consider him as being a person who had his principal dwelling place in a foreign country?

Mrs. HUERTA. Very definitely. His home is not in the United States.

Mr. ASHBROOK. It is your observation that there are a considerable number who would return on weekends?

Mrs. HUERTA. Right. The people that Giumarra brought in to break the strike went home on weekends, and he would pay them \$1.50 or \$2 for each person they brought back to work with them.

Mr. ASHBROOK. So, they would go home on the weekends.

It is very interesting. I can see where we may have difficulty in trying to pin it down. I can understand the question you raised, and I think it was well taken.

Mrs. HUERTA. I think if we know who is living in the country and who is living outside the country, we can have access to the information, we can make an investigation. I think if the willingness is there to determine this information, they can find out, anybody that want to. Certainly we can find it out.

Mr. ASHBROOK. By the same token, you wouldn't want to penalize a person who has an old mother in Mexico and wanted to return once in awhile. It would be hard, possibly, to pinpoint this. We wouldn't want to penalize anybody who happened to commute internationally. If it is important for the purpose of maintaining a residence, that is different. We certainly wouldn't want to penalize anybody who wanted to return to his native country for other purposes.

Mrs. HUERTA. That is right, but I think in speaking here I am representing large numbers of green carders who are probably in the only organization that they have in the United States, which is our organization, the Farm Workers.

They want the union. They have tremendous pressures. You know what the pressures are? Economic pressures. They are trying to make a living in this country, and they are finding it very difficult to live on \$2,000 a year, and less than that in many instances.

Mr. ASHBROOK. You are talking about the green carders who come here honestly with the intention of staying.

Mrs. HUERTA. That is right, and they want the union, because they know it is their only salvation.

Mr. ASHBROOK. What membership do you have?

Mrs. HUERTA. It runs about 20,000, and this fluctuates from month to month. Our dues run \$3.50 a month, but, however, not all of the dues go into the union, because \$1.50 of the dues goes into an insurance program for the workers. It is a death benefit program where the head of the family is covered by \$1,000 life insurance, and each of his dependents are covered by \$500.

Mr. ASHBROOK. That is a very substantial number of workers, no question about that.

Mrs. HUERTA. That is right.

Mr. ASHBROOK. What would you estimate to be the total work force in the area?

Mrs. HUERTA. In Delano, the work force is 5,000—let me give you the figures. We have 3,500 people working under union contracts. We have many thousands of members who are not working under union contracts. We have members who have been paying dues to the union since 1963, when we first started charging dues, who have not worked under a union contract. These are all over the State of California, Washington, Oregon, Wisconsin, Texas, and New York, for that matter.

Mr. ASHBROOK. The figure was given some time ago. I think a witness mentioned thousands, running in the hundreds of thousands, and I think Mr. Thompson mentioned 42,000 in one count in 1966.

What would you estimate as the total number in the California area who would be the group you are—

Mrs. HUERTA. You mean the grape pickers, or the total farmworkers?

Mr. ASHBROOK. One figure might possibly be the entire labor force, and the other might be the commuters.

Mrs. HUERTA. I am not sure exactly what the numbers of farmworkers in the State of California are, and the reason this figure is hard to determine is because there has been so much lying about it. The department of employment always inflated the figures tremendously so they could get braceros in to work.

Many workers are counted once or twice, or maybe three times, and they move up and down the State of California. I don't have any idea what the exact figure of farmworkers living in the State of California is.

I think that the 1960 census, the March census, which was taken during a time of relative unemployment, and which would account for all the local farmworkers, just the people who live in the country, would probably give us a figure. I don't happen to have that now.

Mr. ASHBROOK. Would you guess in the hundred thousand range?

Mrs. HUERTA. Probably, but I am not sure.

Let me mention this, that we have taken a policy, in those areas where we are organizing, that we do not ask people to pay dues until we get a union agreement. I think this is a standard practice.

Instead, we ask the workers to sign authorization cards. In terms of those, we have thousands and thousands and thousands of organization cards, really thousands of them, and if a member wants to join the union, then, of course, he is encouraged to join the union, because he gets the death benefit insurance. He also has access to our program which does immigration work, language problems, difficulties that they have with agencies, et cetera. This is given as a free service to the workers.

We also have a credit union to which the worker can belong, deposit his money and also make loans, and our credit union is chartered under the California Credit Union League, and also under the corporate laws of the State of California.

Mr. ASHBROOK. Obviously, you haven't taken a head count but you are intimately involved with this situation.

To the best of your knowledge, what would be the number of green carders that we are talking about here, the type of green carders who would have a principal dwelling place in a foreign country?

Mrs. HUERTA. I just can't give you that. I have heard upward of half a million. I am not sure it is that much, but I know in the border States—I am talking just in California—maybe 40,000 or 50,000. I think it is about 200,000 just along the border in California. I am not sure.

Maybe Mr. Mayer or Mr. Kircher would have the figures. It is a tremendous amount of people. It is unbelievable. It is fantastic.

Mr. ASHBROOK. There is a difference between the potential and the actual ones that are coming in.

Mrs. HUERTA. I think in Mexicali alone, I think the population there is something like 400,000 people, and almost all of the employable labor force there works in the United States of America.

Mr. ASHBROOK. Thank you.

Mr. THOMPSON. Mr. O'Hara?

Mr. O'HARA. Thank you very much.

Mrs. HUERTA. I am in complete agreement with your expressed views on this subject.

With respect to my distinguished colleague from Ohio, I don't really know what the importance of the membership of the union as related to the total agricultural work force of California is.

If you look at organized labor; I think the AFL-CIO has a membership of something in the neighborhood of 13 million, and out of the total labor force which must be 70-something million—

Mr. ASHBROOK. Would the gentleman yield at that point?

Mr. O'HARA. Yes.

Mr. ASHBROOK. I merely asked, because I want to know how many people a witness speaks for. She said 20,000.

Mr. O'HARA. I don't think we will ever know how many she speaks for.

Mrs. HUERTA. We have a practical reason why we are not encouraging people to pay dues. The reason is because of the bookkeeping. Many of the farmworkers are out on the boycott. We have farmworkers in 60 cities of the country, four or five people in every city. We have a personnel problem in Delano. We don't have enough people to do our bookkeeping.

When a person joins the union, you have to set up a file for him, an insurance plan, and it becomes a bookkeeping problem. They can join the union if they want to, and the services are available, but right now, we are having difficulties rendering these services.

Mr. ASHBROOK. I would say she has indicated to me she speaks for a substantial number of people.

Mr. O'HARA. All right.

With respect to determining the principal place of residence of a farmworker who is a Mexican national, I think there are some difficulties, but I don't think the difficulties are as great as may have been suggested here.

Mrs. HUERTA. I think they can be found out, if the willingness is there to find it out. This is our big problem in our whole movement is trying to get enforcement of local laws. We have trouble getting enforcement of toilet laws.

We have actually done the investigation, even on wetbacks. There is one grower in Delano who has a foreman who has a false compartment in his truck to bring in aliens. We did the investigation, got the names of the aliens, took them to the border patrol, and to date, nothing has been done about it.

Let me mention one other thing which I think is startling. In the Coachella Valley, they have a labor camp of wetbacks, people without any kind of resident papers at all. These wetbacks are taken into a detention camp, from where they are taken out to work in the fields.

Mr. O'HARA. I agree with you that it is not all that difficult. If we want to do it, we can do it.

For one thing, most of these people who are holders of green cards are family people, married men and women, and one merely has to ascertain where the family is, and that pretty much determines where the permanent place of residence is.

Then you have a second question that seems to me to be a very simple one, or relatively simple, to ascertain. That is, is the alleged place of residence in the United States a farm labor camp.

Obviously, farm labor camps don't constitute principal residences, and I think that we have a workable system here if, as the witness has pointed out, we are willing to make it work; that is, the proposal of Mr. Thompson with respect to determination of permanent residences.

I think we can do other things as well with respect to the green card problem but they, unfortunately, aren't within the jurisdiction of this committee. That is one of our problems.

Mrs. HUERTA. Could there be any kind of request made on the Immigration Department, to the State Department, or whoever it is who is supposed to enforce the immigration laws of the country, that all people who hold alien resident cards must be told to live in this country, or, in effect, lose their immigration visas, lose their residence visas? Could something like this be done?

As I said, I know of cases where the Immigration Service, unilaterally, on their own, removed green cards from people simply because they had stayed in Mexico longer than 6 months.

There are people in Mexico that have green cards and that come over here just once in a while, maybe to file their alien registration card.

But it would seem to me that either an alien resident lives in this country, or he doesn't, and I think border checks could be established to determine how many times a green carder goes across the border, and with what frequency.

Mr. O'HARA. The problem is that this is an extra legal practice which, by being condoned over a long period of time, has perhaps permitted the establishment of some sort of an equitable right on the part of some of these people. We have people now, because of the long time this has gone on, as you well know, we have people now who have been involved in the farmwork force of California, let's say in the Imperial Valley, maybe for the same employer for 30 years, who are actually illegal users of green cards.

But we have condoned the practice for so long that we run into problems of equity.

Mrs. HUERTA. I think we have a new situation, that we have new social conditions, and that the farmers in this country are also crying out for equity.

Mr. O'HARA. I think that is correct. I think we could fight for better wages and working conditions, and I think there are some contributions we can make to that effort, for instance, providing a legal right to organize.

I have talked to some green card holders, and I am sure you know many, who tell me they used to live in the United States, with their families, and the wages and working conditions and income conditions were so miserable that they couldn't support their families on what they were making, and so they moved back to Mexico, after having originally come here with a lawful intent. They moved back to Mexico where they could support their family on what they were receiving for their labor in the United States.

I talked to some of them very recently. We hear a lot about how California pays the highest farm wages of any State, and indeed they

do. That is true. All right. The California State Employment Service at Calexico assists in recruiting farmworkers who come across the border, the commuters.

They require of contractors who use their facility that they pay what they determine as the prevailing wage, \$1.60.

Well, what does that work out to? Many of these contractors are doing day hauls of commuting green carders all the way from Calexico all the way up into the Coachella Valley. It is a 3-hour trip each way, 3 hours up and 3 hours back. They pay them \$1.60 an hour, you know, and after they take out the social security it is a little less than that, but it works out, gross, \$12.80 a day, including travel.

Mrs. HUERTA. I think many are not making that much.

Mr. O'HARA. Even if they paid them \$1.60, and many of them are making that, and they are using this facility and claiming they pay the \$1.60. Actually, it is a 14-hour day with 6 hours of travel. They say to me, "How can I support my family in the United States on 91 cents an hour?" Which is the average, including traveltime.

Mrs. HUERTA. May I ask the committee a question? What would be wrong in amending the bill, when there is a strike in progress in the field, that no person with an alien resident card could be allowed to work there, because in so doing he would be depressing the wages and working conditions of local, domestic workers? I think that would be an easy thing to enforce, and I am saying that in all confidence, and we have a lot of strikes to look back on and a lot of experience in elections where we have run, where the green carders have overwhelmingly voted in favor of the union and have gone out on strike in order to get a union.

Mr. THOMPSON. Mrs. Huerta, with respect to your suggestion for amending it for that purpose, I would have grave doubts about its legality.

They do have green cards. Even if they are commuting, because the Immigration Service and other departments don't enforce—or don't have the facilities to enforce the law—as long as they have a green card, they have a legal right to be in the United States and work in the United States, and you wouldn't want to affect that in any way.

Mrs. HUERTA. I would not.

Mr. O'HARA. Mrs. Huerta, I wish to thank you for the contribution you have made to this hearing. I know of the inspiring work you have done in the organization of farmworkers and of your efforts to improve their wages and workings, and I, for one, am proud to have you before the committee.

Mr. THOMPSON. Mrs. Huerta, I don't know whether you have seen it or not, but one of my staff members dug up—in response to an inquiry made of the Department of Defense with respect to the number of table grapes being consumed or purchased and sent to Vietnam—a really fascinating document saying that there has been a tremendous upsurge in the desire of the troops in Vietnam for grapes. They have been asking for them.

Mrs. HUERTA. Especially since 20 percent of them are people with Spanish surnames and the other 25 percent are black. I guess this accounts for the big demand for grapes. This is just another indication, I think, of the Government's neutrality, just like the green

carders, and the Government's helplessness in helping the farmworkers to organize.

Mr. THOMPSON. The Department of Defense is giving them so many grapes over there, I hope their diet is balanced out, because one can hardly live on grapes, you know. They aren't the staff of life, any more than melons are. I suppose they will start shipping melons over there in great numbers.

Thank you very much for your testimony.

The committee will adjourn until tomorrow morning at 10 in this room.

(Whereupon, at 12:45 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, July 17, 1969.)

EMPLOYMENT OF "GREEN CARD" ALIENS DURING LABOR DISPUTES

THURSDAY, JULY 17, 1969

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The Subcommittee met at 10:15, pursuant to recess, in room 2175, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Thompson, O'Hara, Ford, Ashbrook, Reid, Hansen, and Ruth.

Staff members present: William G. Phillips, director; Jeunesse M. Beaumont, clerk; and Michael J. Bernstein, minority counsel.

Mr. THOMPSON. The subcommittee will be in order.

Today, we open the second day of hearings on H.R. 12667, to amend section 8(a) of the NLRA, to make it an unfair labor practice for an employer to hire certain aliens as replacements during a labor dispute for persons ordinarily employed by that employer.

Yesterday, we received testimony from labor union witnesses regarding the depressing effect of the so-called green carders, who are often hired as strikebreakers in border areas.

We found that this situation undermines wages, working conditions and labor standards of the American workers, not only in agricultural labor areas, but in service industries, industrial plants, building trades and other fields.

This morning, our first witness was to have been Mr. Richard M. Scammon, whom we expect later. He was the Chairman of the Select Commission on Western Hemisphere Immigration.

We have with us this morning Mr. James L. Hennessy, the Executive Assistant to the United States Immigration and Naturalization Service Commissioner, who will lead off for us.

**STATEMENT OF JAMES L. HENNESSY, EXECUTIVE ASSISTANT TO
THE COMMISSIONER, U.S. IMMIGRATION AND NATURALIZATION
SERVICE; ACCOMPANIED BY CORNELIUS J. LEARY, DEPUTY
ASSISTANT COMMISSIONER FOR DEPORTATION, IMMIGRATION
AND NATURALIZATION SERVICE**

Mr. HENNESSY. I am representing Commissioner Raymond F. Farrell of the Immigration and Naturalization Service and I am here to outline the procedures and practices of that Service and the pertinent statistics which may help the subcommittee in its consideration of H.R. 12667, a bill to amend the National Labor Relations Act.

In the fiscal year which ended on June 30, 1968, the Immigration and Naturalization Service examined and passed for entry into the United States a total of 217,943,897 persons. To a large extent, this involves duplication.

Mr. THOMPSON. This is in all ports of entry?

Mr. HENNESSY. Yes, seaports of entry, the land borders, and airports.

Across the Mexican land border, which is the area with which you are primarily concerned, 53,776,297 citizens and 82,068,068 aliens were inspected.

Mr. THOMPSON. By citizens, you mean American citizens who go to Mexico?

Mr. HENNESSY. In large part, they are persons domiciled in the United States who have gone over to Mexico, usually as tourists. To a somewhat limited extent, they are U.S. citizens, frequently of Mexican extraction, who maintain their residence on the other side of the border.

Mr. THOMPSON. Yes.

Mr. HENNESSY. The mandate of the Service is to inspect aliens to determine that they are admissible under 31 separate and distinct statutory grounds of excludability. Our examination of persons claiming to be U.S. citizens is limited to determining that fact.

If an individual, by his answers to questions or by the submission of various documents, establishes to the satisfaction of the examining inspector that he is a citizen of the United States, the jurisdiction of the Service over that person ceases and he is not subject to any further questioning as to his purpose, intended length of stay, et cetera.

Aliens who apply for admission are divided into two main classifications. The first of these are the immigrants. These are aliens who have been accorded the right to reside permanently in the United States. Usually they have received an immigrant visa from a U.S. consul abroad.

Here I may explain that with the exception of Western Hemisphere aliens, some persons may adjust their status to permanent residence within the United States, and there are other cases, private bills, et cetera; but the large bulk of immigrant aliens are persons who receive their visas from the U.S. consul.

Mr. THOMPSON. These would include the green card holders?

Mr. HENNESSY. Yes. Every immigrant is a green card holder.

Once they have made an entry with that visa, which they surrender to the immigration officer at the port of entry, they are issued a green/blue laminated alien registration card.

This card serves the dual purpose of being an identity document and also a travel document which enables the bearer to reenter the United States following departures outside this country, and absences of less than 1 year, without being required to obtain a new consular-issued immigrant visa.

In the fiscal year which ended on June 30, 1968, of the total immigration figure of 454,448, natives of Western Hemisphere countries—exclusive of approximately 90,000 Cubans who became immigrants within the United States—accounted for 151,147. Of these, 43,563 were Mexican nationals.

All aliens who are residing in the United States in January of each year are required by law to file an address report during that month.

According to the reports filed in January 1969, there were 3,506,359 such permanent residents in the United States.

About half of these persons are eligible for citizenship with the requirement that you must be in the United States for 5 years before you can petition. Others who are eligible have not seen fit to pursue citizenship.

Of these, 701,979 were Mexican nationals. The preliminary breakdowns indicate that 369,606 of these Mexican nationals resided in California; 198,886 were in Texas; 35,725 were resident in Arizona; and 10,339 were in New Mexico, Illinois, with 45,309 Mexican immigrants, had the largest number in a nonborder State.

All these 3,506,359 immigrants, as I earlier indicated, were in possession of "green cards" and were as free as citizens to move about the United States; to accept any lawful employment; and generally to engage in any activity in which a U.S. citizen could engage.

There is one relatively small group—and I emphasize relative, because I don't wish to minimize its importance, but it is relative in relation to the $3\frac{1}{2}$ million of these green card holders—the "commuters", who, unlike the $3\frac{1}{2}$ million other immigrants, maintain their homes on the other side of the border, in Canada or Mexico, and who enter the United States for employment on an almost daily basis. This practice of commuting in its current form has continued, with the approval of the Immigration and Naturalization Service and with the knowledge of the Congress, since at least January 1, 1930, following the Supreme Court decision of *Karnuth v. Albro* (279 U.S. 231).

The better to identify the "commuter", commencing early in November 1967, the Service arranged for the insertion of a metal grommet in the "green card" of each "commuter" on the Mexican border. These statistics have been maintained cumulatively and as of the end of May 1969, there were 47,315 Mexican alien commuters.

Mr. THOMPSON. This figure coincides almost exactly with studies made from time to time of the precise number of persons entering and leaving, does it not?

Mr. HENNESSY. That is correct.

Mr. THOMPSON. In other words, that would seem to indicate that to a considerable extent, the green card commuters are identifiable, notwithstanding that they have a post office box somewhere in the United States, or have some address here. They all have to have some address in the United States.

Mr. HENNESSY. Yes, they all have an address in the United States.

Mr. THOMPSON. But they would be fairly identifiable?

Mr. HENNESSY. Yes. That is why we have put the grommet in the card. We have sent a copy of that information to the file so that a person could not then apply for a duplicate card, indicating one had been lost, and obtain the ungrommeted card, and we have cross-referenced it in two or three ways.

Mr. THOMPSON. We didn't know that yesterday, and we had a considerable discussion about, how these people could be identified in the event that this legislation were passed.

It would be extremely useful to have the May 1969 statistics in the record of these hearings at this point, without objection.

(The statistics follow:)

U.S. DEPARTMENT OF JUSTICE—IMMIGRATION AND NATURALIZATION SERVICE
PERMANENT RESIDENT ALIEN COMMUTERS AND SEASONAL WORKERS, BY STATE,¹ MAY 1968

State	Commuters	Seasonal workers
Total.....	47,315	4,157
Arizona.....	5,598	77
California.....	19,423	2,502
New Mexico.....	31	2
Texas.....	22,263	1,576

¹ Figures are cumulated from July 1968.

Mr. HENNESSY. I like to think, then, that we had anticipated this action. We started on this about 2 year ago.

Mr. ASHBROOK. I notice in the preceding paragraph, Mr. Chairman, he refers to them with the words "on an almost daily basis."

I think it was the contention of this committee that there are people who fall into a class who would be on a weekly or monthly basis. Are you excluding those?

Mr. HENNESSY. Yes, I am. Frankly, we would not regard them as commuters. A new class has come into being whom I would call the seasonal worker, a person who comes into the United States, for instance, at the opening of a growing season; has moved north as the crops mature; and at the end of the growing season, he has returned to Mexico.

Mr. ASHBROOK. From our point of view, you can see that he maintains his principal place of residence in Mexico, and he wouldn't qualify for what you refer to as a commuter, and yet, for the purposes of this legislation, he very well might.

Mr. HENNESSY. For the purposes of your legislation, he very well might, but for our purposes he is not a commuter, because under the act, residence is defined as the place of general abode, and the place of general abode is redefined in the same act as the principal, actual dwelling place in fact, without regard to intent.

So, all the common law and statutory rules about residence and domicile and intent is completely inapplicable and inappropriate under the language of the immigration law.

So, for all practical purposes, many of those you refer to could be held to have their principal, actual dwelling place in fact in the United States if more than half of the 365 days they were physically present in the United States.

I am not too sure that would be the interpretation—

Mr. ASHBROOK. You don't have any idea how many people we would be talking about in this category?

Mr. HENNESSY. We have made some attempt to identify the seasonal worker in the area of agriculture, at least, because this has been the principal problem, at least in the last year.

Our preliminary figures have identified something in the neighborhood of 5,000-plus, and I emphasize, again, that this is most preliminary.

Mr. ASHBROOK. There is a significant number of people in this category?

Mr. HENNESSY. Yes; it has grown considerably in the last 2 years.

Mr. THOMPSON. If we were to make a determination that in the passage of a piece of legislation we wanted to consider those who spend, let's say arbitrarily, less than half of their time in the United States, and to classify them with the commuters, Immigration and Naturalization could identify them for us, could they not? Perhaps it might be done in somewhat the same manner as you have grommited the other cards.

Mr. HENNESSY. You see, the commuter crosses every day, and this grommited business took place over 2-month spread, and as a person came in each day, every person applying for admission, 20 percent of them were put aside and were inspected more closely than usual, and those that were determined to be commuters got the grommited card. Those who were determined not to be commuters were given a piece of paper indicating that they had been inspected and that it had been established that they were not commuters.

Over a 60-day spread, we finally had everybody at that port possessing a grommited card or a piece of paper indicating he was not a commuter.

Mr. THOMPSON. I see.

Mr. HENNESSY. For the individual coming in once in the early part of January and then coming in again in March, and possibly coming in in April, just a single day in the large mass of movement, we could make the effort, and we would, of course, make the effort. I cannot, however, answer your question categorically that we can identify them as easily and as simply as we did the commuter.

Mr. THOMPSON. A commuter technically loses his commuter status if he isn't employed for a period of 6 months?

Mr. HENNESSY. That is right.

Mr. THOMPSON. Mr. Reid?

Mr. REID. I am happy to welcome you here this morning. I would like to clarify the figures. First, you said on page 2 that of the 151,000 immigrants in the Western Hemisphere, 43,000 were Mexican nationals. That is on page 2.

Now, are these coming in as resident aliens, or as immigrants to this country?

Mr. HENNESSY. They are coming in as immigrants. These are persons who have applied to the U.S. consular offices and have been in fact issued immigrant visas under the Western Hemisphere ceiling of 120,000 a year.

Mr. REID. How many are coming in as resident aliens?

Mr. HENNESSY. A resident alien and an immigrant is the same.

Mr. REID. Of the 700,000, how do those rate, then?

Mr. HENNESSY. The 700,000 is the totality of persons who, over the last 20 or 30 years have been admitted for permanent residence have not become citizens and now reside here. The earlier figure was the number that was added to that figure in the last calendar year.

Mr. REID. How many of those are U.S. citizens?

Mr. HENNESSY. None of the figures here are U.S. citizens. Once they become citizens, we do not statistically count them. They have gone beyond our purview.

Mr. THOMPSON. All immigrants are resident aliens.

Mr. HENNESSY. Yes.

Mr. THOMPSON. Mr. Ford?

Mr. FORD. Thank you, Mr. Chairman.

The record is replete with the word "commuter." What is the definition of "commuter" used by the inspector at the border who interviews a person and says whether he is or is not a commuter? First I had the impression that everyone who crossed the border the day you put the grommets in was a commuter.

Mr. HENNESSY. A commuter is a person who has been admitted and has the right to reside in the United States, who maintains his home on the Mexican side of the border and enters the United States for purposes of employment, and he usually comes in in the morning, does his job, and returns that evening to his home in Mexico.

Mr. FORD. In other words, he becomes the real person who makes the decision as to whether he is a commuter?

Mr. HENNESSY. Yes; it is solely within his control.

Mr. FORD. It is more than in his control. He can say whatever he pleases about which side he is living on. The definition you gave of domicile is at the very best vague. You have a man who comes and follows the crops. He may live for 4 months of the year in one house in Mexico, and never live for more than 2 weeks in one house in the United States. Yet you say that if he spends more days north of the border than he does south of the border, you would consider him to be—

Mr. HENNESSY. Under the law, he is a resident of the United States.

Mr. FORD. But he is a migrant north of the border, and he has roots south of the border.

Mr. HENNESSY. That is true.

Mr. FORD. You have indicated this morning that there is a new phenomenon of people coming across in large numbers at the beginning of a growing season. Is November the beginning of a growing season?

Mr. HENNESSY. I don't know. It might be.

Mr. FORD. How did you pick November? It seems to me you picked the time to make your count of 47,000 when everybody would be going back across the border.

Do you have a count of what happens coming from south to north when the season is starting, instead of in November when it is all over?

Mr. HENNESSY. Yes. This is a continuing thing. We started it, and we are still doing it, and we are doing it on a daily basis.

Mr. FORD. I misunderstood you. I thought you said the 47,000 estimate was—

Mr. HENNESSY. We started in November, but the thing is cumulative, and I thought my statement indicated that the statistics had been maintained cumulatively. We had to start at some particular time.

Mr. FORD. Could you give the committee some sort of a comparison on what you have discovered to be the peak of the south to north movement and the north to south movement? Have you established any kind of a pattern yet?

Mr. HENNESSY. No; we have not yet. We were concerned with the commuter who had existed for 30, 40, or 50 years. The seasonal worker is a person who came into being largely after the repeal of the bracero law.

In fact, many of them are former braceros who have been admitted to the United States temporarily for employment under that act. In large part, the same persons have achieved permanent residence.

Mr. REID. On page 2 again, you talk about over 3 million permanent resident aliens in the United States, and you mention that you have preliminary figures of those in seasonal work, and that that is about 5,000, and that there was something on the order of 47,000 commuters.

Do you have a breakdown on the 3,500,000 permanent resident aliens as to the type of employment in which they are engaged, or do you have figures indicating the number of Mexican nationals who are engaged in farm employment of some kind?

Mr. HENNESSY. No, I do not have any statistical information available on that. I can see whether our statisticians can come up with it. I do not have it here now.

Mr. REID. Do you have an estimate of the number of Mexican aliens who are working in seasonal farmwork of one kind or another?

Mr. HENNESSY. No, but I think we can obtain that.

Mr. REID. Do you have an approximation?

Mr. HENNESSY. No, I would not attempt an approximation.

Mr. THOMPSON. I am going to let you proceed with your statement after one clarification.

I don't want the record left to indicate that the only commuters are those who commute daily. If we interpret the act as it should be, those who really do live in Mexico—withstanding the fact that they hold green cards—should be considered to be commuters, should they not?

Mr. HENNESSY. I am referring to a statutory definition of the residents, which does have the terms I have indicated. I would think that a person whose home, family, wife and children are in Mexico, and who alone comes into the United States and works during a growing season, and during a period of unemployment returns to his base in Mexico, absent the statutory definition, I would have no problem that his residence is in Mexico.

Mr. THOMPSON. He is not a resident alien. He is taking advantage of the fact that he holds the card.

Mr. HENNESSY. Yes; that he holds the card and falls within the definition of the act.

Mr. THOMPSON. Please proceed.

Mr. HENNESSY. The second general classification of aliens relates to nonimmigrants. These include diplomats, students, tourists, crewmen on ships and planes, news media representatives, et cetera.

The nonimmigrant arriving from Mexico is usually in the "visitor" classification. In recent years the Service has taken over from the Department of State responsibility for documenting the nonimmigrant

from Mexico and we issue, upon application by the alien and an inspector's finding of the alien's admissibility and bona fides, a non-resident border crossing card. There are about 2 million such cards outstanding.

Holders of these cards are currently limited to an area not exceeding 25 miles from the border and to a period not exceeding 72 hours following any entry. Holders of the cards, who seek to enter for a period up to 15 days or to visit anywhere in the four border States, who satisfy the examining officer of their bona fides, are given a small printed notice, on safety paper, which reflects the date and place of admission and the serial number of the card, and they are authorized, then, to go anywhere in the border States.

A Mexican citizen who satisfies the officer that he has a legitimate need to go beyond the border States or to remain in excess of 15 days is given the same type entry control card given to an alien entering the United States from any other area of the world.

A second function of the Immigration and Naturalization Service is the location, apprehension, and expulsion of aliens illegally in the United States. During the same fiscal year 212,057 aliens were located illegally in the United States. Of this number 151,705 were Mexican nationals. Of these, 117,184 alleged entry without inspection—that is the traditional wetback who, avoiding the standard ports of entry, has come in, frequently by wading the river, and has entered the United States without inspection—and 25,943 acknowledged that after admission as visitors they had either remained for a longer period of time than permitted or had accepted unauthorized employment.

I should say prohibited employment.

I appreciate that that statement is nothing but a capsule.

Mr. THOMPSON. Could you tell us about the 1967 INS regulations dealing with green cardholders?

Mr. HENNESSY. On June 10, 1967, there was published in the Federal Register—I have a few copies of a supplemental statement on that question.

Mr. THOMPSON. All right.

Mr. HENNESSY. On June 10, 1967, there was published in the Federal Register an amendment to the Service regulations, effective July 10, 1967, which made the green card invalid as an entry document when it was presented by an alien commuter, or one who had his principal dwelling place in Mexico, who sought entry for the primary purpose of initiating employment at a place where the Secretary of Labor had found a labor dispute existed. This is a paraphrase.

Here a few misunderstandings should be cleared up. There is nothing in the immigration laws that would make intended employment at a struck plant or farm a ground for exclusion or inadmissibility against one who had been previously granted immigrant status. There is nothing in the immigration law that will make em-

ployment at a struck farm or a place where there is a labor dispute a deportable offense.

Mr. THOMPSON. It is a matter of executive regulation in this case.

Mr. HENNESSY. It is a device—I would hesitate calling it a gimmick.

The regulation was prepared at the urging of the then Secretary of Labor on the ground that alien commuters were being employed as strikebreakers, as represented by labor organization officials.

It was grounded in the authority of the Attorney General to authorize the readmission of classes of aliens returning resident immigrants, under such conditions as he would by regulation prescribe, without being required to obtain a new visa (8 U.S.C. 1181(b)). The regulation did not make the alien inadmissible; it required him to go to the consul and obtain a visa to reenter the United States for the prescribed purpose.

The statute says every immigrant, every person who goes out of the United States for a single day and returns, is technically an immigrant, and the statute says every immigrant must obtain an immigrant visa to come into the United States.

Obviously, it would be ridiculous, particularly on the borders, to require such an immigrant to acquire a new visa every day. The green card was a device that was used. Under the authority of the Attorney General to prescribe use of that card, this regulation came into being.

Since the regulation was published, the Secretary of Labor has found that a labor dispute has existed at 95 places of employment. Thirty-four of these listings were subsequently removed and 61 places of employment are on the current list.

A number of charges were made by representatives of labor organizations that alien green carders were being illegally employed on farms and ranches, particularly in California and specifically in the vineyards of the Giumarra Corp. of Edison, Calif., which had been certified by the Secretary of Labor on July 10, 1967.

The Service's border patrol interrogated thousands of employees in the fields to determine whether they might be subject to deportation on the technical charge that they had entered without proper documentation, in that they had used a green card to gain entry with the primary purpose of being employed at a place where the Secretary of Labor had found a labor dispute existed, such employment having been initiated or continued subsequent to that finding.

Eventually 10 cases were processed where a prima facie case of deportability had been made, and orders to show cause why they should not be deported were issued against the 10 aliens.

Mr. THOMPSON. At some subsequent time, can you provide the committee with a list of the 61 current sites?

Mr. HENNESSY. Yes.

(The information to be furnished follows:)

LABOR DISPUTES—CURRENT, JULY 23, 1969

Employer	Address	Date determined
CALIFORNIA (AGRICULTURAL)		
Giumarra Vineyards Corp.	Post Office Bin 1969, Bakersfield	July 28, 1967
W. B. Camp, Jr.	Post Office Box 576, Bakersfield	Jan. 31, 1968
Anton Caratan & Sons	Route 1, Box 720, Delano	Do.
M. Caratan	Route 1, Box 258, Delano	Do.
Jake Cesare	1835 Terrace Place, Delano	Do.
Louis Caric & Sons	Route 1, Box 360, Delano	Do.
Bruno Disposto	Post Office Box 1148, Delano	Do.
P. J. Divizich Fruit Corp.	Post Office Box 97, Ducor	Do.
Frank Gallo	Post Office Box 337, McFarland	Do.
George A. Lucas & Sons	Post Office Box 74, Earlimart	Do.
Frank A. Lucich	Post Office Box 1266, Delano	Do.
John Pagliarulo	Route 1, Box 869, Delano	Do.
Pandolf & Sons	Route 2, Box 388, Delano	Do.
Gene Radovich	Post Office Box 69, Delano	Do.
Jack Radovich	Corner of Road 200 and Avenue 4, Richgrove	Do.
Sandrini Bros.	Route 1, Box 362, McFarland	Do.
D. M. Steele & Sons	Post Office Box 1350, Delano	Do.
Tudor & Sons	Route 1, Box 217, Delano	Do.
A & N Zaninovich	Trocha Strip between Road 184 and Road 188, Delano	Do.
George Zaninovich	1837 Terrace Dr., Delano	Do.
Marko Zaninovich	Route 1, Box 725, Earlimart	Do.
Marion Zaninovich	Avenue 24, Road 192, Richgrove	Do.
Vincent Zaninovich	1839 19th St., Val Verde Lane, Delano	Do.
Vincent Zaninovich & Sons	Post Office Box 1268, Delano	Do.
Chuchian Farms	Route 1, Box 66, Coachella	June 18, 1968
David Freedman Co., Inc.	Post Office Box 501, Thermal	June 20, 1968
Ara Herbekian/Mel-Pack Ranch	Post Office Box 534, Thermal	June 26, 1968
Coachella Vineyards	561474 Highway 111, Thermal	Do.
John Zaninovich	2124 Riviera Dr., Vista	June 28, 1968
Ross Cariaga	1120 Date St., Coachella	Do.
H. & M Ranch Co.	Highway 99, Oasis	Do.
Richard Bagdasarian	Post Office Box 698, Mecca	Do.
Richard Glass & Co., Inc.	Post Office Drawer SSS, Indio	Do.
Cy Muradick & Sons	81078 Avenue 45, Indio	July 2, 1968
R. W. Blackburn & Sons	Route 2, Box 266, Thermal	July 5, 1968
Karahadian & Son, Inc.	Post Office Box 756, Thermal	Do.
Eugene Nalbandian, Inc.	Post Office Box 665, Lamont	July 19, 1968
John Kovacevich	Post Office Bin 488, Arvin	Do.
William Mosestian	Route 6, Box 522, Bakersfield	Do.
Berge Kerorian	2720 Rio Vista Dr., Bakersfield	Do.
Charles Malovich	Post Office Box 541, Arvin	Do.
Kern Valley Farms	Post Office Box 505, Lamont	July 23, 1968
Frank Guidera	Post Office Box 2384, Bakersfield	July 31, 1968
Johnston Farms	Edison Highway, Edison	Aug. 7, 1968
R & L Farms (Roberts and Laborde)	986 Davis Ave., Post Office Box 326, McFarland	Feb. 19, 1969
CALIFORNIA (nonagricultural)		
Bermite Co. (Division of Whittaker Corp.)	Post Office Box 1751, Indio	Apr. 23, 1969
TEXAS (AGRICULTURAL)		
Griffin & Brand (Trophy Farms)	Post Office Box 1840, McAllen	July 10, 1967
La Casita Farms	Rio Grande City	Do.
A. B. Margo Farms	do	Do.
Rancho Grande & Ringgold Farms	do	Do.
Starr Farms Co. (Los Puertos Plantation)	Rio Grande City, Starr Co.	Do.
Sun-Tex Farms	do	Do.
TEXAS (NONAGRICULTURAL)		
Transport Co. of Texas	2728 Agnes St., Post Office Box 151, Corpus Christi	May 3, 1968
Alamo Express, Inc.	51 Essex St., San Antonio	June 14, 1968
Darbyshire Steel Co., Inc.	1900 E. Paisano Dr., El Paso	Mar. 7, 1969
Texas Steel Corp.	Post Office Box 991, Harlingen	July 2, 1969

Before administrative proceedings could be conducted and on March 12, 1968, the 10 aliens initiated a declaratory judgment action in the U.S. district court for the Central District of California. In an opinion dated August 2, 1968, Judge Manuel Real ruled that:

Recognizing that "commuters" have no statutory or constitutional status, but entry is at the sufferance of the Attorney General, until Congress acts to determine the status of the "commuter," the Court should not intervene. More particularly since these aliens do not qualify for considerations of due process or

equal protection of the law. If found here, they most certainly are entitled and are being afforded procedural due process to determine the legality or illegality of their presence.

In such a context and limiting application of 8 CFR 211.1(b) (1) to "aliens who live in a foreign country," the regulation is valid as an exercise of the generally delegated power of the Attorney General in the enforcement of the immigration laws.

With respect to the individual plaintiffs, the opinion recited:

The evidence as presented by each of the individual plaintiffs shows that each have been admitted for permanent residence in the United States and when leaving their residence either from labor camps supplied by their employers or from rented homes, they left belongings in the United States and in each instance intended to return after a vacation to rest and visit with their families and friends.

Mr. THOMPSON. They left their bluejeans, workshoes or something.
Mr. HENNESSY (reading).

The regulation as interpreted by defendants and as approved in this opinion applies to "aliens who live in a foreign country." The evidence shows that each of the individual plaintiffs qualify for inclusion within the provisions of 8 U.S.C. Section 1101(a) (27) (B) immigrants. Therefore, individual plaintiffs are not parties who can claim injury "within the meaning of a relevant statute" and thus have no standing to attack the challenged regulation.

As always, since one citing an opinion can be accused of taking things out of context, I would ask your leave to submit the full opinion, and the one I will refer to later, for the record.

Mr. THOMPSON. Without objection, you may do so.
(The document to be furnished follows:)

U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

JUAN CERMEÑO-CERNA, ET AL., PLAINTIFFS,

v.

RAYMOND F. FARRELL, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE, ET AL., DEFENDANTS

CIVIL NO. 68-403-R, MEMORANDUM OF DECISION

Plaintiffs, including Giumarra Vineyards Corporation (hereafter "Giumarra"), filed their complaint March 12, 1968, seeking a declaration that the enactment of 8 C.F.R. 211.1(b) (1)¹ is "arbitrary, an abuse of discretion, and contrary to the Constitution and laws of the United States" and that deportation proceedings commenced against plaintiffs Juan Cermeño-Cerna, Juan de Jesus Cermeño-Ruiz, Benjamin Zermeno-Lerna, Jose M. Jasso-Ramos, Candelario Acosta-Puente, Jose R. Santillanes-Diaz, Nicholas Ramirez-Mora, Jesus Valdez-Murguia, Juan Manuel Jasso-Juarez and Efren Ramirez-Rojas (hereafter collectively called "individual plaintiffs") are "void and contrary to the Constitution and laws of the United States."

Amending their complaint on July 5, 1968, plaintiffs added to their prayer for relief a request for a temporary and permanent injunction restraining defendants from doing any act in regard to the operation, enforcement or execution of the

¹ For the purposes of this action, plaintiffs question only the amendment made June 7, 1967, which added the following language:

"When the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, Form I-151 shall be invalid when presented in lieu of an immigrant visa or reentry permit by an alien who has departed for and seeks reentry from any foreign place and who, prior to his departure or during his temporary absence abroad has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention, of accepting employment at the place where the Secretary of Labor has determined that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's determination." Further reference to 8 C.F.R. 211.1(b) in this opinion shall be limited to this language unless specifically indicated otherwise.

challenged regulation and further alleged a class action "in behalf of themselves and all other immigrants lawfully admitted for residence" and a class of owners of certain places of employment.

The matter proceeded to trial upon the amended complaint and the answer of defendants raising the following issues:

1. Jurisdiction of the Court over the subject matter of the action;
2. Failure of individual plaintiffs to exhaust their administrative remedies;

and

3. Standing of individual plaintiffs and Giumarra to either challenge the validity of 8 C.F.R. 211.1(b) (1) or to maintain the action.

At trial no evidence was presented upon the issue regarding the maintenance of a class action and therefore that question is moot. In any event, resolution of that question is not necessary to a determination of the central issues presented to the Court for decision.

JURISDICTION OF THE COURT OVER THE SUBJECT MATTER OF THE ACTION

(a) *Jurisdiction to enjoin deportation proceedings.*—Individual plaintiffs are each now the subject of deportation proceedings instituted pursuant to Section 242(b) of the Immigration and Nationality Act, 8 U.S.C. § 1252(b).² Within that section is found the "sole and exclusive procedure for determining the deportability of an alien."

Judicial review of deportation proceedings is limited to those procedures prescribed in 5 U.S.C. 701 et seq. excepting those specific provisions of 8 U.S.C.

² 8 U.S.C. § 1252(b) provides:

"(b) A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including order of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the special inquiry officer may proceed to a determination in like manner as if the alien were present. In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer shall be assigned to present the evidence on behalf of the United States and in such case such additional immigration officer shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings.

"No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this chapter, as the Attorney General shall prescribe. Such regulations shall include requirements that—

"(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

"(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

"(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

"(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this chapter, or of any other law or treaty, the decision of the Attorney General shall be final. In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 1251 of this title if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraphs (4)–(7), (11), (12), (14)–(17), or (18) or section 1251(a) of this title. If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this chapter."

§ 1105(a) the most pertinent distinction providing a six (6) months statute of limitations for filing of the petition for review from a final order of deportation.

A review of the statutory and case law clearly compels the determination that the Court is without jurisdiction to stay these deportation proceedings. This should not be construed to indicate that this Court would be without jurisdiction to stay execution of a final order of deportation pending judicial review under proper circumstances.

(b) *Jurisdiction to determine validity of regulations.*—5 U.S.C. § 704³ provides for judicial review of agency action where there is "no other adequate remedy in a court." Individual plaintiffs have been arrested and placed upon bond conditioned upon their refraining from returning to the employment of their employer at the time of their arrest. This action was taken in the guise of enforcement of the provisions of the questioned regulation. Being unable to attack this procedure in any other forum, it would appear that this Court has jurisdiction to determine the validity of the regulation as requested here.

Certainly the administrative proceedings cannot provide for a determination of the validity of 8 C.F.R. 211.1(b)(1). The Special Inquiry Officer can make only a determination of whether or not the regulation is applicable to the factual situation presented by each individual plaintiff in a deportation hearing, and upon finding the facts, apply the regulation regardless of its validity.

Considering the type of review requested herein, the Supreme Court, in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140-41 (1967), says:

"The Administrative Procedure Act provides specifically not only for review of '[a]gency action made reviewable by statute' but also for review of 'final agency action for which there is no other adequate remedy in a court,' 5 U.S.C. § 704. The legislative material elucidating that seminal act manifests a congressional intention that it cover a broad spectrum of administrative actions, and this Court has echoed that theme by noting that the Administrative Procedure Act's 'generous review provisions' must be given a 'hospitable' interpretation. *Shaughnessy v. Pedreiro*, 349 U.S. 48, 51; see *United States v. Interstate Commerce Comm'n*, 337 U.S. 426, 433-435; *Brownell v. Tom We Shung*, supra; *Heikkila v. Barber*, supra, at 379-380, the Court held that only upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review."

We are faced here only with the legal question of the scope of the delegated power of the Attorney General,⁴ not with the Court predetermining a question which could be raised at a *deportation hearing*. There is no procedure for questioning the scope of the delegated power of the Attorney General within the deportation process. Plaintiffs' only adequate or effective relief can be granted in this Court. See *Leedom v. Kyne*, 358 U.S. 184 (1958). Under these circumstances, this Court has jurisdiction, both under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, and in the exercise of its discretionary powers under the Declaratory Judgement Act, 28 U.S.C. § 2201.

VALIDITY OF 8 C.F.R. 211.1(b)(1)

The basic considerations for determining the validity of an administrative regulation are articulated by the Supreme Court in *Boske v. Comingore*, 177 U.S. 459, 470 (1900):

"[A] regulation . . . should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law. Those who insist that such a regulation is invalid must make its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress."

³ 5 U.S.C. § 704 provides:

"Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority."

⁴ Reference herein to action of the Attorney General includes the acts of each of the defendants herein as his duly delegated representatives.

Plaintiffs complain that there can be found no authority for the Attorney General to administratively create a new class of alien for admission to the United States. Defendants contend that the Attorney General is given broad authority to promulgate the regulation challenged here by Section 103(a) of the Immigration and Nationality Act, 8 U.S.C. § 1103(a). Defendants further suggest that specific authority can be found in Section 211(b) of the Immigration and Nationality Act, 8 U.S.C. § 1181(b).

8 U.S.C. § 1103(a) provides in part:

"The Attorney General shall be charged with the administration and enforcement of . . . all . . . laws relating to the immigration and naturalization of aliens. . . . He shall establish such regulations . . . as he deems necessary for carrying out his authority under the provisions of this chapter."

The power given the Attorney General is broad within the delegated authority given by Congress. But such power must be exercised in promulgating regulations that carry out the statutory scheme of admission or readmission of aliens. It must also be exercised within the limits of procedural and substantive due process.

8 U.S.C. § 1181(b) provides:

"Notwithstanding the provisions of section 1182(a)(20) of this title in such cases or in such classes of cases and under such conditions as may be by regulation prescribed, returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation."⁵

The power of Congress to legislate in connection with immigration and naturalization of aliens is plenary. Congress may in the exercise of that power exclude aliens from the United States, impose conditions of entry or reentry, and regulate their conduct and fix their rights while in the United States. Administration of these powers by the Attorney General is not an unconstitutional delegation of power. *U.S. ex rel. Circella v. Sahli*, 216 F.2d 33 (7th Cir. 1954), cert. denied 348 U.S. 964 (1955).

An immigrant to the United States must generally possess a valid unexpired immigrant visa upon any entry to the United States.⁶ Excepted from this general requirement are immigrants who qualify pursuant to 8 U.S.C. § 1101(a)(27)(B). This immigrant "lawfully admitted for permanent residence who is returning from a temporary visit abroad" has by regulation of the Attorney General been permitted to use Form I-151 in lieu of an immigrant visa or reentry permit "when returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding 1 year." 8 C.F.R. 211.1(b)(1). This determination of documentation as applied to an 1101(a)(27)(B) immigrant is within the specifically delegated power of 211(b) of the Immigration and Nationality Act, 8 U.S.C. § 1181(b). That could be said to end the inquiry here.

But plaintiffs claim that the challenged portion of 8 C.F.R. 211.1(b)(1) is discriminatory in creating a new class of immigrant, i.e., an 1101(a)(27)(B) immigrant who works for an employer certified by the Secretary of Labor as being involved in a labor dispute. In response, defendants claim that the challenged regulation is not being interpreted to apply to an 1101(a)(27)(B) immigrant and that the regulation must be read against the background of *Rosenberg v. Fleuti*, 374 U.S. 449 (1963).

A reading of the challenged portion of 8 C.F.R. 211.1(b)(1) would indicate that it applies to (1) an alien, (2) who has departed from the United States, and (3) seeks reentry from any foreign place, (4) for the primary purpose or intention of accepting or returning to employment, (5) at a place where the Secretary of Labor has determined that a labor dispute exists. The regulation thus classifies returning immigrants as:

⁵ 8 U.S.C. § 1182(a)(20) provides:

"(20) Except as otherwise specifically provided in this chapter, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181(a) of this title."

⁶ See 8 U.S.C. § 1181(a).

⁷ These "special immigrants" are issued a Form I-151 generally referred to as a "green card." Each of the individual plaintiffs are green card holders.

1. Those returning to employers not certified by the Secretary of Labor can use their I-151 green card for entry; and
2. Those returning to employers certified by the Secretary of Labor who cannot use their I-151 green card for entry.

Certainly, without more, such a distinction is arbitrary and without rational basis when applied to immigrants admitted for permanent residence to the United States who are exercising a privilege to travel to and from their native land to their adopted one. Such a distinction cannot stand within the rationale of *Bolling v. Sharpe*, 347 U.S. 497 (1954). Recognizing that aliens outside the United States cannot complain of a lack of due process or equal protection of the law, it is clear that aliens residing or present within the United States must be afforded both procedural and substantive due process and equal protection. *Galvan v. Press*, 347 U.S. 522 (1954).

Defendants urge upon the Court that such a classification is reasonable and authorized by Congress by its enactment of Section 212(a) (14) of the Immigration and Nationality Act 8 U.S.C. § 1182(a) (14).⁸ The Court does not read that section, nor does the legislative history⁹ support defendants' contention. Congress delegated power to the Attorney General in conjunction with qualification by the Secretary of Labor for initial entry into the United States "for the purpose of performing skilled or unskilled labor." Nowhere is there found support for delegation of a *continuing* concern by the Secretary of Labor or the Attorney General in the field of alien labor controls.

The Court must, where permissible, within constitutional and statutory considerations give viability to an administrative regulation. In such circumstances the interpretation given the regulation by the promulgating authority should be controlling where it can reasonably be applied within the language used.

Charles Gordon, General Counsel of the United States Immigration and Naturalization Service, tells the Court that:

"The sole purpose of this regulation was to deal with aliens who have been lawfully admitted to the United States for permanent residence but who actually live in a foreign country and come to the United States periodically to work, and who seek entry into the United States for the purpose of engaging in employment at a place where the Secretary of Labor has certified that a labor dispute exists. The limited impact of the regulation is to restrict the use of the alien registration receipt card (the so-called green card) as a document for entry into the United States by aliens who live in a foreign country."

Counsel for defendants has classified this group as aliens commonly known as "commuters" who hold Form I-151 green cards.

Historically the "commuter" has been classified as the alien holding a Form I-151 green card who has not qualified or is not qualifying by maintaining a permanent residence within the United States. In other words, an alien using a status he has not perfected. Present statutory law would require such an alien to obtain an immigrant visa or reentry permit for each entry into the United States. Since these commuters were largely aliens working in the United States border communities and living in contiguous foreign territory there was created the "amiable fiction" of equating employment with permanent residence. This was done without statutory recognition of such a definition. See *Amalgamated Meat Cutters and Butcher Workmen v. Rogers*, 186 F. Supp. 114 (D. Col. 1960). Counsel for defendants advises that this "amiable fiction" is more recently being extended beyond border town employment to seasonal workers staying for longer periods of time. However applied, it remains a "fiction."

⁸ 8 U.S.C. § 1182(a) (14) provides:

"(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a) (27) (A) of this title, (other than the parents, spouses, or children or United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a) (3) and 1153(a) of this title, and to nonpreference immigrant aliens described in section 1153(a) (8) of this title."

⁹ 1965 U.S. Code Cong. & Ad. News 3333, 3333-3334, 3342-3343, 3345. 1952 U.S. Code Cong. & Ad. News 1653, 1697-1698, 1705.

Recognizing that "commuters" have no statutory or constitutional status, but entry is at the sufferance of the Attorney General, until Congress acts to determine the status of the "commuter," the Court should not intervene. More particularly since these aliens do not qualify for considerations of due process or equal protection of the law. If found here, they most certainly are entitled and are being afforded procedural due process to determine the legality or illegality of their presence.

In such a context and limiting application of 8 C.F.R. 211.1(b) (1) to "aliens who live in a foreign country," the regulation is valid as an exercise of the generally delegated power of the Attorney General in the enforcement of the immigration laws.

STATUS OF PLAINTIFFS

1. Plaintiff *Guimarra Vineyards Corporation*

Guimarra is the employer of individual plaintiffs. On July 28, 1967, Robert C. Goodwin, Administrator of the Bureau of Employment Security, United States Department of Labor, pursuant to authority delegated by W. Willard Wirtz, Secretary of Labor, determined that Guimarra was in a "labor dispute involving a work stoppage or layoff of employees."

In *Braude v. Wirtz*, 350 F.2d 702, 707-08 (9 Cir. 1965), the Court disposed of a similar claim of status by an employer:

"In our view, appellants have shown neither a legal wrong nor a legal right to be free of the effects they attribute the determinations complained of will have upon their businesses.

* * * * *

"We therefore conclude that the growers' allegations are insufficient to show that they have suffered a 'legal wrong' or that they have been 'adversely affected or aggrieved * * * within the meaning of any relevant statute; and that as a necessary result, they are without standing to sue."

The Court having adopted the interpretation of the challenged regulation as applying to "aliens who lives in a foreign country" is led to the conclusion that Guimarra has no standing to complain of the exclusion of aliens from the United States nor to complain of deportation of aliens illegally within the United States.

2. Plaintiffs *Juan Cermeno-Cerna, Juan de Jesus Cermeno-Ruiz, Benjamin Zermeno-Lerna, Jose M. Jasso-Ramos, Candelario Acosta-Puente, Jose R. Santillanes-Diaz, Nicolas Ramirez-Mora, Jesus Valdez-Murguia, Juan Manuel Jasso-Juarez and Efren Ramirez-Rojas*

This action is brought by these individual plaintiffs pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 1331, 1361, 2201 and the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., 701, et seq.

The evidence as to each of the individual plaintiffs shows that each of them is admitted for permanent residence in the United States and has been issued I-151 green cards. Deportation proceedings have been instituted pursuant to the challenged regulation against each of the individual plaintiffs as the result of their departures from the United States and return to employment at Guimarra. But defendants simultaneously contend that individual plaintiffs have no standing to bring this action. Resolution of that conflict must be made to determine the standing of individual plaintiffs.

To have standing to question the challenged regulations these individual plaintiffs must be persons "suffering legal wrong . . . within the meaning of a relevant statute."¹⁰ *Braude v. Wirtz*, supra.

The evidence as presented by each of the individual plaintiffs shows that each have been admitted for permanent residence in the United States and when leaving their residence, either from labor camps supplied by their employers or from rented homes, they left belongings in the United States and in each instance intended to return after a vacation to rest and visit with their families and friends.

The regulation as interpreted by defendants and as approved in this opinion applies to "aliens who live in a foreign country." The evidence shows that each of the individual plaintiffs qualify for inclusion within the provisions of 8 U.S.C. § 1101(a) (27) (B) immigrants. Therefore, individual plaintiffs are not parties

¹⁰ 5 U.S.C. § 702.

who can claim injury "within the meaning of a relevant statute" and thus have no standing to attack the challenged regulation.

Judgment for defendants. This opinion shall be considered as the findings of fact, conclusions of law and judgment.

Let it be entered accordingly.

Dated: August 2, 1968.

MANUEL L. REAL,
U.S. District Judge.

Mr. HENNESSY. The results of this *Cermeno-Cerna v. Raymond Farrell* case, which is now on appeal to the Ninth Circuit, would be to make the regulation a nullity against most of the seasonal workers who are employed on other than a daily basis in areas removed from the border.

At about the same time, an action in the nature of a mandamus was instituted in the U.S. District Court for the Northern District of California by a number of domestic farmworkers, claiming to be injured by the competition of alien commuters. These were largely U.S. citizens, employees, in the agricultural area who sought to have the court direct the Attorney General to refuse to continue the commuter status on the grounds that the commuters in competition of them were depriving them of meaningful employment, and I believe that the AFL-CIO, became a plaintiff or intervenor in the action. In rejecting the petition and granting the Government's motion for summary judgment, the court said:

For many years, Congress has been aware of the commuter practice and of the administrative decisions upholding it. There have been Congressional hearings, see, e.g., Study of Population and Immigration Problems, Special Series No. 11, Before the Subcommittee No. 1 of the House Committee on the Judiciary, 88th Congress, First Session (1963). None of the hearings has resulted in any report adverse to the practice nor in any recommendation to abolish it.

Parenthetically at this point, I would say this may become ancient history in the next few months.

Mr. THOMPSON. I hope so.

Mr. HENNESSY (continuing):

This congressional inaction has special significance in the light of the consistent administrative decisions and the refusal in 1964 by the Court of Appeals for the District of Columbia, in Texas State, to declare the practice unlawful.

If Congress wishes to end that practice, it has the power to do so. The issue here is not as to the power of Congress; it is, rather, as to the interpretation to be given an exercise of that power in the 1965 amendments under consideration.

In the light of the long history of the commuter practice, the unvarying administrative interpretation allowing commuter entry, and the potential foreign policy consequences involved in termination, it is hardly reasonable to assume that Congress intended to make such a radical change by an obscure amendment to section 1181 (b), not even referred to in any legislative history.

The court should not attribute to Congress any such casual and off-handed disposition of so important a matter—especially when the language of congressional amendment can be interpreted consistently with continuation of a long-standing practice of which Congress had full knowledge.

Defendant's motion for summary judgment is granted. Let judgment be entered accordingly.

Dated: June 19, 1969.

Gooch et al v. Clark, Civil No. 49500, USDC ND Calif.

I think the mere recitation of these two decisions is the best way to outline the history and practice in response to your question about the regulations.

(The decisions mentioned above follows:)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
(No. 49500)

JOE GOOCH and RAFAEL BUSTAMANTE, on behalf of themselves and a class of persons similarly situated but too numerous to mention, Plaintiffs,

v.

RAMSEY CLARK, Attorney General of the United States, HARLAN B. CARTER, Regional Commissioner, Immigration and Naturalization Service of the United States, and C. W. FULLLOVE, District Director, Immigration and Naturalization Service of the United States, DEFENDANTS.

GEORGE MEANY, President, and WILLIAM F. SCHNITZLER, Secretary-Treasurer for and on behalf of the AMERICAN FEDERATION OF LABOR and CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO) and for and on behalf of its affiliates and their members, PLAINTIFFS IN INTERVENTION,

v.

RAMSEY CLARK, Attorney General of the United States, HARLAN B. CARTER, Regional Commissioner, Immigration and Naturalization Service of the United States, and C. W. FULLLOVE, District Director, Immigration and Naturalization Service of the United States, DEFENDANTS.

MEMORANDUM OPINION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This is a class action for a writ of mandamus to compel the Attorney General and officials of the Immigration and Naturalization Service to exclude certain non-resident aliens. Jurisdiction is asserted under 5 U.S.C. §§ 702 and 703 and 28 U.S.C. § 1361.

Plaintiffs are domestic farm workers.¹ They claim to be injured by competition from the so-called "alien commuters". The latter are aliens who reside in an adjacent country and enter the United States periodically for purposes of employment, returning thereafter to their places of residence. While each commuter has been made eligible, by the appropriate United States authorities, to establish permanent residence in this country, none has exercised the privilege nor indicated an intention to do so. Based upon the continuing eligibility for permanent residence, each commuter has been allowed entry and reentry into the United States upon presentation of an alien registration receipt card, Form I-151 (the "green card"). This card shows the holder to have been lawfully admitted for permanent residence in the United States.

Plaintiffs claim this practice is contrary to the specific language of 8 U.S.C. §§ 1181(b) and 1182(a)(14), and 8 C.F.R. § 211.1(b)(1). They seek a writ of mandamus requiring compliance with those sections as interpreted by plaintiffs. Defendants have moved for summary judgment. After extensive briefing by all parties, the case is ready for decision.

Defendants urge that plaintiffs lack standing to challenge the administrative practice here involved. They rely most heavily on *Texas State AFL-CIO v. Kennedy*, 330 F.2d 717 (D.C. Cir. 1964), in which union members challenging the same commuter practice were held to lack standing because "mere economic competition made possible by governmental action (even if allegedly illegal) does not give standing to sue in the courts to restrain such action. *Tennessee Electric Power Co. v. TVA*, 306 U.S. 118 (1939)." 330 F.2d at 219.

The *Texas State* decision may, at an earlier time, have been persuasive authority on the question in this case, but recent decisions of the Supreme Court run counter to its holding. The Supreme Court has expanded the availability of judicial review of administrative action, *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), and has laid down guidelines on standing. *Flast v. Cohen*, 392 U.S. 83 (1968). Under *Flast*, plaintiffs here plainly have sufficient adverse

¹ Certain labor organizations have also been granted permission to intervene as plaintiffs to represent the interests of other domestic workers.

and personal interest in the outcome of the litigation to assure that the issues will be properly presented in an adversary context.

Perhaps even more important, the Supreme Court has limited the doctrines of *Tennessee Electric Power Co. v. TVA* and the other cases relied on by the *Texas State* court. In *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1 (1968), the Supreme Court distinguished that line of cases, saying: "when the particular statutory provision invoked does reflect a legislative purpose to protect a competitive interest, the injured competitor has standing to require compliance with that provision." 390 U.S. at 6. See *Jaffe, Standing to Secure Judicial Review: Private Actions*, 75 Harv. L. Rev. 255, 266 (1961). In the present case, it is abundantly clear that one of the major purposes of the Immigration Act was to protect American labor against the influx of foreign labor. *Karnuth v. U.S.*, 279 U.S. 231, 243 (1929). The 1965 amendments to the Act reflect the same purpose. S. Rep. No. 748, 89th Cong., 1st Sess. (1965), reprinted in 1965 U.S. Code Cong. & Admin. News, 3328-29.

Under the doctrine of *Hardin*, this Court holds that plaintiffs have standing.

The remaining question is whether proper construction of the Act as amended requires exclusion of the "alien commuter" as a matter of law. Defendants frankly concede that no explicit statutory or constitutional provision protects the commuter against exclusion. *Cermeno-Cerna v. Farrell*, 291 F. Supp. 521, 529 (C.D. Cal. 1968).² Rather defendants rely upon the long practice of the Immigration and Naturalization Service in treating the commuter as a special immigrant defined in 8 U.S.C. § 1101(a) (27) (B) as "an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad."³ This interpretation by the Service persists and has been unvarying since passage of the Immigration and Nationality Act of 1952. See Deposition of Charles Gordon, General Counsel of the Immigration and Naturalization Service, pp. 9-12.

Such classification of the commuter as a special immigrant under § 1101(a) (27) (B) has two effects. It exempts the commuter from the certification requirements for aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor. 8 U.S.C. § 1182(a) (14).⁴ It also allows the Attorney General, in his discretion, to utilize the informal documentation pro-

² For a brief summary of the history of the commuter practice since 1924, see *Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO v. Rogers*, 186 F. Supp. 114, 117 (D.D.C. 1960).

³ 8 U.S.C. § 1101(a) (27) provides in full:

(27) The term "special immigrant" means—

(A) an immigrant who was born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him: *Provided*, That no immigrant visa shall be issued pursuant to this clause until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a) (14) of this title;

(B) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad. . . .

⁴ 8 U.S.C. §§ 1182 (a) (14) and (a) (20) provide:
§ 1182.

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a) (27) (A) of this title, (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a) (3) and 1153 (a) (6) of this title, and to nonpreference immigrant aliens described in section 1153(a) (8) of this title;

(20) Except as otherwise specifically provided in this chapter, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181(a) of this title. . . .

visions of 8 U.S.C. § 1181(b),⁵ and to grant the commuted entry upon presentation of his Form I-151 green card.

Plaintiffs challenge the Service's practice on the ground that it is precluded by the 1965 amendments to the Immigration Act. The challenge centers on the change in § 1181(b), which, prior to 1965, provided:

Notwithstanding the provisions of section 1182(a) (20) of this title, . . . otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation. (Emphasis added; for text of § 1182(a) (20), see footnote 4.)

This section was amended in 1965 to read:

Notwithstanding the provisions of section 1182(a) (20) of this title . . . , returning resident immigrants, defined in section 1101(a) (27) (B) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation. (Emphasis added.)

Plaintiffs urge that the change in wording of the emphasized portions now requires exclusion of the commuter who is not a permanent resident of the United States returning from a temporary visit abroad.

While the amendment is susceptible to that interpretation, it is also susceptible to an interpretation that, by its specific reference to § 1101(a) (27) (B), it tacitly approves the long-standing practice of the Immigration and Naturalization Service. Moreover, Congress had made no changes in the definition of "immigrant" under § 1101(a) (27) (B), and nothing in the legislative history of the 1965 amendments indicates that Congress in any way intended to change or prohibit the commuters' right of entry. In fact, the final Senate Report and Conference Report on the 1965 amendments do not mention the change in § 1181(b) nor its purpose, even in the portion giving a section-by-section analysis of the amendments. See S.Rep. No. 748, 89th Cong., 1st Sess. (1965), reprinted in 1965 U.S. Code Cong. & Admin. News, 3328, 3342.

For many years, Congress has been aware of the commuter practice and of the administrative decisions upholding it. There have been Congressional hearings, see, e.g., *Study of Population and Immigration Problems, Special Series No. 11, Before the Subcommittee No. 1 of the House Comm. on the Judiciary*, 88th Cong., 1st Sess. (1963). None of the hearings has resulted in any report adverse to the practice nor in any recommendation to abolish it. This Congressional inaction has special significance in the light of the consistent administrative decisions and the refusal in 1964 by the Court of Appeals for the District of Columbia, in *Texas State*, to declare the practice unlawful.

If Congress wishes to end that practice, it has the power to do so. The issue here is not as to the power of Congress; it is, rather, as to the interpretation to be given an exercise of that power in the 1965 amendments under consideration.

In the light of the long history of the commuter practice, the unvarying administrative interpretation allowing commuter entry, and the potential foreign policy consequences involved in termination,⁶ it is hardly reasonable to assume that Congress intended to make such a radical change by an obscure amendment to § 1181(b), not even referred to in any legislative history.

⁵ 8 U.S.C. § 1181 provides:
§ 1181.

(a) Except as provided in subsection (b) of this section no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document or document of identity and nationality, if such document is required under the regulations issued by the Attorney General. . . .

(b) Notwithstanding the provisions of section 1182(a) (20) of this title in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 1101(a) (27) (B) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

⁶ See Affidavit of Dean Rusk, Secretary of State, indicating, *inter alia*, that the practice contributes to friendly relations with Canada and Mexico, that termination would be deleterious to those relations and that economic advantages result from the practice.

The Court should not attribute to Congress any such casual and off-handed disposition of so important a matter—especially when the language of Congressional amendment can be interpreted consistently with continuation of a long-standing practice of which Congress had full knowledge.

Defendants' motion for summary judgment is granted. Let judgment be entered accordingly.

Dated: June 19, 1969.

Judge.

Mr. THOMPSON. We have been aware of those, of course, as is reflected in the legislation and in these hearings. I don't know what is going to happen to the legislation, but there will be a report, I expect, addressing itself to that which you just read.

Do you have any questions, Mr. O'Hara?

Mr. O'HARA. Mr. Hennessy, I want to thank you for your statement, which I think is an excellent brief description of the law.

With respect to the question of whether or not a commuting green cardholder or a reentering green cardholder is going to enter for the purpose of undertaking employment on a struck farm—and I have watched some of these immigrants come through these stations, and they come through in an unending stream—as a practical matter, I was wondering how the Service could go about making that decision.

For instance, there are 61 places currently certified. I don't know whether or not any of them are in the Coachella Valley, but I assume that probably a few of them might be.

Mr. HENNESSY. I don't think any valley strike has formally been recognized.

Mr. O'HARA. At any rate, let's take the border crossing point at Calexico.

There are persons who are going through for the rather obvious purpose of seeking agricultural employment. One can guess at that, pretty well, as you know, by the hour at which they are found to be entering.

Mr. HENNESSY. It would be in the morning.

Mr. O'HARA. Yes; 2 or 3 o'clock in the morning. They are easily distinguishable.

Mr. HENNESSY. Quite.

Mr. O'HARA. You are not making any effort, though, and I don't see how you could, to determine where each of them expected to work that day, and whether or not that was—

Mr. HENNESSY. In some respects, we rely on the fact that the alien does not want to make himself an illegal entrant. We spot check the individual, but I have to acknowledge that the job, as a primary inspection job to determine which of the possibly 5,000 agricultural places of employment in the immediate area this particular alien is going to is well nigh impossible.

So, what we have to do is to go on to the farms subsequent to the event, find that the alien is employed there, and then establish that when he did enter, he entered illegally.

This is the best description I can give on the mechanics. In other words, we seek to make him deportable on the ground that he illegally

entered, rather than trying to establish his attempted illegal entry at the time of physical crossing.

Mr. O'HARA. I also think that the warning would be very necessary and appropriate, because a lot of these people, when they enter, they don't know where they are going to end up working that day.

Mr. HENNESSY. This, frankly, is another problem. The regulation has to do with the primary purpose of accepting employment, and many of them don't know where they are going to work, until they go down to—I believe it is described as the pit—where the employers will come in and select persons seeking employment. Or in some cases, they will go to representatives of the California State Employment Service, which will direct them. They will direct them in a few instances to some of the farms on the 61 list, because I don't believe there is complete agreement as to whether a strike exists between the State of California and the Federal Government.

Mr. O'HARA. That is exactly correct, and that is another aspect of the attempt to enforce the regulation that disturbs me. I understand that under the regulation as it was interpreted during 1967 after its promulgation, and during the year 1968, and the early part of the year 1969, the determination as to whether or not a labor dispute actually existed for the purposes of the regulation was made by representatives of the Secretary of Labor, employees of the U.S. Department of Labor, working in cooperation with employees of the State employment service. Nevertheless, the determination was a determination by the Department of Labor.

I am informed, and I am not so sure of this, and I hope to be able to inquire of representatives of the Department of Labor about this, but I am not sure I am going to be able to—

Mr. HENNESSY. I must plead my incompetence.

Mr. O'HARA. I am not going to ask you to speak for them.

Mr. THOMPSON. The Chair would say that the Department of Labor has been invited to testify and has not yet accepted the invitation. It is obvious that we are going to have to talk to them at some stage of the game.

Mr. O'HARA. At any rate, I am now given to understand that the certification will take place only upon the recommendation of the State employment service.

Now, if that is the case, I can't imagine very many farms being certified hereafter, and so I don't think that the regulation will have much effect, even if it weren't for the problems of administering the regulation.

With respect to the Giumarra Farm, you say that after receiving vigorous complaints with respect to employment of illegals and green carders at the Giumarra Ranch that you went to Giumarra and interviewed the persons working there in the vineyard, and you discovered 10 or 11 persons who held green cards who could fairly be said, in your opinion, to have gone to Giumarra—who entered for the principal purpose of seeking employment and so forth.

Did you find any illegals?

Mr. HENNESSY. Yes. I would say it is almost impossible to go on a ranch or farm in the State of California without finding illegals. The figure of 150,000 apprehensions in the course of the year speaks for itself.

Mr. THOMPSON. If you would yield at that point, according to Immigration Service figures, you have 47,000 almost daily commuters. Then there are 4,000 seasonal workers. Then there are 151,000 illegal Mexicans, for a total of 202,000.

Of course, it isn't your direct interest, but this is significant to us because that means there are a total of 202,000 Mexicans in these three categories competing with American workers for the jobs that they go in there to seek every day.

Mr. HENNESSY. Every one of them is, if not an actual, a potential competitor.

Mr. THOMPSON. Yes.

Mr. O'HARA. Do you know off-hand how many illegals you found at Giumarra?

Mr. HENNESSY. No, but I can supply that. I think 10 or 15.

(The following text is submitted in response to Mr. O'Hara's question:)

We have no statistical information on the number of illegal aliens who were discovered on Giumarra Farms during the exact same period the ten alleged violators of the "commuter" regulation were apprehended. Information is available on the apprehension of illegal aliens on those farms on a semiannual basis since the determination of the Secretary of Labor that a labor dispute existed (July 28, 1967):

July 28, 1967 through December 31, 1967	92
January 1, 1968 through June 30, 1968	5
July 1, 1968 through December 31, 1968	24
January 1, 1969 through June 30, 1969	5

Mr. O'HARA. Thank you very much, Mr. Hennessy. I believe your testimony will be of great help to us. One of the reasons I have favored Mr. Thompson's legislation is that I think it would be a much simpler matter, administratively, to more or less put the burden on an employer under a particular set of circumstances, that is, when he is hiring replacements for strikebreakers. In effect, that is the only time he has a problem, and so all we are saying is that if you are hiring replacements for strikebreakers, then you have to be careful about whom you employ, and I think those are circumstances that places the burden on someone who is able to work with only a few people, and identify those whom he will not be permitted to employ, and it would save you people nearly an impossible administrative job.

Mr. HENNESSY. Thank you. While our function is to enforce the law and expell many of these Mexicans, we can't help but feel some sympathy for them.

Mr. THOMPSON. We feel very much the same way.

Mr. HENNESSY. It is a problem that is essentially a labor problem. It might be better taken care of by labor legislation, rather than by the device of immigration regulation.

Mr. THOMPSON. That is the idea, and we don't want in any way to disrupt our foreign policy or limit immigration or the right of these people who so desperately need employment to obtain it.

What we do need to do is to do it by this type of legislation, where virtually every single one of them, as a green cardholder—as you point out—has every right of a citizen. We don't care, really, which side of the labor dispute they take. We just don't want them being hired for the specific purpose of being strikebreakers.

Mr. Hansen, do you have a question?

Mr. HANSEN. Thank you, Mr. Chairman.

One question following up on the last comment.

Would you say that the employer is well-equipped, or not as well equipped, or about equally capable as the Service in terms of making this determination if he is to have the burden of decision?

Mr. HENNESSY. No. I must say that in such a complicated subject as this immigration law in which few of us would dare to call ourselves experts in it after about 20 years, the casual citizen is going to certainly have quite a task in determining what a person's status is.

Frankly, one of our biggest problems in connection with the employment of illegal aliens is the popular belief that anyone with a social security card is free to accept employment, and any alien can cross a river, apply for a social security card, be issued one, and I have to say this for the beleaguered employer—he has no way of checking with the myriad of documents, statutes, and regulations the precise status of this employee.

In all candor, I don't envy him his task.

Mr. HANSEN. Thank you very much. Thank you, Mr. Chairman.

Mr. THOMPSON. Mr. Ruth?

Mr. RUTH. Thank you, Mr. Chairman.

As I understand it, you are saying the primary difficulty with this legislation would be enforcement of it?

Mr. HENNESSY. I couldn't indicate that, because it would be enforced under the National Labor Relations—or the Labor Department. I have merely indicated that the employer will frequently have a problem in determining the place of residence, but I presume that this legislative history will advance that subject, and possibly regulations will be prepared by the agency of Government that administers it that will set out the guidelines that the employer would use.

I have merely indicated that the statutory language, in vacuum, indicates an almost insurmountable barrier.

Mr. RUTH. Thank you.

Mr. THOMPSON. I might say, before giving Mr. O'Hara a chance to ask a last question or two, that I am not terribly sympathetic with the employers in these circumstances. We know perfectly well that when they have a dispute, they use all manner and means of recruiting workers. They know perfectly well when they are recruiting them in the context of a labor dispute that they are recruiting them and taking them to their farms in order to replace people who are on strike—in other words, to break the strike.

Mr. O'Hara?

Mr. O'HARA. I was simply going to point out, Mr. Chairman, if I might, that, first, it was imposed only in a very special set of circumstances, that is, where you had a labor dispute and were hiring replacements, and not with respect to recruiting under any other circumstances.

Second, we must hope, certainly in the report of this legislation, as Mr. Hennessy has suggested, spell out just what the legislation would expect of the employer, and I would think that everyone would agree that the requirements ought to be reasonable and ought to be those that he could comply with with a good-faith effort, and that all we want out of him is a good-faith effort, but we want to assure that.

Mr. THOMPSON. One last comment. Under the existing law, it is the responsibility of the employer not to harbor an illegal alien. Is that not so?

Mr. HENNESSY. There is an exception, a proviso to the harboring statute, that indicates that movement, activity in connection with the employment, is not harboring. There are a couple of bills, incidentally, to amend the statutes to remove that proviso. I believe there is one in the Senate and one in the House.

Mr. THOMPSON. Mr. Ford?

Mr. FORD. With regard to that specific problem, some time ago there was national publicity given to an allegedly covert practice of exposing the harboring of a cluster of workers at about the time they were ready to collect the fruits of their labor. It was further alleged that, in fact, our service was being used to swoop in and clean out a group of people and hustle them back across the border before they could collect their accumulated pay.

This charge was made in a national magazine. Yet, I have seen nothing coming from our Government, at any level, vigorously denying that we were doing this sort of thing.

Was this a figment of somebody's imagination, or have we had some experience of this type?

Mr. HENNESSY. The second part is a figment of somebody's imagination. We do get reports, and go out and determine if they are illegal, and if so, to apprehend them.

There is an instruction that an investigator finding such person has an obligation to help him to collect wages and other moneys due him and to assemble his goods, personal belongings and effects before moving to expel him.

Mr. THOMPSON. I think Mr. Scammon will have something to tell us about that.

Thank you very much, Mr. Hennessy. You were an excellent witness.

Our next witness is an old friend of ours, Richard M. Scammon, the former Chairman of the Select Commission on Western Hemisphere Immigration.

STATEMENT OF RICHARD M. SCAMMON, VICE PRESIDENT, GOVERNMENTAL AFFAIRS INSTITUTE, FORMER CHAIRMAN, SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION

Mr. SCAMMON. I have no formal statement to submit to the committee, but I would like to relate these hearings to those that were organized by the Select Commission on Western Hemisphere Immigration, including five Members of the House, five Members of the Senate, and five public members, which conducted its work from the fall of 1966 until the spring of 1968.

As one of its later activities, the Commission did hold hearings in El Paso, San Diego, Brownsville, and Detroit, Mich., hearings on the "green card" commuters.

I add Detroit, Mich., because when we talk about commuters, we forget that the tunnel between Windsor and Detroit is jammed morning and evening by Canadians who are coming over.

When we talk about green card holders, many people say, "we didn't mean the Canadians."

Mr. FORD. Mr. Chairman, I would like to say that our Government has found a way to solve that problem. They moved the jobs over to Canada, so we do not have that problem anymore.

Mr. THOMPSON. They are doing the same thing with twin plants on the southern border, I might say.

Mr. SCAMMON. In these hearings, which were fairly extensive, and included some 80 or 90 witnesses, we tried to explore the green card matter from all viewpoints—we brought in the farmers, the workers, the Anglos, the Mexican-Americans, the clergy, manufacturers. It is one of these things where you say you know more than you really need to know when you finish the hearing.

I would like to relate those hearings to the ones you are now having here with respect to specific legislation dealing with the problem of green card workers coming across to work in struck plants against present administrative regulations which Mr. Hennessy for the Immigration and Naturalization Service has described to you.

I understand the present legislation is designed to extend and to make more firm the regulations and controls under which this can be prevented, and I would certainly endorse the proposal that the chairman has made.

It seemed to us that this was an aspect of the whole green card circumstance which was particularly divisive and exasperating to many Americans. The fact that green card holders could be recruited and could come across, and had worked—I will say have worked, rather than could work—because this isn't possible legally that these people could be working, but we know it happens. It happens in manufacturing industries as well as on farms.

I would hope this legislation would give the force of statute to the efforts to control this matter.

But I think one must also recognize that this is only a small part of a much larger question, a question which lies outside the jurisdiction of this particular committee, and lies elsewhere in the House.

These are questions involving the green-card holder much wider than any question involving struck plants or struck farms.

Questions such as the problem of the literally thousands of American citizens who live across the line, in Juarez, or Tijuana, and do commute.

Many American citizens cross, American citizens who by preference are living across the line in Mexico and enjoying whatever advantages they feel are there, and are coming across to work.

These people, of course, are not affected by the kind of legislation you have in mind, since this deals only with the green card commuter. Nor, of course, affected by this situation are green card commuters who might be immigrants, literally, to the United States on the basis of their present valid documentation, provided with quarters in the United States, and then at whatever time the employer felt was an appropriate time, put on the payroll.

It seems to me this is a useful undertaking, Mr. Chairman, and I hope your committee, the House, and Congress will make it a new law.

Mr. THOMPSON. Thank you. We recognize that it is a very narrow and very limited piece of legislation and it would give the force of statutory authority—if it becomes law—in just one small segment of the overall problem.

Mr. O'Hara?

Mr. O'HARA. Mr. Chairman, let me say that I have perused the recommendations your Commission made, although I must confess I did not read too much of the hearings.

Mr. SCAMMON. They are pretty long, Mr. O'Hara.

Mr. O'HARA. I find myself in close agreement with your analysis of the problem as it is contained in that report.

We can't simply—well, in the first place, since you and Mr. Thompson agree that we are addressing ourselves to a narrow portion of the problem, it is because we have jurisdiction only over that part.

I agree with your conclusion that one cannot terminate the status of the green card holders who do not actually maintain a permanent residence, although we ought to recognize that it is an abomination, one that we never intended, and if we were able to address ourselves to the problem afresh without having the complications of the existence of hundreds of thousands of people with such a status now thrust upon us, if we had it to do over again, I don't think we would establish a category of permanent commuters.

So, I like your approach. You advocate a grace period.

I ran into, and I know you have, I have run into commuters and seasonal workers whose families were resident in Mexico, who told me that when they had first obtained their visa, they had done so with the intention of making their home in the United States, and they had either moved their family to the United States immediately, or planned to send for them shortly, and discovered that on what they could earn, the net income they could realize from their occupation as farmworkers, they could not support their families in the United States.

So, they are required by the economic necessities of their occupation to leave their families in Mexico, and either go on commuter status, or as the one fellow I remember who so impressed me—he was a resident right across the border from Yuma.

He would leave and go on seasonal farmwork and return to his family at the end of the season and try to spend a few weekends with them in between times. He wanted to move his family to the United States, but he couldn't.

Mr. SCAMMON. We discovered that because the wage rate was low, some of the visa-issuing posts were not prepared to immigrate the rest of the family on the basis that the wages of the workers were so low that the family would become a public charge.

We found also that the charges made, not only by our own service, but also by the Mexican authorities, with a man and wife with five children, even if it was only \$100 a head, that amounted to \$700, and to a man in this work that is a fortune.

Even if he wanted to fill out the rest of the documentation and immigrate his family, he couldn't afford it in the first instance, or afford it in the second instance, even if he could get the local consul general to issue the necessary papers.

Mr. O'HARA. That is an excellent point, because you have filled in a gap in my description which is certainly accurate.

Mr. SCAMMON. It seemed to me and Mr. Ruttenberg that this measure, the normalization, or whatever you want to call it, with respect to the status of persons who are landed immigrants in the Canadian

sense of the word, but don't actually land, that this problem becomes more pressing with the adoption for the first time last year of a 120,000 limit on immigration into the United States from countries in the New World.

Previous to 1968, there was no such limitation. But now, every time you give a visa to a Mexican national whose intent really is to use it as a work permit, you are denying some other immigrant who really plans to come to the United States to live, you are denying that other intending immigrant his passport to the United States, because if you take off a thousand from the top to take care of the work permits, which is essentially what the green card is, you deny to another person who might wish to come to the United States and be a bona fide immigrant as we understand that word, and contribute in toto to the American society.

Though this is a very large issue, and though beginning de novo on this thing is not easy, it seemed to us that it was in the interests of public policy that the Congress address itself in the broadest possible way, with this as a starting point perhaps, Mr. Chairman, to the whole issue.

Mr. O'HARA. That is an excellent point, because with the limit now imposed even on contiguous Western Hemisphere countries, you are absolutely right. You are denying the valid immigrant the status of permanent residence—denying immigration to other people.

One last point very quickly.

The situation is somewhat different in the Detroit-Windsor situation, in this respect: Here among the commuters in Calexico, for instance, they are concentrated in various employment, in a few employments, domestic service to a lesser extent, and to a greater extent in farm labor.

Now, in the Detroit-Windsor situation, there is no great impact on any particular occupation or industry in the Detroit agency, because the Canadian commuters are scattered throughout a very sizable economy. They are unskilled, semiskilled, skilled, they are blue collar, white collar, executive, entrepreneurial. They are all across the spectrum of a very sizable economic unit, so you can't say that, well, the Canadian commuter has had a great impact upon this industry or that occupation, because they haven't.

Mr. SCAMMON. No, as a matter of fact, one uses the Canadian example simply because it isn't the same. In other words, it does illustrate a commuting circumstance in which no one has much difficulty, although one of our witnesses in Detroit did recall that when he had been with the Immigration Service in 1958 during the recession, there was a bit of grumbling. Whenever, in other words, the problem is raised, it doesn't become major, but there are a few comments made.

The wage differential on either side would be very small in that area, and we really don't think of that when we think about a commuter or green card problem.

Mr. THOMPSON. Mr. Hansen?

Mr. HANSEN. No questions.

Mr. THOMPSON. Mr. Ford?

Mr. FORD. Since you have addressed yourself to the urgency of Congress in considering the whole problem involved, I assume that the representatives of the State Department will have something more to

say about that. There is another distinction between the conditions that obtain with regard to the Canadian commuters and the commuters on the southern border. This is that even with the recession, we have not in modern history had a time when the Canadian having been identified ethnically, religiously, or in any other way was then subsequently identified as belonging to a group of people who threatened another group in competition at the bottom of the job ladder. As Mr. O'Hara has indicated, this is a flow that has gone back and forth across the border for years, and the living standards are not as good.

The requirements for working conditions are such that it has never been really profitable for anybody to try to use a Canadian for strike-breaking purposes, at least not in the Detroit area.

I recently returned to Colorado where I went to school, I recall that at the end of World War II, the Mexican-American was treated very badly out there. I can recall seeing ads run in a newspaper which clearly stated that a person who was a Mexican-American or Spanish-American should not bother to apply.

Subsequently, as Denver grew very rapidly, before this growth there was a very small Negro population in Denver, and there was no employment for them. When rapid growth came the Negro population began to grow, and the industrial base began to grow, and at the same time, organized labor began to grow. The result was that all these elements got on a collision course.

I am now told by a number of my friends, some of whom are attorneys involved on both sides of the questions, that we are heading toward a real, bitter clash between ethnic groups who have been exploited and who now find themselves in conflict with each other—fighting to get their foot on the first rung of the ladder.

The overall impact on this country, and also on the attitude of the countries from which these people came, is rather frightening. Denver is the only one place that I have been able to observe it on the basis of 20 year's of personal contact. If this is typical of what happens when we have exploitation at a time people are fighting for collective bargaining rights, we are going to face the same kind of an explosion that we had in 1942 in Detroit. In Detroit some unenlightened management in our major industries started importing people from other parts of the country, who then became identified in the minds of the first generation immigrants from other countries who had come there just a few years before, as a threat to them.

There were large numbers of people brought first by train and then ultimately by boat to a large plant in my area. For many, many years, in the minds of the ordinary working people, no matter how hard the newcomers might work to establish themselves as sound, acceptable citizens they were always identified as "Those people who came here to break our strike."

It may take another generation before that completely disappears, even in that rather sophisticated area. I use the word sophisticated in the sense of being used to having a lot of people from different ethnic backgrounds actually working together and competing with each other.

It seems to me with all the other problems we have, that we shouldn't allow divisions to continue that might have the same kind of results in other parts of the country.

Mr. SCAMMON. I think the real problem here relates not so much to those who are coming into the country to stay—they have a problem, certainly—but to those who are involved in the shuttle on the border, either in a day-to-day shuttle in the case of El Paso and Brownsville and Laredo and the other border towns, or a week-to-week or month-to-month shuttle who are involved with commuters on a longer work schedule, commuting perhaps to San Antonio, and commuting in the agricultural field on the whole circuits, following the sugar beets, for example.

Mr. THOMPSON. Mr. Ruth?

Mr. RUTH. No questions.

Mr. THOMPSON. Mr. Scammon, thank you very much for your informative testimony. It is great to see you again.

Mr. SCAMMON. Thank you.

Mr. THOMPSON. Our next witness is Mr. John Hugh Crimmins, Deputy Assistant Secretary of State for Inter-American Affairs.

**STATEMENT OF HON. JOHN HUGH CRIMMINS, DEPUTY ASSISTANT
SECRETARY OF STATE FOR INTER-AMERICAN AFFAIRS**

Mr. CRIMMINS. Thank you very much for inviting me to participate in this hearing. It is a special pleasure for me to appear after my friend and former colleague, Dick Scammon.

I have a very brief statement, Mr. Chairman, which I would ask permission to read.

Mr. THOMPSON. Please proceed as you wish.

Mr. CRIMMINS. Let me state initially that the Department of State is sympathetic to what it understands are the basic objectives of the bill: that is, to discourage the employment of aliens illegally in the United States and to discourage the hiring of so-called alien "commuters" as replacements for individuals who are employed in the United States and who are out on strike.

Since, however, the National Labor Relations Act is administered by other agencies of the U.S. Government, I intend to limit myself at this time to broad foreign policy considerations.

When the Department has had an opportunity for detailed study of the technical aspect of the bill, it may wish to communicate further views to the subcommittee.

Having in mind that Mexican nationals would be those primarily affected by the proposed legislation, I am particularly interested in assuring that the very cordial relations which exist between Mexico and the United States are taken into account in the consideration of this bill and that these relations are not adversely affected by the bill.

As you know, relations between the United States and Mexico have steadily improved over the past several decades. The Department of State attaches special importance to the preservation of these excellent relations.

The first problem dealt with by the bill is the employment of illegal entrants. Both the U.S. Government and the Government of Mexico are concerned at the substantial increase in the number of illegal entrants to the United States from Mexico in the last several years.

We believe it would be in the interest of both countries to find some effective means of reducing the dimensions of this problem. Accord-

ingly, if this bill can be administered effectively to discourage the hiring of illegal entrants, we believe it could be useful and would not prejudice U.S. relations with Mexico.

The second question dealt with in the bill relates to the hiring of alien commuters as strikebreakers. The commuter system which has operated on the U.S. borders with both Mexico and Canada has been established practice for approximately 40 years, and in the opinion of the Department of State, it contributes to the friendly relations of the United States with Mexico and Canada.

The alien commuter is an important factor in the economy of the border region on both sides of the border, and a sudden termination of the commuter system displacing the present immigrant commuters would have a serious deleterious effect upon our relations with both Mexico and Canada.

On the other hand, we are concerned at charges that Mexican commuters have been utilized as strikebreakers in the border States. We have not seen any statistics indicating to what extent this problem may exist, but we are concerned that such abuses of the commuter program might be prejudicial to our good relations with Mexico.

Accordingly, the Department of State is sympathetic in principle to legislation which would be directed to the problem of such abuses which may accompany a program we believe to be beneficial to our foreign relations.

As I said earlier, I am not in a position to comment on the technical aspects of this bill at the present time but we may have further comments to submit at a future date.

Mr. THOMPSON. Thank you very much, sir. I understand perfectly well, and didn't expect you to comment on the technical aspects of this at this stage of the game. I will certainly see that the State Department is consulted and given the opportunity to comment at any time.

We are sensitive about what you so accurately characterize as "our relations with Mexico."

Most of us on the committee, I believe, are for a liberal immigration policy which would continue the green card principle on all our borders, and that is why this legislation is designed so narrowly to affect a small number of those people, and there probably would be only 5,000 or 6,000 of them, really, in special circumstances.

While we have you here, I might comment that there has been introduced into the record an article from Electronics magazine of March 3, 1969, talking about how the climate is so friendly on the Mexican side of the border with respect to labor problems.

Could you tell us about the background of the establishment of the border industrialization program? I understand you are the U.S. member.

Mr. CRIMMINS. No, sir. I think there is a confusion here, Mr. Chairman. The border industrialization program is an exclusively Mexican program. It has nothing to do with the U.S. Government.

I think the confusion rests in the parallel, but separate existence of the United States-Mexico Commission for Border Development and Friendship.

The latter organization was established in late 1966, and has nothing whatsoever to do with the border industrialization program.

I wish to repeat that the border industrialization program is an undertaking of the Mexican Government. It has been in operation since 1966.

Its purpose is to establish industrial enterprises on the Mexican side of the border.

There have been, to refer again to the possibility of some confusion, statements from time to time that the U.S. Government is in one way or another connected with this program or is encouraging it. This is not the case. This is an entirely Mexican program.

Mr. THOMPSON. I understood that. I had the idea that you were a member of the U.S. Commission.

Mr. CRIMMINS. There are two principal commissions, if I may elaborate on this for the record.

Mr. THOMPSON. There is a commission on border development and friendship, and I guess I have gotten that confused.

Mr. CRIMMINS. Yes. The Assistant Secretary of State for Inter-American Affairs is a member of that.

Mr. THOMPSON. I have here a transcript of the Executive Conference on World Trade, featuring the United States-Mexico border twin plant concept, which was held at the University of Texas at El Paso on April 28, 1969, and there is some confusion created because the moderator of that conference was Mr. Harry C. Myers, the Director of the U.S. Department of Commerce field office at Dallas.

I am not averse to the development of the twin-plant concept, but I understand quite a number of them have already been established.

Do you know how many there are?

Mr. CRIMMINS. Yes; I think that as of May of this year, there had been a total of 103 operating since the inception of the program in 1966 by the Mexican Government.

Mr. THOMPSON. Do you know how many employees that involves?

Mr. CRIMMINS. I think the Mexican statistics, which are not complete, indicate that there are about 14,000 employees in those plants.

Mr. THOMPSON. There is a great deal of electronics in those plants?

Mr. CRIMMINS. I think the emphasis is on electronics and textile processing.

Mr. THOMPSON. And theoretically, they are unfinished products that are brought into other plants?

Mr. CRIMMINS. This is the case with most of them. The plants are intended to export from Mexico to other destinations. Most of the exports come to the United States, but they are not required to come to the United States.

Mr. THOMPSON. In the development of this twin-plant concept, has much thought been given to its effect on American wage standards, employment levels, and working conditions?

Mr. CRIMMINS. On this point, Mr. Chairman, I would like to refer to a statement made by the Mexican Secretary of Industry and Commerce in August of last year, setting forth the principles which guide the Mexican Government in the application of the program, and with the permission of the chairman, I should like to submit the statement by the Mexican Secretary of Industry and Commerce for the record, because it is a useful document.

Mr. THOMPSON. Yes; that will be done.

(The information to be furnished follows:)

DECLARATIONS BY LIC. OCTAVIANO CAMPOS SALAS, SECRETARY OF INDUSTRY AND COMMERCE, CONCERNING BORDER ASSEMBLY INDUSTRIES, AS MADE TO THE PRESS AFTER HIS PERIODIC MEETING WITH THE PRESIDENT ON AUGUST 6, 1968

The most rapid economic development possible of the border areas has been a constant preoccupation of the various Federal Administrations. Because of this concern, the Free Zones were created, and the National Frontier Program was put into operation; more recently, the Mexican-U.S. Commission for Border Development and Friendship was created and the special program for industrialization of the northern border of the country was initiated.

The objective of all these measures has been to bring about continuing improvements in the standard of living in the border regions, and in its social progress, and thus to form communities whose inhabitants, including the workers, are productive, healthy, progressive, with the objective of achieving the living standards of the American communities on the other side of the border. These efforts have received the friendly understanding of the Government and of the people of the United States, particularly in the border communities, who understand that neighbors with little purchasing power, with low levels of health, and who are not very progressive necessarily would be a handicap for the U.S. Border population.

In view of the fact that some labor groups in the United States have expressed concern that Mexico's special program for industrializing the border could bring about a massive movement to Mexico of American industries and of the fact that there appears to be a lack of information in some circles concerning the present objectives and accomplishments of the program, I consider it appropriate to make the following comments:

1. The Special Program for Industrializing the border consists of granting customs facilities for the establishment in Mexican border communities of factories to which is permitted the free access of machinery, raw materials and semi-processed parts from any foreign country in order that the process of manufacture may be completed in these factories and that the resultant products, whether semi-processed or final, may all be exported to some other country. It is obvious that the program has not been designed exclusively either for American industrialists nor for the American market.
2. It is an opportunity for foreign enterprises to produce in Mexico those components of their articles which require considerable hand labor and at cost levels which permit their final products to be competitive in their own and other countries.
3. The value of the articles assembled in Mexico for American companies—\$7.5 million annually—represents approximately one per cent of the value of the articles which American companies send abroad for assembly.
4. The U.S. customs legislation which determines the duties which should be collected on the United States imports made up of raw materials or parts which originated in the United States and which left the country temporarily for assembly—U.S. Tariff (Section 807.00)—has been in existence since 1954 and is utilized by numerous American companies which carry out assembly operations in many different parts of the world. The Mexican program is, therefore, a late beneficiary of U.S. legislation which already was in existence and to which several countries have had recourse. The Mexican program has not required, nor is it based on, any special concession to Mexico.
5. In the case of the assembly industries established on the Mexican northern border, the profits from the operations do not remain in Mexico, but are sent to the foreign companies which own the capital invested in the assembly operations.
7. A number of American companies which have established assembly plants on the Mexican side have stated that their factories on American territory only can exist or progress, in the face of the increasing international competition in United States markets, on the basis of carrying out a part of the manufacturing process on Mexican soil. In all these instances, the creation of factories in our border cities maintains and increases employment in the United States, instead of lessening such employment.
8. The salaries received by Mexican workers are inferior to those which are paid to American workers. This is true not only with reference to Mexican workers, but also with reference to almost all the world, as compared to the richest country on earth. Nevertheless, in accordance with Mexican standards, the salaries of the workers on the Mexican side of the border are not among the lowest; on the contrary, they are the highest in the country, along with the

metropolitan zone of the City of Mexico. The Mexican Government and the workers on the border are striving to increase these salaries as rapidly as possible so that they eventually will be comparable to those of the workers in the U.S. side of the border.

9. The Mexican Government does not favor the movement to the Mexican side of the border of factories which are operating normally in the United States and with reasonable profit. As could be expected, the factories which have been established on the Mexican side manufacture articles which require a substantial amount of inexpensive hand work in order to be internationally competitive. They belong to companies which have had or still have similar assembly plants in Hong Kong, the Philippines, Italy, and other countries and which find it safer and more convenient to establish the plants nearby the parent factory; the shorter distances permit complementary production processes, and rapid and cheap transportation of supervisors in a location where they find a high degree of financial, social and political stability. Also there are factories belonging to American companies which find that, because of the lower rates of duty which the United States has negotiated with other countries, in order for the plants to continue existing, it is necessary to carry out part of the production process through an assembly operation utilizing low production costs.

10. A study is being carried out of the legal measures which are necessary in order to permit products which are manufactured in assembly plants and which are not produced in the rest of the country, to be consumed in all of Mexico.

11. As already has been indicated, the special program for the industrialization of the border is not designed exclusively for American industrialists nor is it expected that the produce from these factories will be sent exclusively to the United States. In order to develop the most extensive foreign markets for the manufactured products of these factories, the Mexican Government will include these products in its programs for the promotion of exports to all the world and will cooperate very willingly to this end with the foreign companies that assemble articles in these factories.

Mr. CRIMMINS. In that statement, the Secretary made a special point of saying that Mexico did not intend to encourage, and would not accept, so-called "runaway plants," which, as we all know is a particularly sensitive point.

The Mexican position, in addition to the principle of not accepting runaway plants, is that the industrial development of the border area on the Mexican side looks toward the elevation of wage rates on the Mexican side, overtime, to approach those on the United States side of the border.

The Mexican position essentially is that the border industrialization program, in economic terms, is mutually beneficial—that it redounds, in the large, to the economic benefit of the United States as well as that of Mexico. Of course, the primary purpose of the Mexican Government is to enhance the industrial development of its own border areas.

Mr. THOMPSON. Yes.

Mr. O'Hara?

Mr. O'HARA. Mr. Crimmins, I appreciate and applaud the State Department's legitimate concern with the foreign relations impact of this legislation, and in making certain, as you say they ought to, that the legislation would not have an adverse foreign relations impact.

So, your caution, I think, is well advised.

Let me ask this: Does the same caution extend to the flow of commodities back and forth across the border? Isn't that something, too, that has a foreign relations impact as well as an economic impact in the United States? What we are talking about is a flow of labor that has an economic impact in the United States. The flow of commodities or products has the same kind of economic impact on the United States.

Does the Department likewise concern itself with that kind of problem?

Mr. CRIMMINS. Of course, the Department has major responsibilities in the field of foreign economic policies, as you know, and in that very significant sense, we are, of course, concerned about the flow of commodities.

Mr. O'HARA. Can you advise me if there is any limitation whatsoever upon the importation of agricultural produce into the United States from Mexico, and what those limitations might be?

Mr. CRIMMINS. Well, sir, I would have to supply this information for the record, but as you know, there have been recent limitations on tomato exports from Mexico. These are significant limitations resulting from Department of Agriculture classification standards that were established as a result of, as I understand it, pressure from U.S. growers.

This pressure was particularly from Florida.

(The information to be furnished follows:)

[966.306, Amdt. 3]

PART 966—TOMATOES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

Findings

(a) Pursuant to Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), regulating the handling of tomatoes grown in the production area, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Florida Tomato Committee, established pursuant to said marketing agreement and order, and upon other available information, it is hereby found that the amendment to the limitation of shipments hereinafter set forth will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, or engage in public rule making procedure, and that good cause exists, for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because (1) the time intervening between the date when the information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Act is insufficient, (2) more orderly marketing than would otherwise prevail will be promoted by regulating the handling of tomatoes in the manner set forth in this amendment, (3) compliance with this amendment will not require any special preparation by handlers which cannot be completed by the effective date, (4) reasonable time is permitted, under the circumstances, for such preparation, and (5) information regarding the committee's recommendation has been made available to producers and handlers in the production area.

Order, as amended

In § 966.306 (33 F.R. 16330, 17310, 19161), paragraph (a), subparagraph (1) of paragraph (b), and paragraph (i) are hereby amended to read as follows:

§ 966.306 *Limitation of shipments*

(a) *Minimum grade, size, and maturity requirements.*—(1) For mature green tomatoes: U.S. No. 3, or better grade, over $2\frac{3}{32}$ inches in diameter.

(2) For tomatoes advanced in maturity to "breakers" or higher stages of maturity: U.S. No. 3, or better grade, over $2\frac{17}{32}$ inches in diameter.

(3) Not more than 10 percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter.

(b) *Size classifications.*—(1) No person shall handle for shipment outside the regulation area any tomatoes unless they are sized within one or more of the following ranges of diameters (expressed in terms of minimum and maximum).

Measurement of minimum and maximum diameter shall be in accordance with the method prescribed in paragraph (c) of § 51.1860 of U.S. Standards for Grades of Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title).

Size classification :	Diameter (inches)
6 by 7-----	Over $2\frac{9}{32}$ to $2\frac{17}{32}$, inclusive.
6 by 6-----	Over $2\frac{17}{32}$ to $2\frac{28}{32}$, inclusive.
5 by 6-----	Over $2\frac{28}{32}$.

(i) *Definitions*.—For the purpose of this section any lot of tomatoes containing not more than 10 percent of tomatoes which have reached a more advanced stage of color than “green” shall be classified as “mature green”. Tomatoes advanced in color to “breakers” and higher stages of maturity may be so classified if the lot contains more than 10 percent of “breakers” and higher stages of maturity. The color terms used herein have the same meaning as when used in the U.S. Standards for Grades of Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title). “Hydroponic Tomatoes” means tomatoes grown in solution without soil. “Consumer size containers” means tubes, trays, and other containers customarily packed for the retail trade in accordance with good commercial practice. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part.

(Secs. 1–19, 48 Stat. 31, as amended ; 7 U.S.C. 601–674)

Effective date

Dated December 31, 1968, to become effective January 8, 1969.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division,
Consumer and Marketing Service.

[F.R. Doc. 69–114 ; Filed, Jan. 8, 1969 ; 1 :04 p.m.]

[980.203, Amdt. 3]

PART 980—VEGETABLES ; IMPORT REGULATIONS

TOMATOES

Pursuant to the requirements of section 8e–1 of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e–1), Tomato Import Regulation § 980.203, as amended (33 F.R. 16440, 17310, 19161) is hereby further amended as set forth below.

Order, as amended

In § 980.203, *Tomato import regulation*, paragraph (a) is amended to read as follows :

§ 980.203 *Tomato import regulation*

(a) *Minimum grade, size, and maturity requirements*.—(1) For mature green tomatoes—U.S. No. 3, or better grade, over $2\frac{9}{32}$ inches in diameter.

(2) For all other tomatoes—U.S. No. 3, or better grade, over $2\frac{17}{32}$ inches in diameter.

(3) Not more than 10 percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter. Any lot of mature green tomatoes may contain not more than 10 percent of tomatoes which have reached a more advanced stage than “green” as defined in § 51.1864 of the U.S. Standards for Grades of Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title). “All other tomatoes” are those advanced in maturity beyond mature-greens.

Findings

This amendment conforms with a simultaneous amendment to the limitation of shipments effective on domestic shipments of tomatoes (§ 966.306, Amdt. 3) under Marketing Order No. 966, as amended (7 CFR Part 966) regulating the handling of tomatoes grown in Florida. It is hereby found that it is impracticable and unnecessary to give preliminary notice or engage in public rule-making procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the requirements of section 608e–1 of the Act make this amend-

ment mandatory, (2) compliance with this amendment will not require any special preparation by importers which cannot be completed by the effective date, and (3) notice hereof is hereby determined to be reasonable and in accordance with the requirements of the Act in that the notice for imports from Canada and Mexico (other than the Yucatan) include the minimum period of 3 days required by the Act plus an additional day, or a total of 4 days, for transportation and entry into the United States after picking, and 2 additional days notice are given for imports from all other points of origin.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated December 31, 1968, to become effective January 8, 1969, for imports from Canada or Mexico (other than the Yucatan), and to become effective January 10, 1969, for imports from all other points of origin.

FLOYD F. HEDLUND,
*Director, Fruit and Vegetable Division,
Consumer and Marketing Service.*

[F.R. Doc. 69-115; Filed, Jan. 2, 1969; 1:05 p.m.]

Mr. O'HARA. That was also my understanding, and I wonder if your Department concerned itself with the foreign policy impact with this limitation on the importation of Mexican agricultural produce in the United States?

Can you recount for us what your Department's position was and what action they took to make certain that our foreign relations with Mexico were not impaired?

Mr. CRIMMINS. Mr. O'Hara, I was not in the country at the time this program was acute. I was in the Dominican Republic.

But I know that the Department was concerned about the foreign policy implications of the restrictions placed upon Mexican exports of tomatoes. Within the executive branch the Department took a position which sought to take into account the foreign policy effects of the limitation on Mexican exports of tomatoes to the U.S. markets.

I am also aware, from having studied this problem as I returned from overseas, that the Mexican Government was much concerned about those effects, and that this concern was an important factor taken into account in the position of the Department within the executive branch.

Mr. O'HARA. Mr. Crimmins, I think the testimony that you have given us is excellent testimony, and as I said before, I appreciate your caution. I think it is justified.

But I would only like to make the observation that I would trust that the foreign policy considerations that are involved in this legislation, which are similar to those involved in the classification of tomatoes, which basically was a small cherry tomato from Mexico, that the foreign policy considerations will not be permitted to interfere with the economic considerations any more in the case of importation of labor than they were in the importation of tomatoes.

Mr. CRIMMINS. I appreciate the point, Mr. O'Hara. I can give you assurances on that point. I would also like to note that in my statement I tried to make clear that the Department was sympathetic to the two objectives sought in the bill under discussion here today.

Mr. O'HARA. I think your testimony has been very good. I just wanted to get that on the record before we went too much further. Thank you.

Mr. THOMPSON. Mr. Hansen?

Mr. HANSEN. No questions.

Mr. THOMPSON. Mr. Ford?

Mr. FORD. I am pleased to see the statement at the bottom of page 2 endorsing the concept of this kind of legislation.

This legislation, instead of following the pattern that has been used in the past of placing all the obligation on the immigrant and enforcing regulations through a variety of actions directed toward the immigrant himself, would place the burden for good faith observance of the law on American citizens who are solid citizens? They are farmers; they are farm employers. Isn't this one of the foreign policy virtues of this legislation?

Doesn't it have a better taste for other countries when we say that we will enforce our laws and regulations by expecting more from our own citizens than from citizens from abroad?

Mr. CRIMMINS. Mr. Ford, I think the point is very well taken. The basic position of the Mexican Government with respect to illegal entrants would be that the most effective way to control this problem, which I repeat is of concern to the Mexican Government as well as to us, would be to restrict the hiring and employment of illegal entrants, so that the ultimate point of decision, or the ultimate source of action would be the employers on the U.S. side of the border.

What I am saying is that in the light of what I would describe as the basic Mexican position, the foreign policy effects would be positive.

Mr. FORD. Thank you very much.

Mr. THOMPSON. Mr. Ruth?

Mr. RUTH. No questions.

Mr. THOMPSON. Mr. Crimmins, I want to thank you very much. I think your testimony was excellent. I am not at all surprised, but it is very nice to see you, and I am grateful to you.

Mr. CRIMMINS. Thank you very much, Mr. Chairman.

Mr. THOMPSON. Our next witness is Matt Triggs, assistant legislative director of the Farm Bureau Federation.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATION DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. Good morning, Mr. Chairman, and members of the committee. It is a pleasure to appear before you once again. I understand you have copies of our statement before you.

The opportunity of presenting the views of the American Farm Bureau Federation relative to H.R. 12667 is appreciated.

H.R. 12667 provides that it shall be an unfair labor practice under the National Labor Relations Act for any employer, including an agricultural employer, to (1) employ an alien who has been lawfully admitted as a permanent resident to the United States but whose principal residence is now in a foreign country, at a time when the employer is involved in a labor dispute, or (2) to employ at any time an alien who is unlawfully in the United States.

Our comments are limited to the application of the bill to the employment of workers by farmers.

We respectfully submit the following for the consideration of the committee:

1. The definition of a labor dispute in the National Labor Relations Act does not fit the purposes of H.R. 12667.

The National Labor Relations Act defines a "labor dispute" as follows: "The term labor dispute includes any controversy concerning terms, tenure or condition of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

This is an extraordinarily broad definition of a labor dispute.

A labor dispute under the statute would be considered to exist if a union sought to obtain recognition by the employer even though no workers on the farm of an employer were union members.

A labor dispute would be considered to exist if the workers on the farm were members of Union A but Union B wanted to organize them.

A labor dispute would be considered to exist if the workers on a farm were happy and satisfied with the arrangement they had with the employer, if a union appeared and placed a picket at the farm entrance.

A labor dispute would be considered to exist if the union demanded that workers must join the union even though no workers wanted to join the union.

A labor dispute would be considered to exist irrespective of whether or not the union demand was unreasonable, arbitrary, or beyond the capacity of the employer to meet.

Thus, a labor dispute, as above defined and described, would be an unreasonable and arbitrary criterion on which to base the prohibition of the act.

The second point that we would make is that the enactment of the proposal would impose an impossible burden on farm employers.

The issue relates primarily to the employment of persons of Mexican ancestry in the United States. The major categories of such workers are:

1. Persons who were born in the United States and are therefore citizens.

2. Persons who were lawfully admitted to the United States and have become citizens by naturalization procedures.

3. Persons who were lawfully admitted to the United States but who have not become (as yet) U.S. citizens, but who maintain a residence in the United States (commonly called "green card" workers).

4. Persons who were lawfully admitted to the United States but who then established a principal residence in Mexico. They may leave this residence once or several times a year to seek employment in the United States for short or long periods. On the border they may even commute daily for employment. These, too, are referred to as "green card" workers.

5. U.S. citizens of Mexican ancestry who have returned to border towns in Mexico to live.

6. Workers who are here illegally, most of whom carry identification (usually forged or borrowed) indicating they are lawfully in the United States, and many of whom speak English as well as persons of Mexican ancestry who were born in the United States or who have been lawfully admitted to the United States.

The assumption of H.R. 12667, that farmers and other employers can distinguish between these various categories of workers, is not correct. In some cases they can. In many cases they cannot. It is, we would submit, unreasonable and arbitrary to declare a person liable for doing what it is impossible for him to avoid doing.

I have heard some farmers say they could segregate those who are here legally, and those who are not. They did not mean in 100 percent of the cases. I have heard other farmers say they could not distinguish between workers who are here illegally and legal workers.

I know I cannot segregate them, and I have lived in California for 35 years, with some association with persons of Mexican ancestry.

Mr. THOMPSON. Do they all look that much alike to you?

Mr. TRIGGS. They look different, but there isn't necessarily a distinction as between the various categories listed above.

Mr. THOMPSON. Yes.

Mr. TRIGGS. In this connection section 274 of the Immigration and Nationality Act provides criminal penalties for any person bringing into the United States, or transporting within the United States, or concealing, harboring, or shielding an alien. Persons who employ aliens are not liable under the act unless they do so knowingly, in which case they are engaged in illegal harboring of aliens.

I think I should add a comment at this point. The Immigration statutes were codified and reenacted in 1952. At that time, the question of employment of illegal aliens became a substantial issue for consideration by the Senate Judiciary Committee. We, and others, said that an employer should not be liable for employing an illegal alien if he didn't know the employee was an illegal alien. I was a participant in a number of informal discussions of this point, out of which arose the present language of the statute, which provides that it is unlawful to willingly or knowingly conceal, harbor, or shield from detection or attempt to conceal, harbor, or shield from detection, and so on.

Then, below, it has this language at question: "Provided that for the purposes of this section employment, including the usual and normal practices incident to employment, shall not be deemed to constitute harboring."

In our informal discussion that I referred to of this point, it was the general understanding of those participating that the two sections referred to did not exempt an employer from liability for harboring an illegal alien with clear-cut knowledge that he was an illegal alien.

I gathered from Mr. Hennessy's comment this morning that the Immigration Service has not followed what we understood was the interpretation. Certainly we would not object—we understand bills are before the Congress to clarify this point—and we would not object to extending it to employment if it is employment with knowledge that the alien is here illegally.

To continue, the third point we would make is that the enactment of H.R. 12667 would have some undesirable consequences.

To most of the workers involved—that is, "green card" workers lawfully admitted to the United States but now living in Mexico—the opportunity of employment in the United States is of crucial importance. Unemployment in Mexico is high, and wages are far lower than in the United States.

Thus, if legislation were to be enacted which would imperil the opportunity of such workers for sustained employment, it seems probable that a substantial percentage would simply move to the United States, as they have every right to do, in order to avoid any curtailment of employment opportunity.

A substantial number of wives and children would also be eligible for entry to the United States. Thus the communities in which they would settle would be faced with a sudden and substantial increase in the need for schools and community facilities of all kinds.

It is difficult to see any resulting net gain to anyone.

4. The situation is temporary. During the past 10 or 12 years the number of Mexicans who have been admitted annually to the United States as permanent residents, and here I left out several words, "for employment in agriculture" has declined sharply to near the vanishing point.

Thus, the total number of "green card" workers and the number of "green card" commuters is declining sharply and may be expected to continue to decline in the future.

I talked to Mr. Hennessy about this, and he said that some of those admitted for employment by nonfarm employers turn up a year or two later as agricultural workers, so I am not quite so sure of what I say in this section as when I wrote it, and if I were writing it again, I would leave it out.

Mr. THOMPSON. If you were writing section 4 again, you should correct it to say that the number is increasing, and hasn't decreased sharply.

Mr. TRIGGS. That is the point I am making as a result of the previous hearings before the committee, although 47,000 is not a big number.

5. The National Labor Relations Act should not be the vehicle for accomplishing unrelated objectives.

The National Labor Relations Act is designed to provide rules and procedures governing relationships between employers and employees with respect to the negotiation of terms of employment.

We suggest it would be undesirable to use the National Labor Relations Act as a vehicle for other purposes.

Although the employment of aliens may influence terms of employment, this is true of many policies and statutes—State and Federal minimum wage and hour statutes, safety legislation, foreign trade, immigration policy generally, public works and regional development expenditures, the employment of minors, occupational or unemployment insurance, public and private housing programs, Government credit programs, Government contracting policies, civil rights statutes, and many others.

We suggest it would represent an undesirable precedent to provide that violation of law or policy, not related to the collective bargaining function, should be an unfair labor practice.

Now, we come to what we would consider to be a primary reason for our opposition to the bill.

6. To include farmworkers under the NLRA would be an undesirable precedent.

The enactment of H.R. 12667 would establish a precedent for the inclusion of farmworkers under the National Labor Relations Act.

As the committee knows, the American Farm Bureau Federation does not favor the enactment of legislation to cover farmworkers by the National Labor Relations Act.

This does not mean we are opposed to any legislation governing farmer-worker relationships. We do favor the enactment of legislation governing farmer-worker relationships geared to fit the particular situations existing in agriculture.

We have presented our recommendations for legislation in this respect to the Senate Committee on Labor and Public Welfare.

We will, of course, welcome the opportunity to present our recommendations for such legislation to this committee at such time as the committee may schedule hearings on the subject.

In the meantime, since we are opposed to the inclusion of farmworkers under the National Labor Relations Act in general, we must express to the committee our opposition to inclusion of farmworkers under the National Labor Relations Act for a specific purpose.

We thank the committee for this opportunity to present our views relative to H.R. 12667.

Mr. THOMPSON. Thank you, Mr. Triggs. Mr. Ford, do you have any questions?

Mr. FORD. Thank you, Mr. Chairman.

It is good to see you again, representing the Farm Bureau before this committee.

First of all I would like to ask some questions to see how many things we do agree on.

With respect to your personal approach to this whole question, laying aside the specific legislation before us, how do you feel about the practice of employing people as strikebreakers during labor disputes.

Do you think this has been conducive to——

Mr. TRIGGS. I think this is a very dangerous area for legislation to deal with. Strikebreaking is something that unions have endeavored, quite properly from their point of view, to propagate the idea that this is something undertaken only by the scum of mankind. We think there are strikes that are not legitimate. There are strikes that should not be won. We don't accept the principle that a strike, per se, is a good thing, and that every strike should be won.

Mr. FORD. I want to be more specific in that. I will concede that, from your point of view, that we might agree that there are some strikes that shouldn't occur.

But, assuming that a strike is in process, I am now asking specifically about hiring persons to take the job of a person on the picket line. How do you feel about that as a practice? Is it likely to bring peace to people you represent as employers?

Mr. TRIGGS. Hiring who to go on the picket line?

Mr. FORD. Well, let's take 10 people who normally are working for someone. They decide to go on the picket line because they have a dispute with their employer. How do you feel about the specific practice of hiring 10 people, regardless of the source of these people to take their jobs while they are engaged in the dispute with their employer?

Mr. TRIGGS. I'm not sure we have a position on that. I do think we could say this, that we don't think the matter should be dealt with by legislation.

Mr. FORD. Then you have answered my second question, which was whether the Farm Bureau did, in fact, have a position. You are indicating that the Farm Bureau has no position with respect to that specific practice.

How do you feel about it?

Mr. TRIGGS. My personal view? I don't have one to present. I appear here for Farm Bureau.

Mr. FORD. I notice in the testimony on page 1 that one of your criticisms is that the term "labor dispute includes," and then you go on with the definition. You say this is an extraordinarily broad definition of a labor dispute.

You and I have established in previous discussions that in 1947 when the Taft-Hartley law was written, your organization was a strong supporter of that legislation.

Some of the language broadened the definition of a labor dispute.

Didn't your organization endorse that definition at the time it was written into law?

Mr. TRIGGS. We did not specifically endorse that definition, but I don't think we would have any objection to the use of that definition in the National Labor Relations Act.

Mr. FORD. Would you care to provide the committee with any correspondence or formalized testimony that you gave at hearings back at that time which would indicate that you had any reservations about the definition when it was being discussed as a curb on organized labor?

Mr. TRIGGS. I will do that if I can, Mr. Ford.

(The information to be furnished follows:)

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., July 29, 1969.

HON. FRANK THOMPSON,
Chairman, Special Subcommittee on Labor, House Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR MR. THOMPSON: During the July 17 Subcommittee hearings on H.R. 12667, Representative Ford asked me to supply for the record any testimony presented by Farm Bureau in connection with the enactment of the Taft-Hartley Act relating to the definition of a "labor dispute" in such Act.

Farm Bureau did support the enactment of the Taft-Hartley Act, which of course included the above referred to definition. However, I am unable to locate in our files any indication that we specifically endorsed or had any position with respect to the definition of a labor dispute for purposes of the Act.

Very sincerely,

MATT TRIGGS,
Assistant Legislative Director.

Mr. FORD. On page 2 you say that a labor dispute as defined would be an unreasonable and arbitrary criterion on which to base this act.

This act would prohibit the replacement of an employee, while he is in a labor dispute, with some other person. I would simply ask, if a labor dispute would not be a proper criterion upon which to base a prohibition against hiring an alternate employee, what would you suggest as a proper alternative?

Mr. TRIGGS. It doesn't seem to be likely that the Congress—maybe I am overstating this—would agree that with respect to some of the kinds of circumstances outlined at the top of page 2, of our statement, these are the kinds of labor disputes that warrants any sanction.

Now, I don't have any suggestion for revision of the definition of labor dispute in the National Labor Relations Act. For the purposes of that act, I think the definition may be all right.

Mr. FORD. Also on page 2, you state that the issue relates primarily to the employment of persons of Mexican ancestry.

What in the legislation suggests to you that it relates only to persons of Mexican ancestry? Why do you draw that conclusion, and spend the next page and a half of your statement discussing only those people?

Mr. TRIGGS. Admittedly, it applies to persons of any ancestry.

Mr. FORD. But do you, representing the Farm Bureau, view the impact of this legislation to have direct effect only on persons of Mexican ancestry?

Mr. TRIGGS. No; but I think this issue would never have arisen if it hadn't been for the Mexican border problem.

Mr. FORD. Is it your view that it would have impact mainly on people of Mexican American ancestry?

Mr. TRIGGS. Yes.

Mr. FORD. Doesn't that indicate that along with what you have suggested about the indirect effect this would have on immigration policy, you recognize clearly that there is a specific group of American nationals or foreigners that are the subject of the problems which this legislation addresses itself to?

Mr. TRIGGS. There is no question about that. We wouldn't necessarily be opposed to any and all legislation in this area. We, of course, would want to take a look at it.

Mr. FORD. How do you feel about a Canadian auto worker coming across the border into Detroit to take a job in an auto plant, or a worker coming across to take a job in a steel plant while a strike is in progress?

Would you have the same concern about whether legislation should permit that?

Mr. TRIGGS. I don't think that our people would feel that that is necessarily our business. There may be an agricultural interest involved, but it is fairly remote.

Mr. FORD. You are suggesting that the Farm Bureau does not believe that it is a matter of concern to them that we have a national policy with relation to what is and what is not sound labor management relations, that they are concerned only if they specifically, as agricultural employers, are involved?

Mr. TRIGGS. No. I think you are putting words in my mouth, Mr. Ford.

Mr. FORD. I thought that is what you said to me. I thought you said, if I might try to repeat what you said, that "we wouldn't consider that any of our business," but in 1947, you considered very much of your business. You came down here and carried the banner for the Taft-Hartley Act, and you weren't even covered by it.

Mr. TRIGGS. We thought the Taft-Hartley Act was our business, that the Landrum-Griffin Act was our business; that there were interests of farmers that were involved, and that we were properly involved in that.

On the question you raise about the autoworkers in Detroit, there may be an agricultural interest that our people would want to represent, but at the moment, it doesn't occur to me, nor do I think—

Mr. FORD. You must sell your agricultural products to someone. I think there are people who work in Detroit who are probably pretty good customers for your farmers.

Mr. TRIGGS. Yes.

Mr. FORD. On page 4 you say that the total number of green-card workers is declining sharply and may be expected to decline in the future.

Would you be willing to submit some figures to the committee that would substantiate that assertion, would you pay particular attention in the preparation of your figures to the sharp decline that might be attributable to the conclusion of the bracero program?

Mr. TRIGGS. Mr. Ford, I guess you were otherwise occupied when I testified on this point. I virtually agreed that, after hearing Mr. Hennessy's testimony, I was not certain that this was the case. The large number of Mexicans being admitted for nonfarm employment may replenish the green-card workers resident in Mexico.

Mr. FORD. All right.

Mr. TRIGGS. It is true that for the past 12 years, there has been virtually no persons admitted for agriculture employment, but as Mr. Hennessy pointed out in his statement, a substantial number of persons of Mexican ancestry have been admitted, and some of those may turn up later on to be in agriculture.

Mr. THOMPSON. If the gentleman will yield, Mr. Hennessy testified that in the last fiscal year, there were 454,448 persons admitted to the United States as immigrants. That is the largest year since the 1924 act. There were 43,563 Mexican aliens included in that figure.

He went on to say this morning—your attention must have been otherwise diverted—that included among those were a considerable number of former braceros. So that the fact is for agricultural employment, that the number has increased.

Mr. TRIGGS. Yes. Those did not come in as agricultural workers. The employer in the United States signing the papers was not a farmer, and farmers did not enter into the requisite guarantees. Otherwise, the workers would not have been admitted. They were admitted for employment by other people.

Mr. FORD. On page 4 you say that you deem it undesirable to use the National Labor Relations Act in the respect you mention there.

I take it that you think that employees who are not covered by all aspects of the National Labor Relations Act should not be covered by part of it. Is that correct?

Mr. TRIGGS. What I have in mind in this section is that the National Labor Relations Act shouldn't be a carryall for all kinds of prohibitions and penalties.

For example, you shouldn't provide in a National Labor Relations Act that a violation of the minimum wage law is an unfair labor practice. It is not an appropriate way to handle this, so we suggest that the act be limited very specifically to the clear-cut, direct relationships between workers and employers.

Mr. FORD. Do I understand the impact of your statement to be that you believe this particular legislation is defective because it would apply only a part of the National Labor Relations Act to these people, whether employer or employees, and would treat them for only specific purposes, rather than applying the whole act, which, of course, you would object to, also?

You make the additional objection that we are only trying to apply a portion of the National Labor Relations Act to these people. Is that correct?

Mr. TRIGGS. That is the point that we made in item 6 on page 5; yes, sir.

Mr. FORD. All right. We have had for several years before another committee of this Congress legislation which would establishing labor-management relations by law between the Federal employees and the Federal Government. Recently the administration proposed a specific piece of legislation to create a postal corporation.

One of the things that that piece of legislation does is to apply portions, not all, but that part of the National Labor Relations Act that is not inconsistent with the proposal, or otherwise provided for in the law, to all of the postal employees, 750,000 employees.

I just did a check and found that your organization is foursquare on the record in favor of that legislation.

Now, could you explain what appears to me at least to be the inconsistency of your urging that 750,000 postal employees in this country should have some parts of the National Labor Relations Act applied to them and then arguing that the same sort of reasoning is invalid if we are talking about agricultural employees?

Mr. TRIGGS. Well, it is a different group of employees. Incidentally, we did notice your colloquy with Postmaster General Blount relative to the union shop question, and it raises an issue that we—

Mr. FORD. I am very happy to see that you are reading about our efforts in other areas.

Mr. TRIGGS. This raises, I think, a very crucial issue that our people are going to want to have to look at again before we give any whole-hearted support to the post office bill.

Mr. FORD. Mr. Chairman, if I might impose on the good graces of this committee, I would ask a question that I should have asked before: Am I given to understand that since Postmaster General Blount has indicated that his bill would probably provide for the union shop for Federal employees, this might cause you to change your mind on whether you want to support it?

Mr. TRIGGS. Let me say it will cause us to go back to our board of directors to see what their view is with respect to what our posture should be in the light of this new development.

We on the staff and the officers think at the moment that we are in a difficult position.

Mr. THOMPSON. I think you are.

Mr. FORD. One final question, if I might, Mr. Chairman.

I understand from the testimony that your organization gave in the Senate that you have in some States preparation of a Farmers' National Labor Relations Act which would apply to labor-management relations between farm employers and employees, and be administered by the Secretary of Agriculture.

Mr. TRIGGS. Yes.

Mr. FORD. In that act, do you deal specifically with the question of strikebreaking during the course of a labor dispute, as you define labor dispute in your proposed act?

Mr. TRIGGS. We did not define the term "labor dispute" in our draft.

Mr. FORD. Well, you do anticipate that in order to enforce such a law, there will have to be a definition of a labor dispute.

Mr. TRIGGS. There is a definition of a labor dispute in the draft, in the bill, that Senator Murphy has introduced, S. 2203.

Senator Murphy's bill is not our bill, just to make it clear, although there are a lot of things in Senator Murphy's bill that we are very much for, and that are in accordance with our policy situation. There are some things in it that we are not so much for.

It does have a definition of a labor dispute that is not, as I recall it, a whole lot different from the definition of a labor dispute in the Labor-Management Relations Act, and we think for the purposes of that act it is OK.

Mr. FORD. Since you indicate that you do have a draft of an act, I wonder if I might have unanimous consent, to ask if the gentleman would provide us with the draft of the act he is so describing, for inclusion at this point in the record.

Mr. THOMPSON. Without objection, the permission is granted.
(The draft of the bill follows:)

A BILL To provide standards governing the relationship between farmers and farm workers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the Agricultural Labor Relations Act.

SEC. 2. It is the purpose and policy of this Act to encourage and promote the normal flow of commerce and the production of commodities for commerce by prescribing the respective rights and responsibilities of farmers and farm workers and organizations of farm workers in their relations with each other.

The Congress finds that (1) the production and marketing of an adequate supply of food at reasonable prices is necessary for the health and welfare of the people of the United States, (2) labor disputes between agricultural employees and their employers, and labor organizations representing or seeking to represent such employees, may seriously affect the supply and price of food products, and (3) because of the perishability of agricultural products the enactment of legislation specifically designed to fit the circumstances surrounding the production and marketing of agricultural products is necessary to prevent imbalance of bargaining power, interruption of supply, increased prices to consumers and diminished work opportunity.

SEC. 3. When used in this Act:

(a) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, representatives, trustees in bankruptcy or receivers.

(b) The term "agriculture" or "agricultural" refers to farming in all its branches which is in commerce or affecting commerce and among other things includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended); the raising of livestock, bees, fur-bearing animals, or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(c) The term "farmer" means any employer engaged in agriculture; not including (1) an owner of land who rents a farm to a farm operator for cash, or (2) an owner who rents a farm to a farm operator for a share of the proceeds of production unless the owner responsibly shares in management of the farming operation, in which case the farm operator and farm owner shall be considered joint operators.

(d) The term "independent contractor" means a person who, under contract with the operator of a farm performs specified agricultural operations for the farm operator and who exercises independent judgment and is not under the immediate supervision of the farm operator.

For purposes of this Act, an independent contractor shall be considered as an employer and provisions of this Act applicable to farm employers shall be applicable to the agricultural operations of an independent contractor. An independent contractor and the employees of an independent contractor shall not be

considered to be employees of the farm operator or operators with whom the independent contractor has contracted to perform specified operations.

(e) The term "farm" means the agricultural land used in production by a farmer which is operated from one headquarters from which the utilization of labor and equipment is determined and which, if consisting of separate tracts of land, are within a 50 mile radius of the headquarters.

(f) The term "farm employer" or "employer" means a farmer who employed an average of at least eight employees in agricultural employment during the preceding calendar year. In calculating the average number of agricultural employees, any day in which an employee performed agricultural work for compensation for one hour or more shall be considered as one man-day, and three hundred man-days shall be considered one year of employment. It is not the intent of Congress to preempt jurisdiction of any state over agricultural employers not within the jurisdiction of this Act as above defined. For purposes of section 3(m), 3(n) and 3(o) the term employer shall include any employer.

(g) The term "farm employee" or "employee" means any person employed for compensation for at least 14 work days during the preceding 30 calendar day period by a farm employer in agricultural employment, including persons engaged in providing housing and food for such employees, provided that in the determination of the number of employees employed by a farmer in the preceding calendar year for the purposes of section 3(f), every farm employee, regardless of the number of days of employment, shall be considered as an employee. The following shall not be included as employees for any of the provisions of this Act; not including (1) members of the family of the employer (children and spouses of children, brothers, grandchildren, parents, spouse, or other members of the immediate family of the employer) or (2) supervisors, professional employees or persons engaged as guards in connection with the protection of property, or any bookkeeper, accountant, secretary, stenographer, or similar type of office employee, or (3) any employee who is covered by the Labor Management Relations Act, as amended, or (4) any worker who has quit, been laid off and has no expectancy of being recalled within 60 days, or been discharged, or (5) a tenant or share cropper who responsibly manages or shares in the management of a farm.

A person shall be considered an employee of an employer if the employer pays the wages of the employee and the work is performed for his benefit or on his behalf, even though the supervision, bookkeeping and the issuance of payroll checks is by a person other than the employer.

(h) The term "supervisor" means any individual having authority in the interest of the employer to hire, fire, transfer, suspend, lay off, train, recall, demote, promote, or assign employees; or to adjust their grievances; or responsibly to direct workers in the performance of their work; or effectively to recommend the foregoing; if the exercise of such authority is not of merely a routine or clerical nature, but involves the use of independent judgment.

(i) The term "professional employee" means any employee engaged in work predominantly intellectual in nature, involving the exercise of discretion and judgment, requiring knowledge of an advanced type in a field of science or learning customarily acquired in an institution of higher learning.

(j) The term "agent" means any person who pursuant to an agreement, express or implied, performs acts for and on behalf of an agricultural employer or labor organization. In determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question as to whether or not the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(k) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which farm employees are members or who have authorized the labor organization to represent them in their employment relationships with farm employers and which exists for the purpose, in whole or in part, of dealing with employers concerning terms of employment. The term shall, only for the purpose of Sections 4(e) and 6 of this Act, include any labor organization recognized as such under the Labor Management Relations Act, as amended, or any federation or grouping of such labor organizations.

(l) The term "terms of employment" shall include compensation of employees, payment of compensation, hours of employment, housing, training, meals, transportation, other circumstances and conditions directly relating to employment, and the handling of grievances; but shall not include prerogatives of management, such as, but not limited to the following: (1) the use of or change of methods, products

to be produced, equipment or machinery, (2) scheduling, timing and manner of accomplishing production, marketing, shipment or sales, or the contracting to others of a portion of such operations, or (3) the determination of the number of such workers to be employed for any or all operations, or the assignment thereof.

(m) The term "secondary boycott" shall mean (1) to engage in, or to induce or encourage any individual employed by any person (including any person acting in a managerial capacity), to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any agricultural product or to perform any services relating to commerce in such product; or (2) to threaten, coerce, or restrain any person where in any case, as set forth in (1) or (2) hereof, an object is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by Section 4;

(B) forcing, inducing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any farmer, other producer, processor, or manufacturer, or to cease doing business with any other person, or to make a managerial decision which will result in the cessation of using, selling, handling, transporting, or otherwise dealing in the products of any other such farmer, producer, processor or manufacturer, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 5; provided that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 5;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to a valid order or certification determining the bargaining representative for employees performing such work.

(n) The term "secondary picketing" shall mean to picket at or near the premises of any employer other than the employer with whom the labor organization has a primary labor dispute.

(o) The term "hot cargo" shall mean to induce or coerce or attempt to induce or coerce any employer to enter into any contract, agreement or arrangement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with another person.

(p) The term "products boycott" shall mean engaging in or threatening to engage in or inducing or encouraging any other person to engage in any activity, where a purpose of such conduct is to prevent, discourage, or diminish the marketing, sale, distribution, transportation, jobbing, wholesaling, retailing, warehousing, or otherwise handling an agricultural product.

(q) The term "representation election" means an election by secret ballot to determine whether or not a majority of the employees of a farm employer want to designate a representative.

(r) The term "decertification election" means an election by secret ballot to determine whether or not a majority of the employees of a farm employer want to terminate an existing designation of a representative.

(s) The term "representative" means a person who is a certified representative in accordance with the provisions of Section 5 of this Act.

(t) The term "jurisdictional strike" means a strike or other coercive action against an agricultural employer taken to enforce demands for recognition by a union in competition with another union also seeking recognition.

(u) The term "commerce" means trade among the several states, or between the District of Columbia and any territory of the United States or with any foreign country. The term "affecting commerce" means burdening or obstructing commerce.

(v) The term "family corporation" shall mean a corporation engaged in a farming business which is wholly or predominantly owned by the immediate members of a family. In the case of a family corporation the members of the immediate family which owns the corporation shall not be included as employees for purposes of Section 3(g)(1).

(w) The term "Secretary" means the Secretary of the U.S. Department of Agriculture.

SEC. 4. It shall be unlawful:

(a) For any employer or labor organization to restrain or coerce, or require or permit any employee or agent to restrain or coerce, any person in the exercise of his right (1) to join and belong to, or to refrain from joining or belonging to, a labor organization, or (2) to pay fees or dues to a labor organization, or the right of a nonmember to refrain from paying such fees or dues.

(b) For any employer or labor organization to discharge, or discriminate against or to cause or attempt to cause such discharge or discrimination, of any person because he has joined or not joined or resigned as a member of a labor organization, or because he has filed a petition, complaint or charge as provided by this Act, or given testimony in connection with any petition, complaint, or charge filed under the provisions of this Act.

(c) For any employer or labor organization to restrain or coerce any employee in the exercise of the right to vote in a representation or decertification election, provided that this provision shall not be construed to prevent free expression of any views, arguments, or opinions, or statements of material fact relating to the issue, or the dissemination thereof, as provided in Section 7 of this Act.

(d) For any person to pay or give anything of value, or to offer to pay or give anything of value to induce an employee to join, or not to join, or to terminate membership in a labor organization.

(e) For any labor organization or its agents to threaten, initiate, or participate in or induce others to threaten, initiate or participate in—

- (1) a secondary boycott, or
- (2) secondary picketing, or
- (3) a strike in agriculture which may result in the loss, spoilage, deterioration, or reduction in grade, quality or marketability of an agricultural commodity, or
- (4) a jurisdictional strike or boycott, or
- (5) a hot cargo practice, contract, or agreement. Any contract or agreement incorporating a hot cargo clause heretofore or hereinafter entered into shall to such extent be unenforceable and void.

(6) a products boycott, unless:

(A) The labor organization has a primary dispute with the employer or with the employers who produce the product, and unless the labor organization specifically identifies such employer or employers as the producer or producers of the product boycotted; and

(B) The labor organization uses honest, truthful and undeceptive publicity in connection with such products boycott; and

(C) The products boycott is not directed at a trademark or trade name or generic name of any product unless the labor organization has a primary labor dispute with an employer or with the employers who have the exclusive use of such trademark, trade name or generic term; and

(D) The products boycott or the publicity disseminated in connection therewith does not have the effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to work, handle, pick up, deliver, or transport any goods or to perform any services at the establishment of any employer other than the primary employer; and

(E) It is not accompanied by secondary picketing.

(f) For a labor organization to picket, or cause to be picketed, any farm or farm employer where an object thereof is to force or induce the farm employer to recognize the labor association when:

(1) An election has been held during the past twelve months as provided in Section 5 of this Act, or

(2) A petition for an election has been filed, as provided in Section 5(b) or the alternative method of selecting a representative under Section 5(g) has been used, or

(3) A representative has been chosen as provided in Sec. 5 of this Act, and no petition for a change in representation has been filed, or

(4) An election is barred by Section 5(j) of this Act.

(g) For a farm employer or certified labor organization, upon the timely request of the other party, to fail to confer at reasonable times and for reasonable periods of time with respect to terms of employment; or for a labor organization not certified as provided in Section 5 of this Act to endeavor to require an employer to confer with respect to terms of employment. This provision shall be construed to mean that each party shall state its position with respect to terms of employment at issue and be willing to convert any verbal agreements which may be reached relative to terms of employment into written contracts. This provision shall not be construed to require either party to accede to any demand by the other party. No employer may be compelled to bargain on a multi-employer basis.

(h) For a labor organization or employees in any manner or by any means to interfere with the exercise of a management prerogative such as, but not limited to the following: (1) use of or changes in methods, procedures, products to be produced, equipment, facilities or products to be used, or (2) the scheduling, timing or manner of accomplishing production, marketing, shipment or sales, or the contracting to another of a portion of such operations, or (3) determination of the number of employees employed for any or all operations or the assignment thereof, or (4) to seek or exact compensation for services not performed or to be performed, or not desired by the employer.

(i) For any employer, or association or representative of employers to pay, lend, or deliver, or to agree to pay, lend, or deliver, any money or other thing of value, to any representative of his employees, or any labor organization, or officer thereof; or for any labor organization, or officer thereof, to demand or receive any money or other thing of value from an employer or association of employers; or for a labor organization or employees to seek to exact compensation for services not performed or to be performed or not desired by the employer.

(j) For any employer or labor organization to conspire or combine with any other person to do, or aid, or abet or to picket in support of the doing of any act made unlawful by this Act.

Sec. 5. (a) The Secretary is directed and authorized to (1) designate local officials of the U.S. Department of Agriculture with whom petitions may be filed, and who are delegated responsibility for conducting representation and/or decertification elections, as provided hereinafter, and (2) issue regulations relating to the performance of this responsibility.

(b) A petition for a representation or decertification election may be filed by the employees of an employer, or by the employer, during any payroll period and an election among such employees may be held during any payroll period, in which at least eight employees have been hired to perform substantially all types of work done or to be done on the farm. At least 30% of the workers on the payroll during the payroll period in which a petition is filed must sign such petition. Any agreement entered into prior to a harvest period shall provide for reopening the contract with respect to terms of employment not more than 30 days prior to the beginning of the harvest season.

(c) No election shall be held pursuant to this Section if there has been a valid election of workers employed on the same farm in the preceding twelve months, or there is a contract bar to an election, as provided in subsection (j) of this Section. Otherwise, upon receipt of a petition as provided in subsection (b) above, the designated local official of the U.S. Department of Agriculture shall give appropriate and timely notice with respect to the time, place, and the procedure to be followed in the election and shall take all other action to expedite the conduct of the election.

(d) The determination of eligibility to vote in an election shall be based upon the definition of a farm employee in Section 3(g) of this Act, provided that an employee eligible to vote in an election must be an employee of the employer on the date the election is held.

(e) The ballot form shall provide employees an opportunity to choose by secret written ballot between no representation and any proposed representation. A proposed representative need not necessarily be a formally organized union but may be an individual or committee to be chosen by employees. If no alternative receives a majority of the number of votes cast, a run-off election

shall be held between the two alternatives which have received the largest number of votes.

(f) Following the election, the designated local officer of the U.S. Department of Agriculture shall count the ballots in the presence of representatives of the employees and of the employer, and shall announce the result. If a representative is chosen by a majority of the employees of an employer such representative shall be termed a certified representative.

(g) A representative may be chosen by the following alternate method:

(1) An employer may post in a conspicuous place for observation by his employees a notice setting forth terms of employment offered by him.

(2) Individual employees may, using a standard form prescribed by the Secretary, designate a committee from their number of 3 to 5 members as their representative.

(3) Upon the filing of such form, signed by a majority of the workers with the designated official of the U.S. Department of Agriculture, the official shall make any investigation as the circumstances may indicate to be necessary to determine that the signatures are valid and voluntarily given, and upon a determination that this is so, the Committee named shall be considered the certified representative of the employees employed by the employer.

(h) The procedures set forth in this Section shall be the only valid procedures for determining representation.

(i) The designation of a representative as provided in this Section shall not be construed to deny an employee (or employees) the right to consult with his employer with respect to grievances and the settlement thereof.

(j) A contract between an employer and a labor organization shall be a bar to an election for the term of the contract, but in no case longer than three years.

(k) The secretary shall issue and promulgate rules and regulations regarding the content of and procedure for filing petitions for representation, procedure for conduct of such elections, eligibility to vote, or such rules and regulations as he may deem necessary to perform his duties under this Act, and shall administer and enforce these rules.

SEC. 6. (a) Whenever any farmer, employee, or labor organization is aggrieved because of violation of the provisions of Section 4 of this Act, or there is reasonable grounds to believe that a violation of such provisions is threatened, a civil action for preventative relief, including application for a temporary restraining order or temporary or permanent injunction, may be instituted by the aggrieved party in the U.S. district court of the district in which the farm headquarters is located. If the violation occurs within another district court jurisdiction, the Civil action may be filed in the district in which the violation occurred or in the district in which the defendant is domiciled. If the court finds upon a preponderance of the evidence that a violation has occurred, or may occur, the court shall issue such orders as it deems necessary to prevent or to terminate the unlawful conduct involved, and may also award the aggrieved party damages and reasonable costs, including attorney's fees. If the court finds that no violation has occurred, it may award reasonable costs, including attorney's fees, to the defendant.

(b) In any case involving an alleged violation of Section 4(e)(3) of this Act, a Civil Action for a temporary restraining order shall be handled expeditiously and continued in effect until the Court has ruled on any requested temporary injunction.

(c) Any person aggrieved by an order or decision of the district court may obtain a review of such orders or decisions in the circuit courts of appeals of the circuit in which the district court is located.

(d) A labor organization may sue or be sued as an entity and on behalf of the employees whom it represents, shall be bound by the acts of its agents as provided in Section 3(j), and shall be responsible for compliance with any judicial order or for payment of any money judgment. Such money judgment shall not be enforceable against an individual member unless such individual member is named in the complaint. The service of summons, subpoena, or other legal process, upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Since conditions in agriculture differ from those in industry, precedents and interpretations of the Labor Management Relations Act shall not be controlling and/or determinative in the interpretation of this Act.

(f) Except as clearly inapplicable, or as provided otherwise in this Section, the Federal Rules of Civil Procedure shall be applicable to judicial action under this Act.

SEC. 7. Nothing in this Act shall be construed to deny to labor organizations, employees and employers, except to the extent herein prohibited, the same right to express views, argument, or opinions to each other, or the dissemination thereof to the public relating to issues in dispute, whether in written, printed, graphic, or visual form; and such expressions shall not be evidence of a violation of the provisions of Section 4 of this Act, if such expressions do not constitute threats of reprisal or force or promise of benefit. Statements of fact relative to the economic factors or to proposed changes of operation which are occasioned by technological improvements, competition, or required for more efficient operations shall not be construed to be threats of reprisal or force or promise of benefit.

SEC. 8. The provisions of Sections 201 to 205 inclusive of the Labor Management Relations Act, as amended, relating to the Federal Mediation and Conciliation Service shall be applicable to disputes between employers and employees covered by this Act. In the event that negotiations and mediation fail to resolve a dispute between an employer and a labor organization relating to terms of employment, the parties may jointly request the Federal Mediation and Conciliation Service to assign conciliators or mediators to make recommendations relating to settlement of the dispute, provided that the recommendations so developed shall not be binding upon either party unless the parties have mutually agreed prior to the submittal of the dispute to the Service that they will agree to and be bound by the recommendations so developed.

SEC. 9. There is hereby created in the U.S. Department of Agriculture an Agricultural Labor Service which shall be responsible for performing the following functions:

(a) Supervision on behalf of the Secretary of Agriculture of the provisions of Section 5 of this Act relating to the conduct of representation or decertification elections.

(b) Accumulation of factual information with respect to any labor dispute in agriculture upon the request of the court with which a civil action has been filed, or at the request of the farm employer, farm employee, or labor organization before or after such civil action has been filed, and the submission of an affidavit to the court with copies to the parties setting forth factual information relating to such labor dispute for the assistance of the court. Such affidavit may be admitted in evidence subject to cross examination of the party executing the affidavit.

Such sums as may be necessary to carry out the provisions of this Section are hereby authorized to be appropriated.

SEC. 10. If any provision of this Act is held invalid, the validity of the remainder of this Act shall not be affected thereby.

SEC. 11. The effective date of this Act shall be 60 days after the date of enactment.

Mr. TRIGGS. Let me see if I understand.

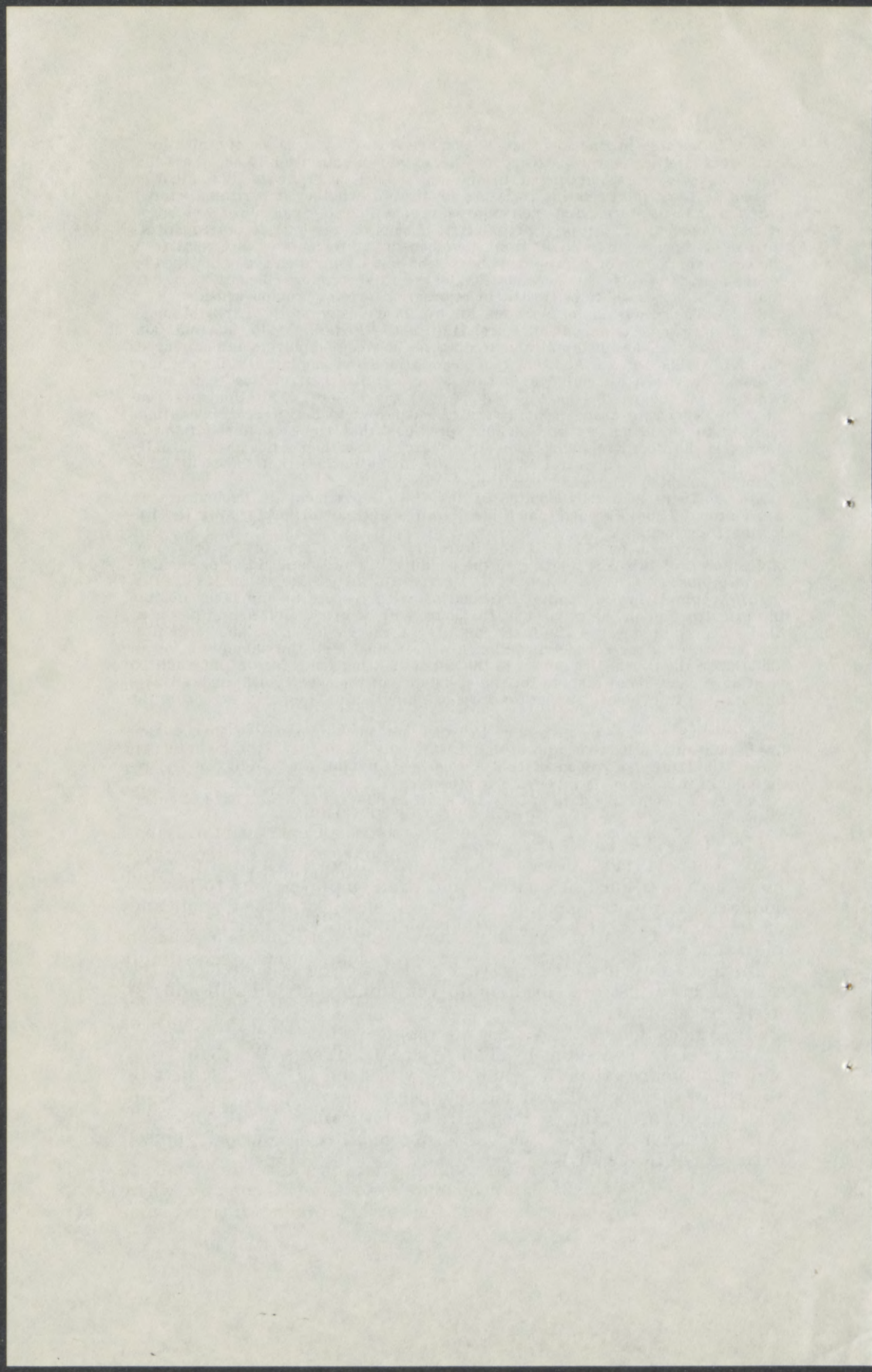
Mr. FORD. If that bill were enacted, and if there was a labor dispute, however it is defined in that bill, and if an employer were to hire an employee to replace an employee who was engaged in the dispute and on strike, would that be a permitted or prohibited activity by the employer, as you see it?

In short, do you want to prevent strikebreaking in your bill in the senses I have just described, or do you think your bill will address itself to that at all?

Mr. TRIGGS. Our bill does not address itself to strikebreaking.

Mr. O'HARA (presiding). Thank you, Mr. Triggs. We thank you, and we announce that the committee will stand in recess, subject to the call of the Chair. There will be other witnesses yet to be heard on this legislation, and they will be heard at a future date.

(Whereupon, at 12:30 p.m., the subcommittee adjourned, subject to the call of the Chair.)



EMPLOYMENT OF "GREEN CARD" ALIENS DURING LABOR DISPUTES

THURSDAY, AUGUST 7, 1969

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Thompson, O'Hara, Gaydos, and Ruth.

Staff members present: William G. Phillips, director, Special Subcommittee on Labor; Jeunesse M. Beaumont, clerk, Special Subcommittee on Labor; and Michael J. Bernstein, minority counsel, Committee on Education and Labor.

Mr. THOMPSON. This morning the Special Labor Subcommittee resumes hearings on H.R. 12667, a bill to amend section 8(a) of the National Labor Relations Act to make it an unfair labor practice for an employer to hire certain aliens as replacements during a labor dispute for persons ordinarily employed by such employer.

Our previous hearings on July 16 and 17 heard witnesses from the Department of State, the Immigration and Naturalization Service, the former chairman of the Select Committee on Western Hemisphere Immigration, and from the AFL-CIO and other unions; we also heard from the American Farm Bureau Federation.

This morning we will hear witnesses from the Department of Labor, the National Council of Agricultural Employers, the United States-Mexico Border Cities Association, and the Association of Immigration & Nationality Lawyers.

I might say to my colleagues that the subcommittee has received an unusual amount of communications with regard to this legislation. The problem of so-called green card border immigrants is exceedingly complex and involves many elements of our social, economic, and political systems as well as affecting our international relations, labor policies, immigration policies, and the lives of many thousands of people on both sides of the border. The bill now before us does not presume to solve this difficult problem, which has broader implications that are beyond the jurisdictional scope of this subcommittee. It does, however, attempt to come to grips with what some of us believe to be an abuse of the green card privileges.

We concern ourselves mainly with those who apply for permanent residence in the United States as an immigrant and then continue to live in their own country and commute to jobs in this country, where they are often hired as replacements or "strikebreakers" during a labor

dispute for American or other green card workers living in this country.

I would like to take note of the fact that the subcommittee has received a number of queries concerning the first line of the bill before us. The proposed new section 8(a)(6) would add as an unfair labor practice for an employer: "To employ any alien unlawfully present in the United States;" the rest of the bill then refers to the prohibition against such action during a labor dispute and includes within the prohibition the so-called green carders or border commuter aliens.

There is concern that this first sentence would somehow amend the Immigration and Nationality Act and work a hardship on many thousands of aliens now in the United States who may technically be considered "unlawfully present in the United States." They would include aliens who are employed, and who may be involved in litigation or appeals procedures relating to their immigrant status or who may be the beneficiaries of private bills introduced here in the Congress. I want to assure the members of the subcommittee and others concerned with the interpretation of this provision that it is not my intention to adversely affect this small category of aliens. Certainly, any reasonable interpretation of the language, within the context of the whole, clearly indicates that the unfair labor prohibition against an employer in the hiring of replacements for other workers could hardly have any effect on these special cases. The unfair labor prohibition against an employer in the hiring of replacements for other workers could hardly have any effect on these special cases. The unfair labor prohibition would, however, apply to the broad category of aliens "illegally present in the United States" who may have gained entry, for example, illegally with forged documents or by illegal border crossings. In other words, an employer who hires a so-called wetback would be subject to an unfair labor practice complaint under the proposed bill. Of course, the alien would also be subject to deportation if apprehended in any case. I hope that this explanation will clarify the intent of this provision of the bill.

A number of interesting articles and reports on this subject have been called to my attention since our hearings began last month. Without objection, I will have them included in the record at this point.

(The articles and reports referred to follow:)

EXECUTIVE CONFERENCE

ON WORLD TRADE

Featuring The

UNITED STATES-MEXICO BORDER

TWIN-PLANT CONCEPT

The University of Texas at El Paso

(123)

EL PASO CHAMBER OF COMMERCE
EL PASO, TEXAS

THE INTERNATIONAL CITY

MEMORANDUM TO: Recipients of the Twin Plant Conference Transcript

The material in this transcript consists of talks given by five well-informed experts on the Border Industrialization Program. For those readers who may be vague on the exact nature of this program, the following information is submitted:

Since 1964, as a part of the Northern Border Development Program of the Republic of Mexico, the Mexican Government has allowed foreign firms to establish manufacturing plants along the Mexican side of the border. Mexico reserves the right to control importation, manufacture, and export of the materials used in the operation; and demands that 100 percent of the manufactured products be exported. Under these conditions, Mexico permits plants and firms wholly owned by foreign citizens to operate in Mexican border communities. These plants and firms receive no tax incentives, and the primary inducement for a Mexican location is the availability of the high-skill and productivity of Mexican labor at lower wage scales than in the United States.

Under U.S. Customs Regulations, U.S. industries that export raw or semi-finished materials for such processing, may later import processed products back into the U.S. under favorable tariff conditions provided that no basic change had been made in the form of the materials. Under these conditions, duties are paid only on the value added to the materials and, sometimes, at rates lower than would be applicable to materials of foreign origin. The status of each product to be considered for such processing is determined by U.S. Customs. As a result of this new Mexican policy and existing U.S. Customs Regulations, a number of U.S. firms have established plants on the Mexican border.

Most U.S. firms operating on the Mexican border find that not all work on the products can be performed in Mexico. U.S. border communities are seeking to induce plants to perform supplemental work in the U.S. border cities. Such an establishment of counterpart plants on the U.S. and Mexican side of the border is being promoted as the "Twin Plant Concept". The El Paso Chamber of Commerce, the El Paso Industrial Development Corporation, and Juarez Industrial Development Board have sponsored the publication of a booklet entitled "El Paso/Juarez International Twin Plant Fact Book" that provides detailed information on the program. This book may be obtained by writing the El Paso Chamber of Commerce.

ROBERT H. GIVEN
President

EL PASO-JUAREZ ECONOMIC SIAMESE TWINS

Dr. John M. Richards, Dean, School
of Business, The University of Texas
at El Paso

What I am going to speak about today has really been changed from the topic of the Siamese Twins of El Paso and Juarez. Of course they're not really twins, but are somewhat different--but are linked together.

In discussions the question has been asked quite frequently: "What is the future of the border industrialization? In our discussions last week, it was decided that I would try to address my remarks to some of the things that we've seen out at the University concerning the impact of the border industrialization program and its future. What I want to do today is talk with you about some of the merging trends that will have an impact on the border industrialization program and also some of the concealed contingencies that may very well decide its future. Basically, I want to talk about the direction and developing characteristics that the program is already beginning to take on in terms of plant organizations, the products that are being produced, and some of the decision framework on which location decisions have been made. And then I'm going to talk about some of the broad, economic trends such as wage differentials, technology, and bargaining-demand characteristics that are likely to affect it in the future, and touch briefly on some of the governmental or political contingencies on which it is based.

In order to talk about what the future is going to be, I think we have to look first at what is beginning to take place. Essentially the border industrialization program is going to take on three different types of plant characteristics: (Most all plants can be found in one of these types.) You might classify the first of these as the Uninational Plant--that is where the output of the plant is basically Mexican in character. The basic processing plant is in Mexico, using raw materials to reach a finished product which is basically Mexican in origin. The international aspects of this plant are confined mainly to the few auxiliary warehouses and sales offices that are located in the United States. Such plants do use a few U. S. raw materials, but only a minor amount of them. The benefit from the program stems almost entirely from the importation of machinery into Mexico, and there is only a small dependence on the reduction of duties in the cases of those plants that use a few U. S. raw materials, or component parts. The other two types of plants are the multi-national plants or the twin-plant concept. The first of these might be called the Satellite plants. These are plants that have a primary operation in the United States. This is the home of the big mother plant. The Mexican operation is of minor importance and carries on a minor processing--usually a finishing process. It is more or less tangent to, or satellite to the mother plant. Then the third category is also a multi-national or twin plant. We have labeled it the Simbiotic plant,

using the biological term that refers to the parasite, but also refers to parasitical relationship of mutual benefit. Both plants depend upon one another. So these are parallel and highly integrated operations--one in Mexico and one in the United States. Both are essential and both are highly significant to the complete product. It is this interdependency that makes them symbiotic or mutually dependent upon one another. It is also essential, I believe, to realize that the multi-national plant is a division of labor, or a division of specialization. It is not based necessarily on the economic advantages of the two nations, but rather, as referred to by Mr. Reid, it is based in the legal or administrative definitions that are involved. This is the fact, of course, that the United States law says that processing, fabricating, and change of form that takes place on U.S. raw materials on foreign continents (countries) call for full duties and so this definition of processing or fabrication that determine the specialization and determine what shall be carried on in the United States with what lies outside that definition be carried on in Mexico.

The products that these plants produce are pretty well broken down according to the type of plant. One group consists of those made primarily of Mexican material. Those areas in which Mexico has some absolute advantage in terms of the raw materials and the processing of these raw materials. (Lumber and hardware products are a good example.) Also those areas where Mexico has what we might call a comparative advantage, usually where they have developed markets within their own country and some market in the United States. These are dependent upon the skills and specialty products of Mexico, certain food products and certain specialty foods being an example of goods geared in this direction. The type of the goods produced are primarily high cost--containing high amounts of labor input or labor-intensive operations. Either a product or some component parts of the product. Here the labor is high, relative to the capital or the machinery cost--the capital cost of the operation, or to the shipping cost. If the product involves a low bulk item, or if the shipping involves only small distances, to local markets primarily local operation, then again the labor will be a high input. Such products as apparel, electronics, services, toys, plastics, fall under this category. Then there are some other plants, other products, a few metals under a special section under U. S. law, some plants who have a job for purposes other than to gain good labor costs, some have even gone under the guise of avoiding taxation. In view of these products, we look in terms of general categories or general classification of products. These then become those that have Mexican specialty duty, those that have high labor input. These probably and consistently will make up the majority output under the border industrialization program. When we look at these general categories, at the category of high labor intensive products, we find that the less of all possible things that could be produced, of all possible firms producing them, are not really representative on the border. This brings out the question then of why these particular products alone--why are these particular firms located in the border industrialization program and not a host of others that fall under the general classification. One

answer to this may lie in managerial attitudes, or the experiences that one may define as the decision framework that led to a border location for these plants. Regionally we can classify those plants located on the border under three classifications according to the managerial, decision-making process. First, are those firms that have had previous experience overseas--usually in manufacturing or sometimes in selling. For these firms, considering the Mexican location--considering any foreign location--is not unusual. The Mexican location then, is something close to home--not a dramatic or dynamic decision to at all. A host of other firms fall into the second category. Those would be firms with the management and financial backing and ownership that are located on the border. They're local to the borders. In these local firms many of the men are involved have lived on the border all their lives and the decision to shop for a location across the border is not unusual--it's just moving across town. The third classification of manufacturing firms are those that have been forced into considering Mexican location or forced to some more dramatic decision because of the tight squeeze that they've been forced into because of competition or changes in their industry. In other words, for these firms the alternative to the border location frequently is a tight competitive situation, sharp market decline, sometimes the abandonment of complete lines--for very few the possibility of bankruptcy. Circumstances then forced these firms to take more dramatic action. If these three classifications account for most of the firms then this would mean that the real future of the border is probably going to lie in the development of a fourth, which is already beginning to appear and might be called imitators. These are the firms that will view the success of existing border operations and will follow that success by deciding to locate over in Mexico and take advantage of the border industrialization program. Now these imitators will consist both of existing firms that are going to imitate the already established pattern of plants that they've been seeing and also a host of other firms that will imitate the successful operation either of their competitors or those in complementary lines. The question then, I think, becomes what are some of the key variables--the key trends that are taking place--that will determine success for firms already on the border program and the innovators to follow them in establishing plants. The area we want to look at--as I said before--is for general economic trends to evaluate what will be their impact or likely to be their impact in the future of the program. I'm going to have to talk in some generalities here because to get down to more specifics would take more than my allotted 50 minutes--and also it would be very difficult to predict the ultimate impact--how it is going to happen--how it will affect the prosperity of the individual firms. But I believe we can project the general affect of certain broad economic trends. Also I want to take time to talk about governmental contingencies that are going to be vital to the success of this program.

First, let's look at some of the economic trends. The first would be the general investment climate in the United States. I think we're all aware that firms just don't shift locations without some sort of economic advantage. Most shifts in industrial

locations come when firms or industries are in a financial position to consider new plants and new locations. This frequently occurs when firms have gone through the process of depreciating the old plant and equipment and now they have to choose between renewing the existing plant and rebuilding up the old plant at the old site or shifting to some completely new location. The shift of textiles from the New England area to Piedmont is an example of locational shift that occurred over a period of time when depreciation took place. Some other groups of firms are able to consider locational changes--those that are involved in expanding markets. The increasing demands for production call for constant review of new plants, new investments. Also, firms introducing new markets or new products will have to consider a locational change. The border industrialization program came in at what may well be the tailend of the large investment buildup in the United States. During the period of the sixties, many plants have already located overseas that were seeking labor intensive or labor surplus areas. And there are certain advantages to expanding from a nucleus once it has been established. So I suppose in summary we could say that the impact of investment planning is somewhat slack for it is certainly not as likely to be as favorable as it might have been ten years ago. In other words, the border industrialization program may have come too late to take advantage of the real opportunity for major success. In the long run, however, the outlook becomes more promising and even improves particularly as opportunities arise to reconsider locations that have already been made in the other areas of the world we've been talking about.

The second trend that is going to be important is the trend to wage and cost differentials that are involved. This is why firms are going to Juarez because of the cost differential. Primarily the cost differential is the gap between the United States and the Mexican wages. This gap must also offset shipping costs, import duties, certain financial costs, and must also offset the gap between the Mexican wage and the wage in other nations, such as Taiwan, South Korea, and other areas that we've mentioned. The gap between United States and Mexican wages is closing somewhat, that is, Mexican wage rates have been rising. It is hard for many of us studying U. S. wage raises to see, but Mexican wages have been rising faster than those in the United States. For about a five or six year period the annual average increase was about nine-per cent. Of course it's varied from time to time and from place to place. It's varied all the way from an annual increase of four-per cent to--in some cases--an increase of 18 per cent. This includes, of course, such things as fringe benefits and also there may be some feedback from the border program on wage raises themselves. On the other hand, given wage conditions in the United States now, it's not likely to significantly close the gap. The gap will persist for many, many years into the future. The fact that it is closing in some degree may squeeze out a few marginal firms and may somewhat influence some overseas competitive positions who are betting on the gap in the trend of wages in those areas. Another thing that is going to be important, and that is very difficult to evaluate, is the technological changes--the effect of automation on manufacturing in the United States.

Particularly important is the fact that automation is now beginning to invade many industries where once they thought it was totally impossible. As our engineers begin to develop machines not only to replace muscles, but also to replace such things as hands, fingers, and eyes (I'm not talking about transplants, but about doing the jobs of those things), this is beginning to change whole industries. New machines, of course, are some alternative to lower wages--and we are finding now more and more in the future that new machines are beginning to make capital-intensive industries out of many industries that have been labor-intensive in the past. It's already been suggested by some students of the border industrialization program that some of the plants located here may be here only temporarily. That is, they're located here to stretch out a lot of labor-intensive equipment as the competition begins to bring in more capital-intensive equipment. Another impact of technology is, of course, that machines tend to be single processing--that is that everything is done from start to finish. Of course, the border industrialization program is dependent upon some bridge in that area--some sort of separation between the fabrication and the assembly. This is likely to become more difficult as technological changes occur.

In summary then, the technological forces seem to be working somewhat against the program in certain specific industries and areas. All this may sound somewhat pessimistic, particularly following Bill Reid's excellent presentation, but I do think there is one area that is beginning to speak very well for the future of the program. And I'm talking now about the trends in marketing and demand change that are beginning to occur. The affluent society of the United States and the rest of the world is demanding more and more finishing and individualization of its products once the product is there. Then it still wants something done to it. It's demanding more such things as packaging, stylizing, individualization of the product. Now these are all the brake area of the production process and they are mostly highly labor consuming. You can then give the finished product the extra attention the modern consumer likes. Also, our economy is beginning to demand more and more services. Some of these can be centralized and sort of mass produced on--I'm thinking of the area where you can take the information from a consumer, send it to a central area, and return it to him. More and more we're beginning to move toward centralization of services. Somebody has even suggested that it might be possible to begin to use the computer matching of dates and that with couples computer-matched along the Mexican border, they could enjoy a very delightful courtship with the ProNaf facilities and complete the courtship across the border. Associated with this change is the fact that we are in this country creating more and more paperwork for more and more data processing. This is an area which demands highly elaborate equipment and also personnel--large masses of personnel. It is another area where again the border industrialization program can begin to play a very important role. Also, of course, we are beginning to consume more specialty products. We are wanting certain varied styles, we're increasing our taste for things we try, we're beginning to turn more and more towards specialty goods which we've never tried before. Here I

think there's a great opportunity for our sister country of Mexico to begin to break into the mass consumer market in the United States. These changes, then, indicate that there may be a real future for border programs in these particular areas--as we begin to change our market demands. They can very well offset the somewhat negative impact of technology. It also implies that the ultimate composition of the border industrialization program some years from now may be something completely different than we have conceived now. It may be less in terms of industrial plants and more in terms of specialized attention to the finished product in terms of mass production of consumer goods.

Now to finish off let me talk about certain governmental or political contingencies. It's essential to the existence of the border industrialization program that both governments practice a continuity to the existing principle of free international trade that has established the border industrialization program. It is also essential that they maintain and increase the flexibility of the operation. The concept of continuity and flexibility is not a great paradox. Rather, of course, the determination to make something survive implies the flexibility and change necessary to make it viable. They decide it will exist and then they remain flexible so that it will continue to do what it is supposed to do. This would imply, and I don't mean to offend anyone of Mexican or U. S. citizenship, but it would seem to me that in Mexico this would imply the continuation of the action to encourage foreign investment in the northern border. Mexican history is misinterpreted in this country and I think more so than is justified by businessmen, but it has been interpreted by certain businessmen as being somewhat hostile to foreign investments and operations. Mexico will have to accept in the future as this program begins to develop a certain degree of "Yankee economic imperialism." This imperialism will come in the form of equipment, managerial attitudes, methodology, and to some extent, even political influence there. This is going to follow United States investment over there. However, I think the current thought that has been expressed by many of the Mexican leaders who I've talked to and heard today indicates that tolerance and understanding of foreign investment is based on their own self-interest. So the border industrialization program it self expresses this and I think in good faith. It's also supported and must continue to be supported by the actions of firms who go into Mexico as well as into other foreign areas. They must realize that their existence is based upon a mutual advantageous situation, or that acts to the benefit of the country who is their host as well as to their own operation. Then the operation in Mexico flexibility implies primarily, I think, that some attention be given to lessening the import in-bond restriction. In other words, to change, if possible, from a limited annual quota. If not, there is the possibility that plants located across the border may become feeder or stockpiling plants. A company by sufficient vigilance should be assured that all materials imported will be exported. I believe that this should and could be done at the expense of the companies that are located in Mexico if they desire this service. For the United States--and I think this is probably more key and more essential--the United States must maintain its neutrality--engaged in no change in the law to accommodate the

authority. There is no change in the U. S. law to accommodate this program. It is essential that we maintain the law as it exists in order to continue this multi-national plant. And this law is primarily under attack by certain labor and allied groups. Also, I think that we ought to be aware of the fact that there are liable to be some victories given these groups along the border areas. But these victories should not, in my judgment, be given in the area of changing this law. Rather these legislative victories should come where they are deserved and where they will do the most good. They should be based on solid analyses of what's good and what's bad. I have no doubt whatsoever that the solid analyses of the impact of the border industrialization program of the United States show that the law we have is good. I do believe that we have to examine that law and we will have to engage in educational processes to convince our legislators and other groups that it is a good law and must be maintained.

In summary then, given the present composition of the border program, the future implies--as would be expected--some pluses and minuses. In the short run, we can see a continuation of and probably a gradually accelerating role of the border industrialization program as more and more the investment climate, the development of new markets, and new demands begin to occur. I suppose we shall continue to accelerate and the long run holds a very great promise for the program, though there is the possibility that it will be a completely different picture. I think that with some dramatic, dynamic decision-making we can look into the future with a real possibility. Essentially though, the program was made by governmental action and can be sustained only by positive position of these governments. These are crucial to the continued existence of the program and I think are something we must continue to keep our eyes on and work to maintain these positions of the government.

EL PASO-JUAREZ TWIN PLANT CONCEPT

WHAT IT IS - HOW IT WORKS

Mr. William Reid, Executive Director
El Paso Industrial Development Corp.

In 1964 a prominent research company was commissioned by the Juarez government to make a study of the potential for industrial development to assist in the relief of unemployment in that area. The idea or proposal that excited the most interest was an idea called the "Twin-Plant" concept which envisioned the location of manufacturing facilities, complementary manufacturing facilities on both sides of the border. Up to and prior to that time the Mexican government had become increasingly more concerned about the heavy unemployment in the border areas, which numbered certainly tens of thousands of the hundreds of thousands of the people. At the same time, in the United States, we have a problem also. A quite different kind of problem. Many of our manufacturers, particularly those who are manufacturing items with high labor cost, were finding their markets eroded by cheap imports from foreign countries to the point, in fact, where they were having to go in many cases several thousands of miles to the Far East or to Europe--or to other locations to reduce their production costs to remain competitive on the market. So we had the paradoxical situation of having two great nations across a common border from each other--one with vast quantities of financial management and technical resources, but low manpower availability and high labor cost. On the other hand we had a country with vast quantities of unemployed people, but limited resources and limited financial and technical areas. Yet there were only, at that time, a few companies who had considered Mexico as a potential location for cost reduction in their production processes. New interest was generated, however, in 1965 when President Diaz Ordez in the State of the Union message, announced a new program for border industrialization and one of the parts of this program was a relaxation of certain regulations as they applied to foreign investment and manufacture facilities in the border areas. There were two basic changes: One that the foreign company could own and hold completely the Mexican facility; and two, they would permit the temporary importation without duty on machinery, equipment, and materials needed for production--with one condition--that the entire product of the Mexican plant would be exported from Mexico to the United States or to other foreign countries. This was the Mexican half of the "Twin plant" program. The United States half was already in existence through certain provisions of the Harris schedules of the United States, which provided for the deduction of the value of U. S. materials from the total value of the import article on re-entry into the United States. Thus was the Twin Plant program born.

Typically the Twin Plant program--or the Twin Plant concept--consists of two plants. One in El Paso to convert raw material into identifiable parts of a product and the second in Juarez to do the assembly operations. Following assembly, the products are returned to the United States plant for such additional operations as are

required, such as inspection, finishing, and distribution. The potential for cost reduction result primarily from the differential between the wage levels between the United States and Mexico. The present minimum wage rate in Mexico is approximately .32 cents an hour or \$2.50 a day. With benefits added the cost rises to approximately 42 cents an hour or \$3.27 a day, as contrasted to \$12.80 at minimum wage in the United States. And actual wages in Juarez are approximately near minimum because of the tremendous supply of labor in Juarez. As an example, there was one plant which wanted to recruit here, in just the last several months, two-hundred production workers. And they cut off taking applications after 2400. Obviously the more labor intensive the type of manufacturing the greater the opportunity for savings. Most of us know good rules to determine off the top of our head whether or not a facility in Juarez saves money or not, but we have one rule of thumb that when 50-per cent or more of the cost of production is a result of labor and the customs duty is 25 per cent or less, there is a good chance that it can be produced at lower cost under this program. Training wages, incidentally, are even lower. During the training period the employees can be paid as little as half of the minimum wage or, if you prefer to have someone else do your training, there are training schools in Juarez which will train your employees for you in the specific skill that you require. The savings from labor, however, is reduced somewhat by the U. S. customs duty. The duty is levied on the total value of the product in accordance with its classification less the value of the part of the assembly that was made in the United States.

There are many advantages to a location under "Twin Plant" programs as opposed to locations in offshore locations, such as Taiwan, Hong Kong, Portugal, Northern Ireland, and such places. These result primarily in assorted distances from your office and from your market. Consequently, there are lower transportation costs, smaller in-process inventory costs, shorter lead times in responding to market changes and easier control by the home office. Also management and technical personnel, their living conditions in El Paso are the same as they're accustomed to--thus avoiding the preoccupation that would go with locating a family in a foreign country. Assistance in location--there are several groups and individuals in El Paso and Juarez of which the El Paso Industrial Development Corporation is one, that will be happy to assist you in any plans you may have concerning potential locations in this area. This service is provided to you by these organizations on a confidential, no-obligation basis.

SLIDES:

El Paso is built around the base of the Franklin Mountain, the southern tip of the Rockies. In area it's one of the largest cities in the United States--over 117 square miles. It is located at the western tip of Texas and the Mexican border across the Rio Grande from the City of Juarez, Mexico. It is 563 air miles west of Dallas, 565 miles south of Denver, an equal distance from Los Angeles. Within 400 miles lies virtually the entire State of New Mexico, 90 per cent of the population of Arizona, all of west Texas as far east as Abilene, and the State of Chihuahua in Mexico. Within 800 miles or

less are Los Angeles, Dallas, Houston, Denver, San Antonio, Phoenix, and Tucson. The population of El Paso itself is around 390,000 and the population of our sister city Juarez across the river is even greater. In this fine metropolitan area there are almost one-million people. International bridges cross the Rio Grande which connects El Paso and Juarez. Annual border crossings exceed 30-million. This interchange of goods, labor, and money is an important factor in the El Paso economy. This is one reason why downtown El Paso is flourishing while the older commercial areas of many cities are dying of business and financial malnutrition. As evidence of the faith our businessmen have in the future of the downtown area, here are a few of the buildings that have been erected in the past few years. Mutual Federal Savings and Loan Association, the El Paso National Bank, the Southwest National Bank; and this International Building has been completely modernized. Of equal importance, however, is what is in store for El Paso in downtown skyline. Confident in the dynamism of their city, El Paso voters recently overwhelmingly approved the bond issue for construction of a \$15-million dollar Civic auditorium and convention center.

The past few years have also seen the opening of a number of large shopping centers in a number of areas. The trend will continue. For example, this Kern Plaza shopping center has done reasonably well. El Paso is well-supplied with homes at every price range and the price ranges are likely to be much less than comparable homes in other regions. Houses like these of a thousand square feet sell for about \$11,000. In this area homes are in the range of \$17-\$19,000 and up. And of course there is no limit to what you can spend for homes like these. You may have noticed that all these homes have masonry construction. El Paso's building code limits the use of wood in residential dwellings. As a result we enjoy the lowest fire insurance rate of any major city in Texas. One feature of many of these homes that is uncommon in even finer homes in most other places is the maid service. El Paso is one of the few American cities where there still is an ample supply of domestic help. For those who prefer apartment living, there are several apartment buildings in several locations throughout the city--like this ten-story high-rise penthouse. Almost all apartments have patios, swimming pools, and the swimming season is long in the Southwest. In addition to public swimming pools, many residential areas have low-cost membership community pools for those in nearby homes. You can't swim every day of the year, of course, but you can play golf year-round on one of the ten 18-hole public and private golf courses in the area. This course is Coronado Country Club--not only beautiful and challenging but also the highest in altitude in the State of Texas. If this gives you the idea that in El Paso all you can talk about is the weather, this is not strictly so. But almost everyone does enjoy the all-year pleasant climate--the hundreds and even thousands of days of sunshine, mild sunny winters; and although summer days get hot the humidity is very low and at night it is cool and pleasant. We enjoy outdoor sports almost every month of the year, tennis as well as golf, boating and waterskiing in Ascarate Lake right in the heart of town, and of course we have our share of spectator sports, including fine "Western Athletic Conference" football and championship basketball. El Paso's Sun Kings of Texas League are owned and operated by the Los Angeles Angels. Just

minutes from downtown El Paso is Sunland Park with an exciting eight months season of thoroughbred and quarterhorse racing every fall, winter, and spring. And when the horses aren't running at Sunland Park, they are at Ruidoso Downs, which on Labor Day of each year has the largest purse in the country. Or at the Juarez racetrack, on the most beautiful track in the country, greyhound racing is held almost every evening the year-round. In addition to racing, Juarez offers many other attractions to El Pasoans and their guests. This area enjoys bullfights most of the year. For the devotees of horsemanship in the swash-buckling manner, there is the Charro Rodeo.

Shopping in Juarez can mean anything from inexpensive fruits and vegetables to handcrafted furniture, and silver and handblown glassware. From the fine specialty shops the open-air markets Juarez offers the shopper's paradise. It is not a sleepy border town, but a dynamic city with many fine homes and a growing industrial community. El Paso's proximity to Juarez offers to the American manufacturer a practical alternative to locating in offshore places, such as Taiwan, Portugal, or Hong Kong. The El Paso-Juarez Twin-Plant concept, which has an advantage from favorable custom duty and labor differential, is currently being employed by major manufacturers of everything from apparel to piano parts. By locating a material preparation plant in El Paso, and an assembly plant in Juarez, a company whose labor cost represents one-half the production cost usually realizes a substantial savings. Whatever your pleasure, you're sure to find it here in the international city--as for example, this colorful patio in an international hotel. Several active and creative theater groups present dramatic productions all year long. Exceptionally fine symphony, ballet, and operas are enjoyed in season with many famed internationally known artists.

This is the El Paso Art Museum that houses part of the well-known Kress collection and European masterpieces. There are also a number of privately owned art galleries and this is the unusual Museum of Juarez. Beyond the immediate area of El Paso, the mountains of Southern New Mexico, a few hours away, offer a broad variety of recreational opportunities. There is hiking, picnicing, camping, game fishing, big-game hunting. Few areas of the country offer so many opportunities for outdoor activities, and few still have the kind of climate that lets you enjoy them all year around. We take pride in our excellent school system, particularly our University of Texas at El Paso. This outstanding school of Tibetan architecture, has achieved university status, and offers a wide-variety of degrees and disciplines to over ten-thousand students.

Here is the Sun Bowl--one of the oldest bowl games in the nation is played each year. There are 19 high schools in our public school system and 81 elementary and intermediate schools. In addition there are 19 parochial, elementary and high schools, including Loretto Academy, an outstanding school for girls, and Radford School for Girls, which draws girls from all over the world to education in El Paso. El Paso's medical facilities are outstanding also. There are more than 250 practicing physicians and surgeons in El Paso--many located in medical centers such as this. Here are two of our six general hospitals, giving a combined total of over 1,700 beds. Expansion of existing facilities and addition of new homes such as

this student nurses' home, keeps El Paso one of the leaders in medical services in the Southwest. El Paso is also the home of 236 fine churches, from the very old to the very new, representing nearly every Christian and Jewish denomination. In addition to the traditional services and Sunday School activities, many of these also sponsor choral and dramatic groups, lectures, discussion groups, and other cultural activities. To further enhance the quality of living in El Paso, there are many active service and social clubs, libraries, YMCA's, Health Clubs, and other social and cultural groups. Up to this point our remarks have been centered almost entirely on the liveability of El Paso. Now let's look at some of the factors that have a more direct relationship to the possibilities of going into business.

Local government as represented by this fine City-County Building is headed by progressive, competent leaders who recognize the importance of a strong, economic base and are responsive to its needs. El Paso has a large pool of highly trainable labor--many with technical skills required by highly sophisticated types of industry. Most of these come from the three large space-age military installations. Fort Bliss, which has been here for 120 years, is the U. S. Army's air defense center--the guided missile training headquarters of the United States and the entire free world. For example, the German Air Force Air Defense School is located at Fort Bliss. Also in the area are White Sands Missile Range, Holloman Air Force Missile Testing and Development Center at Alamogordo, New Mexico, and NASA's manned space craft center test facility. The contributions these installations make to technically trained labor forces in El Paso is substantial, because literally thousands of these men make their homes in El Paso. In addition El Paso has an ample complement of skillful adaptable labor--over 50 per cent of which are Mexican or Latin descent. The "natural instinct" of these people for fine craftsmanship has readily been developed into highly skilled abilities in many specialized fields. The dependability of this labor force has led to highly satisfactory labor-management relations. Strikes, shutdowns, labor unrests are seldom experienced in El Paso. Another factor which makes industrial operations profitable here is the extremely low rate of absenteeism because of the largely mild and pleasant climate. Manhours lost because of bad weather is almost unheard of in El Paso. Airlines and weather bureau figures show that we have more days of sunshine in winter months than any other city in the United States. An average of 88 sunny days out of a possible 98 in December, February, and January. Average rainfall is only 7.89 inches per year and blizzards, tornadoes, fog and similar types of bad weather are practically unknown. The area's economy has traditionally been based on the five C's--copper, cotton, cattle, clothing, and climate--but it is now very widely diversified. At this time the clothing industry is typified by these two picture of such plants, and employs the largest number of workers, approximately 12,000, with a payroll of more than \$32-million a year. The mining, smelting, and refining industries are substantial contributors to the El Paso common wealth. The El Paso Smelting Works of the American Smelting-Refining Company is the nation's largest custom smelter. The Phelps-Dodge Copper Refinery is the largest plant of its kind in the country and refines approximately a third of the entire United States supply of

copper. It is currently being expanded. Two large oil refineries-- the Standard Oil Company of Texas and Texaco--are combining a capacity of over 80,000 barrels a day. Some other El Paso industries are food processing, cement production, steel making, and lumber products. Peyton Packing Company, which processes 100,000 head of cattle, 150,000 hogs a year, has recently completed this new multi-million dollar packing plant. Boots, shoes, moccasins, saddles, holsters, belts, and harnesses are made in El Paso and sold all over the country. The Tony Lama Boot Company factory is one of the largest in the nation. The red areas on this map indicate some of the more than 25,000 acres of highly diversified types of industrial sites available in El Paso County. Typical of these areas is the east El Paso industrial district or this one on the west side of the city. Buildings such as the one shown here are usually available in El Paso also. Some of the many advantages industry enjoys in El Paso are the electric, water, and gas facility services at reasonable rates. The El Paso Electric Company and Southern Union Gas Company are progressive, dynamic companies alert to the future needs of their services. They are constantly expanding their facilities to meet these needs. The home office of El Paso Natural Gas Company, one of the nation's largest transmission gas companies, is located in El Paso with operations throughout several western states. The El Paso International Airport, with its 14,000 foot runways enjoys more flying days than any other major airport in the country. It is served by American, Continental, Frontier, and Texas International. Aeronaves de Mexico offers direct flights from Juarez to Mexico City and Acapulco. General aviation is big in El Paso--three fixed-base operators offer facilities for charters, rentals, sales, and maintenance. There are a large number of private and executive aircraft operating out of El Paso. Excellent rail transportation is provided by Southern Pacific, Santa Fe, Texas and Pacific with connecting lines to national railways in Mexico. El Paso is served by several United States and Mexican airlines, and limited access highways connecting the major areas in the United States and Mexico. There are 16 major common carrier motor freight lines serving El Paso directly and four of them have headquarters in the city.

Of course it is impossible in a talk like this to cover every aspect of El Paso and Juarez, and possibly only to touch briefly on the areas we've mentioned, but we hope that this presentation has stimulated an interest in our area as a potential location for new manufacturing facilities.

SERVICES OF THE JUAREZ INDUSTRIAL DEVELOPMENT BOARD

Ing. Jaime Bermudez, President
Juarez Industrial Development Board

It is a great privilege and a pleasure to be able to come before you to make a brief presentation on the Juarez Industrial Development Board. Gatherings like this make an important contribution to any cause, by bringing together people with different backgrounds and attitudes to exchange ideas and experiences. For this achievement, I would like to congratulate all those persons who made this seminar possible.

The Juarez Industrial Development Board is a nonprofit private organization composed of a substantial number of leading businessmen, bankers, lawyers, educators, and officials of both Juarez and El Paso. Its basic purpose is that stated by its name: To develop Juarez's industrialization.

The Board has now been working for several years in close cooperation with such institutions as El Paso Industrial Development Corporation, El Paso and Juarez Chambers of Commerce, and the Committee for Border Industrialization--an entity established by the Mexican government with the specific purpose of helping the firms wishing to establish on the border to obtain the legal permits.

The most important service it offers is to make itself available to companies interested in the program and to try to answer all their questions. This is usually done by furnishing them with the general information about the industrial advantages of the area, the economics involved, and the different procedures normally used. If after the initial presentation it is found that the general picture is still attractive to the inquiring enterprise, the board then requests additional information mostly about its processes, raw materials, and manpower requirements, which are then analyzed in detail to see whether the specific conditions of that particular company can be satisfactorily met. This is an important step, because no two companies are one-hundred per cent alike and no standard formula can be adapted to all of them--but each product has to be evaluated in regard to its customs status.

When this is done, representatives from the company involved visit several of the plants already in operation, so they can get a first hand view. At the same time, they have an opportunity to exchange their impressions about the program.

It is not uncommon to have the Board introducing those persons to people on both sides of the border, to discuss such matters as financing, building leasing, and legal procedures. More often than not, these initial contacts have proven highly valuable in deciding on the feasibility of installing new ventures in Juarez. They save time to those who decide against it, but help those who want to stay to find a workable solution.

Although it is not within the jurisdiction of the Juarez Industrial Development Board, I would like to mention something which is taking place and which will contribute in offering better conditions

to foreign industry coming to Juarez. I am referring to a study being conducted by the Mexican Ministry of the Treasury on which the experiences of the firms now in operation will be carefully evaluated with the purpose of drafting and issuing *ad hoc* regulations for in-bond companies, and to make their establishment and operation more simple and efficient. Up to now, those companies have been working under the authority of the regular customs code, which was not designed for these operations. Simply the Mexican government is in the process of streamlining the border program.

Another service being offered by the Juarez community, although not through the Juarez Industrial Development Board, is a brand new industrial park, with about 200 acres in a choice location with all services available. This park is run by a Mexican corporation which has devoted itself to furnishing American firms with physical facilities tailor-made to their own specifications. The first such building is now being erected for a Mexican electronics company, with 130,000 square feet of air conditioned, covered space. It is about 80 per cent finished and should be delivered on June 18. We will take a look at it later on during our Juarez tour.

But the most interesting part about this park is that it will be a bonded area. In this way, the companies located there will have the advantage of doing most of their customs paperwork at their own location and routing their materials directly from the bridge to the park with some sort of customs supervision, but without going into the customs house.

For the investor wishing to enter into a joint venture in Juarez several possibilities are available. At least two companies now exist for the purpose of meeting with the American firm in this kind of enterprise, and a third one is being formed with the participation of Adela Investment Company, which as you probably know, is a corporation devoted to promote the development of Latin-America. It has as stockholders the 200 most important companies in the whole world, like IBM, Litton Industries, Dow Chemical, United States Steel, International Telephone and Telegraph, Caterpillar, Coca Cola, Standard Oil, Alcoa Aluminum, Krupp, Shell Oil, Fiat, Mitsubishi, Rothschild, etc

The joint venture is undoubtedly one of the best solutions for most firms, since it provides not only financial support but also the knowledge of the local uses, plus valuable contacts in the business community and official agencies.

If you are interested in this kind of arrangement, Mr. Bruce Evans of the Juarez Industrial Development Board here in El Paso will be more than glad to review with you the different choices at your disposal and to suggest the more convenient solution.

We at the Juarez Industrial Development Board do not think that the program is a panacea to all the problems of all the industries. We feel that it offers a good opportunity to some American companies and that it is a very good formula for the economic advancement of both Mexican and United States communities along the border.

Unless one lives in this area, it is difficult to understand and appreciate how completely dependent and integrated the United States and Mexican communities are. In El Paso for example, 50 per cent of all downtown retail purchases are from Juarez and at least 30 per cent of the total retail purchases in El Paso are made by Mexican citizens. In total wholesale retail purchases, Mexicans spend annually about \$150-million. El Pasoans and tourists, too, spend a substantial amount of money in Juarez. Reports indicate that 50 per cent of all income earned in Juarez is transformed into bank deposits or purchases in El Paso. Still another index of the interdependence of both communities is the number of border crossings between Juarez and El Paso, which numbered more than 34-million in 1968.

An argument has been repeatedly expressed by some American unions, most vocally by the AFL-CIO, in the sense that the border program is progressing at the expense of American jobs, especially along the United States side of the border. I think this topic deserves special consideration.

The border program was not designed to take jobs away from American workers. It was, instead, proposed and initiated to expand U. S. production by making that production more competitive on an international basis, and to hopefully supplant that production now coming from such faraway places as Asia and Northern Ireland. It might be argued inevitably that a small number of U. S. jobs could be lost to the border program, but if the border program is to serve its intended purpose, then any of these jobs will be shifted to other categories. In fact, there should be an increase in U. S. employment due to the border program. We have never, nor do we feel that the Mexican government would permit us to endorse or advocate the reduction of U. S. employment for any given U. S. company that we assist in establishing within the authority of the border program.

The border program is more attractive on the outset to the electronic and apparel industries. U. S. imports of these two product categories have rapidly increased over the past several years. Obviously this is due to their intensive working nature of these categories, but we should point out that the employment and prosperity of these industries in the United States are at an all time high. The great majority of these two manufactured imports come from foreign companies with absolutely no equity participation by U. S. industry. Conversely, the great majority of all like production operations under the authority of the border program are 100 per cent owned by the U. S. parent firm. If we take, say, a given \$10 valued apparel import from Japan, and assuming that this import comes from a wholly owned Japanese company, then the U. S. must export a \$10 valued product to balance the trade picture. Now, if we can supplant the same import to come from Mexico's border program, owned wholly by a U. S. company and using U. S. raw materials or components, then the same import can be cut in import value to about \$4 and no more than \$5. If just 10 per cent of the manufactured imports that presently come into the United States could be supplanted to the border program, then the U. S. balance-of-payments deficit

would be eliminated and unknown. We would say to the AFL-CIO-- forget about the obvious interest that Mexico has in using the border program to help alleviate its border unemployment--use the border program for the selfish interest of the United States. It offers, we feel, an excellent tool through which to improve the U.S. balance-of-payments situation and to keep ownership and quality within the hands of U. S. industry.

Within the past two years some fifteen U. S. companies have established within the authority of the border program in Juarez, and with the exception of only one of these companies, all have established some type facility in El Paso. We feel that it is important that one understand that these companies did not choose Juarez-El Paso over another U. S. location, but instead the decisions were made in favor of geographic points outside the United States and outside the Western Hemisphere. If one fully understands the border program and how it operates, then one would know that it is almost prerequisite to establish an additional, new facility on the U. S. side at the same time as the Mexican facility is being established. These new U. S. jobs are necessary and additional to the success of a foreign operation.

Some American unions have proposed that certain U. S. tariffs be raised and have more specifically proposed the repeal of Section 807 of the U. S. Tariff Code. It is true that the repeal of this Section would most certainly cripple the function of the border program, but the U. S. government could not--or hopefully would not--repeal Section 807 strictly and solely against Mexico and not include all other countries. Again, the proposal to repeal Section 807 and its attack specifically related to Mexico is unfounded and lacking in facts. If one investigates the volume of imports that come into the United States each year under this Section, one would learn that this figures presently exceeds \$800-million annually, but of this amount less than five-per cent of this total comes from Mexico with the great majority coming from countries of Europe.

What amazes us is that elements within the make-up of the AFL-CIO or those unions outside its jurisdiction have not spoken up in favor of the border program. Certainly the electrical-electronic industry workers who are engaged in manufacturing, other than labor-intensive assembly, will gain by the necessity for materials and components destined for the border program. One of the most make-sense and feasible industries for the border is the apparel industry, and of course the need to produce more U. S. textiles is obvious. Perhaps the strongest union case in support of the border program should be that of the trucking and airline freight industry. Not only does the trucking industry handle all freight to and from the border, but they are even allowed and do go into Mexico directly to the plant sites for shipment pickups. In addition to these strong labor organizations, whom we feel should support the border program, the great majority of the indirect and by-service jobs and responsibilities are handled by U. S. firms. Yet if all goods and services were totaled via the border program, the unquestionably the United States would come up on the plus side.

With the exception of El Paso, the most depressed area in the Southern United States are those areas immediate in the U. S. side to the Mexican Border. Why? These areas suffer from lack of geographic proximity as do their Mexican counterparts, and under normal circumstances are simply not attractive areas for which U. S. industry will locate or expand to. The most pertinent factors such as lack of raw materials, nearness to major markets and lack of skilled labor are not conducive, nor seemingly hopeful to healthy industrialization. And yet, Mexico's border program has brought new life, new hope to these areas. For the first time major U. S. companies are inquiring into these U. S. cities as to the availability and readiness of plant sites, of homes and apartments, and of banking services. For the first time these cities have been shown a purpose for their unfortunate lack of proximity, for their supply of people and favorable employment wage rates that are needed by U. S. industry. Again let the AFL-CIO look at these factors that favor the border program for the selfish interest of the United States and if they must--have them forget the selfish interest in Mexico.

While we have read many articles quoting the AFL-CIO, and while we maintain that many of their statements are made with hearsay evidence, we are not in any way forgetful of what the unions in the United States have accomplished for the mass of its people. We look at the United States as the leader in industrial production and technology, and we respect above all other countries--the economic prosperity that prevails and continues to grow in the United States.

One very basic point, in my opinion, is that we are not interested in creating unfair labor competition against any zone in the United States. Rather we are interested in competing against places like Formosa, Hong Kong, Taiwan, Korea, and other areas where for a great many years, U. S. industry has been using low cost labor to assemble finished goods for sale in the United States.

Sometimes one wonders if at least part of those problems do not arise from the fact that we Mexicans are trying to be effective commercial partners to the United States and to earn a fair profit from our efforts, rather than looking for foreign aid to solve our needs.

To sum it up, the Juarez Industrial Development Board is a non-profit institution which provides foreign industry with information and service as is specifically applicable to the border program and the legal establishment in Mexico. New regulations are being prepared to give the program more flexibility and ease of operation. Juarez is now in a position to provide very adequate physical facilities to all types of industry. We do not agree, by any means with the argument that the program threatens the employment security of the American worker, but to the contrary. We are convinced that it will help to create more jobs in the United States. The program should not be seen as something that will unilaterally benefit Mexico, but rather as an opportunity of improving both the Mexican and American communities along the border.

In regard to this last point, I am convinced that El Paso and Juarez are the two border cities with the most to offer to incoming industry, not only in terms of business facilities, but in their social, cultural, and educational environment as well--which are well above that of any other border community.

I hope it doesn't sound like too much bragging if I say that we are doing our best to keep it that way.

Thank you so much.

LEGAL CONSIDERATIONS IN ESTABLISHING A TWIN PLANT

Lic. Aureliano Gonzales-Vargas
General Counsel for Juarez Industrial Development Board

Ladies and gentlemen, primarily I'm going to speak to those of you who represent organizations that have not gone beyond the borders of the United States in their operations. For those of you that have plants overseas, coming into a foreign country is not a novelty. When you come into Mexico, you're going to find yourselves much in the position that existed when Cortez landed on the shores of Mexico in 1519. He found a highly developed civilization--three or four highly organized nations of Indians. They had a stratified social organization. They had laws that governed them. They had laws that controlled the extent of the central power of government, a diversified meaning of justice that gave the people a certain element of stability in life and a right to appeal and to be tried by a court--and the ultimate appeal rested with the monarch.

He found that things were very similar in the Indian nations of the Americas as they were in Europe at that date. You will find that the same system of institutionalized living is a fact in Mexico today. We have a law that governs corporation--one law throughout the whole country. We have 29 states in the Republic of Mexico, but we have one federal corporation law. That law governs all the corporation and organizations in Mexico. We only have two types of corporations--private corporation and a quasi-public corporation. A private corporation is the one that devotes itself to industry, commerce, and trade. The quasi-public corporation is a thing of relatively new creation that has come into effect as Mexican government has participated in the industrial development of the country and the exportation of the resources of the nation. This is a corporation that is controlled by the government and private capital is allowed to participate.

We are now interested in the private corporation. The general belief of everyone outside Mexico is that a corporation to do business in Mexico must have 51 per cent Mexican capital or Mexican ownership, and 49 per cent U. S. ownership. That is true outside of the border industrialization program. The government of Mexico has taken a stand that in furthering this program and making it feasible, and to make it attractive, a corporation may be 100 per cent owned by foreign interests. That means that a parent company in the United States, in Europe, or elsewhere can come into Mexico, organize a corporation and own it, and control it totally without any participation by Mexican capital.

Incorporating in Mexico is not much different from what it is in the United States. In the United States you have to apply for a charter. In Mexico you apply for a permit to incorporate. You must state the purposes and the objects of your corporation on filing this petition. It is filed through the Department of Foreign Relations, which will grant the permit. Once you are given the permit to incorporate, which is equivalent to your charter, then you must go to a Notary Public and in that Notary Office you'll sign your Articles of Corporation and bylaws governing the corporation.

The bylaws and the internal organization of the corporation will be very similar to those in the United States. In a sense, the capital, the assets, the value of the company, is represented by stock. It can be barter stock or it can be nominal stock. Barter stock is owned by the person who holds it. It is transferred simply by delivering physical possession of the stock. Nominal stock must be endorsed and ownership recorded by the corporation. You can have a minimum of 25,000 pesos (\$2000) capitalization in a stock-issuing corporation. In order to have a partnership you must have 5000 pesos (\$400) in minimum capital--then you have certificates of participation. It is somewhat similar to a United States partnership. We do not have capital corporations in Mexico. We do not have ultravires acts by a corporation. Everything must be done within the program and the objects of the corporation. An ultravires act, if declared, is considered mute and unenforceable. So we try to make the purposes and the objects of the corporation only as wide in scope as necessary so that a corporation can carry on normal business and foreseeable expansion.

Management of a corporation in Mexico. The highest authority in a corporation is the stockholder group. A majority of the stockholders constitute a ruling body because they control. But minority stockholders have protection. If 25 per cent of the minority group vote in a certain way they are entitled to representation on the Board of Directors. The Board of Directors is made up of three or more (uneven number) of individuals. It is preferable for the purposes of the border program that the corporation adopt a different system of management. One where they have a sole administrator. Directors have to hold periodic meetings (generally monthly). For the purposes of holding a meeting they must have a proper immigration documentation from Mexico and, if you are going to have to obtain permits every time you're going to have a Board of Directors' meeting, you're going to find that it's a little bit harrowing--much as it is for Mexicans who do likewise in the United States.

You have to go through proceedings to get your permit and make them legal. If you have a sole administrator you can have an executive committee made up of as many members as you wish, who will dictate the policies and the program, and control the corporation as long as its directed through this lone administrator. This facilitates everything in a convenient way without a lot of red tape involved in immigration matters. Incorporating proceedings are costly in Mexico. They're set by law and based on capitalization. You must pay a recording tax to the state. You must pay a federal tax to the federal government. Consequently the federal government has decided that in view of the fact that there are such payments involved in incorporating, it is preferable for a plant that wishes to come into Mexico under the border program to apply for its permit. You apply for approval of the program before incorporating. In that way if the program is denied you would not be out the incorporating expenses. But if your program is approved, simultaneously we grant you the charter to incorporate. Once you have obtained your permit--once you're incorporated, then you obtain the permit to import your machinery and raw materials.

All of these temporary importations must be bonded. You post a bond to guarantee that you will not sell your equipment and machinery, and it is allowed to remain in the country indefinitely. You only renew your bond yearly. Your raw materials are brought in, but you do not bring in a year's supply. You would bring it across as a program for manufacturing development. Consequently you do not have to post a heavy bond on a huge value of your raw materials or your component parts. You post a revolving bond for the amount of--let's say--two or three weeks operation. That will give you a week in which to bring in the material, a week to process it, a week in which to take it out--and you keep rotating in this manner for the entire year. That will save you a considerable amount of money in bond premiums.

Once you have your site picked out, your lease signed, (leases in Mexico are no different from leases in the United States) you install your equipment and machinery, you have your raw materials ready to bring in, and then you're faced with the problem of labor.

The problems in that field are that you have a tremendous work force available--mainly unskilled. Again we go back 100 years and you are going to be amazed much as Cortez was amazed, at the artistry and dexterity of the Mexican worker. We sign apprenticeship contracts with the individuals that are going to be trained. These apprenticeship contracts may run for as long as it is necessary for you to train them. One week, six weeks, six months, eight months, or a year. You are the sole judges of when an apprentice or trainee has become a qualified operator.

The Federal Labor Law is an enlightened law. It provides for apprenticeship training; it provides for bringing in instructors from outside of Mexico; it provides for an escalated pay scale--even a trainee must be paid. Yes, sometimes you pay them \$1.50 a day in the initial paying period and as they develop, you yourself will be the judge of how to escalate that pay--from \$1.50 to \$2.00--from \$2.00 to the full \$2.50 minimum wage.

Well, what happens after that? You're not going to pay only the minimum wages to your employees. You can put them on an achievement basis--you give them the added incentive of earning more. Yes, they can go up to \$5.00, to \$6.00, to \$8.00 a day, but it will depend upon production, adequate to your needs and to your programs.

During the training period you're free to get rid of those individuals that you see cannot learn. Once they become permanent employees, you cannot discharge them except with just cause--and there are many just causes.

What is the feeling behind open shops and unionized labor in Mexico? What are the problems that you will find--what is an advisable solution? I remember that thirty years ago Mexico was the United States' Red neighbor to the south. The unions in Mexico had come into their own--they were demanding elected bargaining agreements--they were demanding fringe benefits--they were

demanding better working conditions--they were demanding a stable salary. They were demanding very much what the United States' unions later on demanded. In our labor movement in Mexico we have reached a more or less stable situation. We have 34 different branches of unionized labor in Mexico. Some of the radical elements want everything they can get and a little bit more. Other unions want to establish a feasible working agreement with industry that makes it possible for industry to develop and for the employees to have stable employment--for the employees to have a hope for the future as industry develops and becomes stronger and bigger, and is able to pay better wages.

What should you consider when coming into Mexico? Consider the possibility of using unionized labor. You should pick the individuals that you will work with because that way you will not face the possibility that all of a sudden the labor will unionize or be unionized by the wrong individuals and find that they are making ever-increasing demands on you. Our wages in Mexico are not the same throughout the country. There is a variance according to the area and the living conditions, and the availability of labor and the strength of industry in each area. That's what determines the minimum wage which is fixed by law every two years.

You're going to ask me about liability insurance, employment insurance, accident insurance of all natures. That, gentlemen and ladies, is covered by the Mexican social security fee rather than the tax. Social security is maintained in Mexico by contributions made by the government, by the employee, and by industry. If you're only paying the minimum wage you will have to pay the workman's social security fee. What do you get in return? You get medical attention, medicines, surgery, hospitalization. You get unemployment pensions for the employee and his dependents under 18 that are unemployed. You will find that it is very much cheaper than trying to insure with a private insurance company. You'll find that it lowers your cost automatically because you do not have to pay the cost of premiums on that type of insurance.

I'm going to go back to the renewal of permits. When you obtain the permit to bring in machinery, equipment, raw materials, and component parts, these permits have had to be renewed every six months. Now they've been extended for 12 months. Mr. Mercado of the Federal Treasury, Mr. Lenada of the Federal Treasury, Department Mexico--though not with us today--have brought us the news that renewal of permits in the future--instead of taking as long as two months--are going to be reduced to approximately a ten-day period. That means that once you've completely used up all your raw materials, you file an application for renewal and in ten days you'll have your permit to import additional material to keep you going for another year.

This is only the beginning of a revamping of the legal organization to the legal background of this program which is as new to Mexico as it is to you. In addition to these actions of the federal government of Mexico in easing off regulations, it is also

thinking about passing a specific law or special regulation covering this phase of the industrial operation. It is their desire to further this program as much as possible with as little hindrance in red tape as can be possibly obtained.

What are your tax situations? Taxes in Mexico, thank the Lord, are much lower than they are in the United States. There's a very good reason for that. We are not in a position of trying to find a solution to all the world's ills. Neither is the Mexican Army, Navy, and Air Force in any position to be the world's policemen. At the present time we are spending more money on education than we are on anything else in Mexico. The government of Mexico has taken the stand that technological education is more important than liberal arts and other education. So they have expanded education in the technical fields. Every state in the union of Mexico has at least one technological college. The program financed by the federal government provides state assistance. So you're going to pay federal taxes. The federal government is not interested primarily in creating a tax contributed from industries coming in from abroad. You pay your federal income tax just like anybody else would--on your net profits. Since these companies are going to be subsidiaries to United States corporations, the profits in Mexico are going to be negligible. Your bookkeepers will see to that. State and city taxes are based on gross income. That sounds awful--gross is a gross word--but they're so low that they're really not too bad.

I'm not going to say that you can or cannot get state and city tax extension or reduction because while we do have a law or statute today saying that new industries are entitled to that, the State of Chihuahua is considering very seriously revamping the law--to make it a more just law. It may provide some consideration for industries, but you are not going to do away with in-state or city taxes entirely--maybe partially. We'll know more about that in matter of a few days. But the taxes for the city and for the state are extremely low. A corporation paying a federal income tax would have to go up in the millions of net profit before it would get up to over two-per cent income tax.

Ownership of the land and ownership of your plants within 50 miles along the land borders and 35 miles along the coast lines are forbidden to aliens or alien-controlled corporation. So you lease the plants and buildings. There is a possibility that if we can convince the federal government--and I say if--there is the possibility that trust agreements can be made along certain lines. That will give you the equivalent of ownership even though you do not have it in your own name. That's a matter for future thought and future developments.

That kind of sums up what I have to tell you about--the legal aspects of organizing your companies down here. I'm afraid it has to be a very summary explanation on why the Mexican government has taken these steps to help industry move into the border areas after seeing the effects of the industries that were exported to the

Orient and to Europe? There is a danger in 8000 miles of flying and 8000 miles of transportation over stormy waters and dangerous skies that makes the proximity of a neighbor that guarantees total overland transportation into the United States a very interesting fact. Why are our salaries lower in Mexico than they are in the United States? Because we are not a carbon copy of any country in the world--yes, we pay our people lower salaries but we pay them more than other people in other countries. We do not try to impose ourselves on other countries that are less developed than ours--our ways of thinking and our ways of life. We have been fighting our way out of a mess. We're beginning to see the light. We've had our troubles as you've had your troubles, and you're having your troubles and we're having our troubles--but we keep going forward.

We expect that as your plants or other plants that locate in Mexico develop and become stronger and much more profitable in their operations, that they will be sharing with our people--their employees--to a certain extent; and give them better wages and better salaries. That will make for better standards of living and will make better education for our masses--and more comfortable living along this border.

Dean Richards mentioned two words that are an anathema in Latin America. "Yankee Imperialism." The New York Yankees were the world's champions in baseball--that was the only kind of Yankee Imperialism we liked and backed. President Kennedy, undoubtedly one of the most beloved Americans outside of this country--especially in Mexico--was dear to the hearts of many of us and he was for the great alliance for progress. He went from country to country--from government to government, and he preached this program of progress which was based on political understanding, political plans, political execution. We on the border have never had an "Alliance for Progress." We've lived in debt--we've suffered the hot sun and the bad sandstorms, the droughts, the wars, internal dissension, all brands of social misunderstanding, and poverties. God made us neighbors and through our efforts we became friends. This program for industrial development along the border is not an "Alliance for Progress" and it is not a political idea! It is the people of two countries--you and I--getting together in a program to defeat poverty. Let us not forget it.

THE CUSTOMS BROKER ROLE IN THE TWIN PLANT OPERATION

Mr. Rudolph Miles, Customs House
Broker

What is the custom's broker role? We like to feel that we're in the middle and this is not just figuratively speaking, because all your merchandise, all your components that go into Mexico have to have someone in the United States to clear the red tape. On the Mexican side we have our counterpart--they also have to clear the red tape that is involved on the return. But what is a customs broker? I believe that only those that have been actively involved in either shipping or receiving for foreign countries actually know what a customs broker is. During my 24 years of experience the question that is asked me most is; what is a customs broker--what do you sell?

We don't sell anything except service. In the United States--so you'll understand what we go through, we have to first apprentice ourselves and after several years learning the customs regulations, take an examination for customs officials before we can hang up our shingle. This is only part of the training because we're not just taking care of government regulations, we receive your freight, pay the freight, in order to save you the time of making checks to freight companies--U. S. customs. Actually we arrange for your transportation after we receive your merchandise. We check over your documents. If they're wrong we advise you about it. Going out of the United States, now, there are some items that do need export license. There are very few, but there are some--mainly in strategic materials, articles of war, or articles going to foreign countries or not aimed for the United States. Of course we're concerned with Mexico so you won't be bothered with that. On the strategic materials going to Mexico on this Twin-Plant concept, you will have very little difficulty in obtaining license to export these items because the United States knows that they are coming back. They're not going to be consumed in a foreign country.

We have had several plants already that have had need for these export licenses and they have been granted immediately. A Customs House broker will obtain these licenses for you if you do not have a legal department in your firm that is already involved in getting licenses for other materials. Of course, as Sr. Gonzales-Vargas said, first you must obtain an import license from the Mexican customs. If your permit is in order, then these component parts are classified and that classification is--they make a petit mentho over in Mexico so that it will be recorded in Mexican customs so that they will control the incoming and outgoing of the materials. The Mexican broker will arrange for the transportation from the United States to the Mexican customs, and from the Mexican customs to your plant so you're not involved in making calls to different individuals--finding the most suitable transportation. It's there. If there are any errors in classification, the Mexican broker is the one who has to deal with the Mexican customs. This takes you completely out unless there is an expert opinion involved--such as what does this particular component do, or what is this machine--is it an accounting machine--how does it function? Then you have to provide literature

or an engineer to explain something that we might not know how to do.

Records are kept both by the U. S. customs broker as well as the Mexican customs broker. This is mainly a bookkeeping operation. Whatever you take into Mexico you have to bring out of Mexico. As far as the United States is concerned you do not have to bring back everything that you take out. If you have breakage or spoilages, or anything like that--the U. S. government is satisfied--as long as you do not bring back more than you took out. On the return trip, most of these permits that you obtain from the Mexican government give you a leeway for breakage and spoilage--just plain depreciation that you can't--no tangible reason for not bringing it back--but they do give you a leeway.

I was just talking to the Mexican representatives from Mexico City. There are some firms that use alcohol, glue, and paint. Now you take five gallons of, say, alcohol. You have it in a certain production and it evaporates. Well, you're not going to bring back that five gallons of alcohol. This is provided for in this program. On returning your finished products, the Mexican broker goes ahead and cancels that portion of the bond that they placed originally when your merchandise went in. You have to supply the information by which he cancels the bond. The Mexican customs then check over--either by weighing, by checking pieces--now, they're very lenient. If they had by weight I believe they would have a very complete control. So far it's not by weight, it's by the figures that you supply. After this cancellation of the bond--one of the most simple thing that we have to contend with because it only takes about a day to get the product back, but it takes about four days to get the product in.

Now on the American side, when your finished components come in to the American customs broker, he produces the invoices that you will supply. This is using the figures that you have supplied to the U. S. customs, as far as the amount of labor that went in, the cost of the materials that went in. All these ingredients together on your invoice for the specific matter--your broker would tell you how to make your invoices. He presents this to the American customs. The American customs looks and checks against your invoice to see if what you are declaring is there. If there's anything missing, it will be brought up immediately. Your shipment will be released and generally it doesn't take more than a half-hour for the inspection. Your entire shipment ordinarily will be released--sometimes one item is kept for future examination and checking. After it's released by customs, then your customs broker has to ship according to your instructions. You might want to send something by air--part of it by truck--part of it by rail. These are the instructions that you give your broker. If you want it shipped immediately by air, the same day it's imported, it's in the air and probably the next day it will be in New York. Ordinarily it's about one day--it depends on size and availability of space. Truck from El Paso to New York generally takes around six days--for powerloads, that's a little different. I believe that I have given you sparingly what we have to offer--we're a little behind, so I think that's about it.

RETURNING PRODUCTS TO THE UNITED STATES

Mr. Adolfo Loera, Assistant District
Director of Customs, El Paso, Texas

Mine is a technical subject, a dry subject, about legal requirements and procedures to be complied with upon the importation of products into the United States. I want to make one thing clear, that these processes are not complicated--that the United States customs service is not here to tie imports in red tape or to discourage importers or exporters.

To the contrary, exporting to the United States is relatively simple. The United States Customs Service is here to expedite--not delay--and to serve the public and the public interest. Mr. Miles, as a customs house broker, has very aptly described the mechanics of exporting and returning products to the United States. The customs house broker and the customs service work hand-in-hand to protect the rights of the importers and the collection of revenue from customs.

Here comes the dry part. All merchandise imported to the United States is subject to full duty unless specifically exempt by special provision of the tariff schedules of the United States. All merchandising ordered to the United States is subject to entry requirements under the jurisdiction of the Bureau of Customs, as described by Mr. Miles. The particular area which I will cover deals with products made or processed abroad from components of United States manufacture and with American metal products exported for processing and return for further processing--which are the areas which happen to deal with the Mexican program.

There are special provisions in the tariff schedules of the United States for payment of reduced duties; when certain requirements are met upon the return of such products. I will read the two principle provisions in this area, describe briefly their meaning, the conditions necessary for products to fall under these categories, and define the value and the basis for collecting duties from importation to the United States. These provisions are Items 806 and 807.

Item 806. In the article of metal, except precious metal, manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing and if the exported article is processed outside of the United States, or the article which results from the processing outside of the United States, is returned to the United States for further processing, you pay duty on the value of such processing outside the United States. I must remind you that we're talking about metal products.

Item 807. Articles assembled abroad in whole or in part of fabricated components--the product of the United States which was exported in condition of (a) assembly or further fabrication, (b) has not lost its physical identity in such articles by changing form, shape or otherwise, and (c) has not been advanced in value or improved in condition abroad, except by being assembled and except by operations. This could be an assembly process such as cleaning, lubricating and

painting. They pay a duty upon the full value of the imported article, less the cost or value of such products of the United States.

The principle conditions of Item 806 is that the American metal product be exported for processing and that it be returned for further processing, and will not fall in this category. The processing in the United States must be of a substantial nature and it is advisable to clear it with customs before returning the article. The main difference in status of articles under Item 806 is that the duty applies to the cost of the processing done abroad while the duty on assembled articles applies to their full market value, less the cost of the exported components. The duty that is payable on the return of the article depends on the nature of the returned article. Different articles carry different rates. This can be checked in the tariff schedules of the United States or at the customs house or with your customs-house broker.

Another important feature of Item 807 is that to be deductible from the full value of the returned article, the American components must not change in condition by further fabrication, must not lose their physical identity of the assembled article by any change in form, shape, or otherwise--or they must not be advanced in value or improved in condition abroad except by the act of assembly and operations incidental to the assembly. An example of a change would be the cutting and sewing of buttonholes in front of a shirt. This change would exclude the cost of that particular component from being deducted for duty purposes upon return. It is always advisable to check with United States customs prior to assembling or processing any article in this area, and to obtain a ruling from the Bureau of Customs in Washington, D. C. by submitting samples of components, the assembled article, and all details of manufacture or assembly. This assures the importer that he knows in advance what duties would be applicable to his products on return to the United States. The most important item is the establishment of the market value of the import article for appraisement purposes and as a basis for collecting import duties. The customs law defines the value of imported merchandise for customs purposes briefly, as follows:

Export value. "If there is no export value, what is known as United States value, and if there is no United States value, then what is known as constructive value, each of the last two being an attempt to arrive at a constructive export value." Briefly defined, export value is price of the country of exportation at which the merchandise is freely sold in wholesale quantities (fact) for exportation to the United States. The United States value is an alternate base of appraisement when there is no export value--no sales. This value is the market price of the imported merchandise in the United States at wholesale with deductions for profit and general expenses in the market in the United States, the cost of transportation and insurance from the point of shipment abroad to the point of delivery in the United States, and a deduction for United States duties.

It has been our experience that due to the circumstances surrounding the assembly of goods abroad, elements of value for appraisement purposes are ordinarily lacking to preclude the appraisement either export or United States value. So we get to the very last resort, which is known as constructive value--the final basis for appraisal. This value is the sum of all costs, components, materials, labor, overhead, and a normal profit depreciation and normal profit to arrive at a fair market value in wholesale quantities in the country of exportation. It is most advisable to establish with the district director of customs, the proper value on goods, state, general expenses, and profits which must be added to arrive at a full market value. All merchandising imported into the United States must be legibly and conspicuously marked to indicate to the ultimate consumer its country or origin of manufacture. For the purposes of the marking law, goods assembled abroad from American components are considered the product of the country where they are assembled. And must be so marked before they are permitted entry for consumption in the United States. The Bureau of Customs has ruled that there is no objection to marking goods with words such as "assembled in Mexico from American components." The United States Customs service is exactly what its name implies--here to serve you. Red tape and delays are kept to a minimum. Immediate delivery of the merchandise may be obtained on arrival with presentation of the proper documents.

I would like to leave one last impression about the United States Customs service. The customs house, the district director's office, my office, the offices of all my fellow employees are open to the public, and we encourage you to visit us and to use our service which is our mission.

UNITED STATES COMMISSION ON CIVIL RIGHTS

STAFF REPORT

THE COMMUTER ON THE UNITED STATES-MEXICO BORDER

INTRODUCTION

One of the most commonly voiced concerns of the Mexican American community in the border area is with the commuter, the Mexican alien who resides in Mexico and commutes to work across the border in the United States, 1/ forcing domestic workers to compete for wages with workers living in a much lower cost economy. Commuters represent a supply of workers in excess of the demand who depress the wage rate, displace the domestic worker, and lower his living standard. The commuter poses an even greater threat to the economic well being of the domestic worker when he serves as a strike-breaker, as he has done in Starr County, Texas and Delano, California, thus stifling the organizing and collective bargaining efforts of the American laborer. 2/

As viewed in the 1968 Report of the Senate Migratory Labor Subcommittee, The Migratory Farm Labor Problem in the United States, "(t)he problems created by the commuter are manifest":

The Mexican aliens, as a group, are a readily available, low-wage work force which undermines the standards American workers generally enjoy throughout the rest of the country. More importantly, the normal play of free enterprise principles is subverted and prevented from operating to develop standards along the border commensurate with the American standard. So long as Mexican aliens are allowed indiscriminately to work in the American economy, and take their wages back to the low-cost Mexican economy, the growth of the American standards will continue to be stultified. 3/

1/ There is also, but to a smaller extent, commuter traffic across the American-Canadian border. Canadian commuters do not depress local economic conditions, as do Mexican commuters, because they live in a substantially identical cost-of-living economy, work in highly unionized occupations and are highly unionized themselves. Being well assimilated into the labor force, they offer no undue competition to American labor.

2/ See p. 17 infra.

3/ Senate Migratory Labor Subcommittee, The Migratory Farm Labor Problem in the United States, S. Doc. No. 1006, 90th Cong., 2d Sess. 45 (1968).

WHAT IS A COMMUTER?

The term "commuter" is taken by most residents of the border area to refer to all persons who travel to their work on the American side of the border from their place of actual residence in Mexico, whether they commute daily or on a less frequent basis. Several classes of persons commute to work across the border, including American citizens living in Mexico and Mexican citizens with temporary visas (commonly referred to as "white carders"). The latter group acquires employment here in violation of their limited status. In its strict legal sense (and as it will be used here) the term "commuter" is limited to immigrants lawfully admitted for permanent residence and gainfully employed here, but who retain actual residence in Mexico (sometimes referred to as "green carders", although, in fact, all immigrants, whether or not "commuters" are issued "green cards").

There is wide disagreement about the actual extent of the commuter traffic. The Immigration and Naturalization Service conducted a survey on January 11 and 17, 1966, finding a total of 43,687 commuters. The United Farm Workers Organizing Committee, AFL-CIO, on the other hand, has estimated the number to be closer to 150,000. While the former estimate includes only daily commuters working along the border, the latter includes aliens remaining here for periods of weeks or months, usually working in areas farther North.

The commuter should not be confused with the non-immigrant Mexican contract laborer previously brought in for seasonal employment under Public Law 78 (known as the "bracero" program) and recently brought in under section 101(a)(15)(H) of the Immigration and Nationality Act of 1952. The bracero program was originally established during World War II to augment the American labor shortage. Thereafter, Congress continually extended it (even when there was domestic unemployment) under pressure from an agri-business which had to come to assume a vested interest in this cheap labor supply.

In 1964, after the national conscience took stock of the rising rate of agricultural unemployment, the increasing of discrepancy between farm labor wage rates and those for comparable work, and the worsening conditions in migrant labor camps, Public Law 78 was terminated. ^{4/} The effect of this termination was softened by the

^{4/} Report from the Secretary of Labor, Year of Transition -- Seasonal Farm Labor 2 (1965).

admission of a decreasing number of contract laborers under the above mentioned provisions of the Immigration and Nationality Act. During the last year of the bracero program 177,736 Mexican laborers were admitted; in 1965, under the new procedure, the number was reduced to 20,286. In 1966 the number decreased to 8,647 and in 1967 to 7,703. The year 1968 was the first year in which there was no admission of contract laborers and marks the final phasing-out of the contract labor program.

Like all persons immigrating to the United States, the commuter must apply for and obtain the status of a permanent resident alien and receive an alien registration card (Form I-151, commonly referred to as a "green card") as evidence of his lawful admission. Under section 212(a)(14) of the Act, in order to qualify for employment in the United States, the applicant must secure certification from the Secretary of Labor to the effect that:

there are not sufficient workers in the United States who are able, willing, qualified and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed.^{5/}

Under the present Immigration and Naturalization Service (hereinafter "Service") interpretation and enforcement of this section, compliance with this provision need only be made at the time of the commuter's original entry. Once his status is secured he may enter and leave the country at will, working wherever he pleases, regardless of the effect he might have on domestic working conditions.^{6/}

A 1967 amendment to the regulations ^{7/} bars the employment of green card holders (commuters and residents) at locations where a

^{5/} Immigration and Nationality Act, §212(a)(14), 8 U.S.C. §1182.

^{6/} See discussion of Amalgamated Meat Cutters case p. 9 infra.

^{7/} Title 8, §211(b).

labor dispute has been certified by the Secretary of Labor. On July 10 and 27, 1967, some 16 work stoppages were certified in Rio Grande Valley of Texas, El Paso, Texas and in Southern California, with the effect of preventing commuters from accepting employment at the struck concerns. Even commuters who have secured their immigrant status are covered by the section. A major exception exists, however, with regard to workers already employed at the struck concern at the time of certification. This exception renders the regulation somewhat ineffective in preventing commuters from working as strikebreakers since an employer usually has ample time after a labor dispute occurs to hire needed alien employees before the dispute is certified. This problem could be met if the regulation were modified so as to exclude all green carders not employed at the time that the dispute began.

Once admitted, a commuter is entitled to most of the rights and privileges of an ordinary citizen except the right to vote and hold public office. Unlike most of the more than 650,000 Mexican aliens currently possessing green cards, commuters are not seeking eventual citizenship. Instead they look upon their green cards as nothing more than work permits. In fact, by law commuters cannot claim naturalization benefits; it has been held that actual domicile here is a prerequisite to naturalized citizenship. 8/

LEGAL BACKGROUND OF AND LEGAL CHALLENGES TO THE COMMUTER SYSTEM

The commuter system has deep roots. People have commuted to work across the United States-Mexico border since the border's inception. Up until the 1920s this traffic was unrestricted. In 1924 a quota system was established which, while not restricting Mexicans directly, required Mexican immigrants to present immigrant visas for entry. 9/ An exception to the Act's definition of the term "immigrant" ("any alien departing from any place outside the United States destined for the United States" 10/) was made for "an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure". 11/ At first commuters were considered as being here

8/ Petition of Wright, 42 F. Supp. 306 (1941); In re Barron, 26 F.2d 106 (1928); Petition of Correa, 79 F.Supp. 265 (1948).

9/ Immigration Act of 1924, Ch. 90, 43 Stat.153.

10/ Id. §3.

11/ Id. §3(2).

"temporarily for business" and deemed not to be immigrants and, hence, were allowed to continue their employment pattern unrestricted. In 1927 immigration authorities reversed this position and classified commuters as immigrants. 12/

Two commuters contested this new classification and the Supreme Court, finding that one of the "great purposes" of immigration legislation "was to protect American labor against the influx of foreign labor", held unanimously that the term "business" was not meant to include everyday employment. The commuter was not to be exempt from the immigrant status. 13/

The Immigration authorities, however, saw their duty as the protection of diplomatic relations between the United States and Mexico rather than the protection of American labor. In a paper by the Immigration and Naturalization Service prepared for the Select Commission on Western Hemisphere Immigration, the Service stated:

In studying the problem (status of the commuter) at that time, the immigration authorities concluded that Congress had not intended to interfere with the established pattern of regular border crossings by workers from Mexico or Canada who commuted to jobs in the United States. While such aliens could obtain immigrant visas without difficulty, they would be faced with an impossible task if they were required to obtain a new visa for each daily reentry. Consequently, the immigration authorities devised a border crossing identification card which could be used by aliens who frequently cross the international boundary. The issuance and use of such border crossing cards received express sanction

12/ General Order 86 of Apr. 1, 1927.

13/ *Karnuth v. United States ex rel.* Albro, 279 U.S. 229, 243, 244, (1929).

by the Congress in the Alien Registration Act of 1940.

Thus a commuter was able to procure an immigrant visa and subsequent lawful admission as an immigrant. Thereafter he would obtain a border crossing identification card, and with that card he could enter each day to go to his job as returning to his immigrant status in the United States. This arrangement was in harmony with the established good-neighbor policy with Mexico and Canada, facilitated travel across the Mexican and Canadian borders, and avoided serious dislocations in the border areas. 14/

Actually, the commuter system is without express statutory basis. In fact the term "commuter" is not to be found in the Act. Its special character has been described by the Board of Immigration Appeals in the following way:

The commuter situation manifestly does not fit into any precise category found in the immigration statutes. The status is an artificial one, predicated upon good international relations maintained and cherished between friendly neighbors. 15/

In Gordon & Rosenfield, Immigration Law and Procedure, (1959) this description is found:

Where this employment (of Canadians and Mexicans) is permanent in character administrative ingenuity has devised a "commuter" status, which enables the Canadian or Mexican to obtain lawful admission for permanent residence in order that he may be able to pursue his employment here, and his right to enter each day is attested by his alien registration receipt card. Of course, this device is an amiable fiction. . . . 16/
(Emphasis added.)

14/ Report of the Select Commission on Western Hemisphere Immigration Commuters, Historical Background, Legal Challenges, and Issues 101 (1968).

15/ Matter of M.D.S., 7 Immigration and Naturalization Dec. 209 (1958).

16/ Gordon and Rosenfield, Immigration Law and Procedure 127 (1959).

Due to the absence of statutory foundation, immigration authorities have attempted to justify the commuter program's existence by its long-standing history, the fact that the program has long been well known to Congress and the fact that it was discussed and impliedly endorsed by the Senate Judiciary Committee study preceding the passage of the Act of 1952. "Nothing in the Immigration and Nationality Act of its legislative antecedents indicated that the Congress was dissatisfied with the commuter program or desired to change it in any way". ^{17/} The continuation of the commuter program after the 1952 Act was endorsed by the Board of Immigration Appeals in the Matter of H. O., 5 I. & N., Dec. 716, 1954.

It also has been argued that the structure of the statutory and regulatory provisions facilitating re-entry supports the commuter program. Section 211(b) of the Act provides that

. . . under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 101(a)(27)(B) . . . may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigration visa, reentry permit or other documents.

A "returning resident immigrant" is defined by the statutory definition alluded to as "an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad." In turn, section 101 (a) (20) defines the term "lawfully admitted for permanent residence" as ". . . the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed". As pointed out by L. Paul Winings, past General Counsel for the Immigration and Naturalization Service, in defining the term "lawfully admitted for permanent residence", the Act

. . . does not say one who has been admitted for permanent residence and has established such residence in the United States. What it says is that it is the status of having been accorded the privilege of permanent residence. In other words, I have paid my way into the ballpark; if I want to go out temporarily, I can come back in. ^{18/}

^{17/} See n. 15 *supra*, at 102.

^{18/} House Judiciary Committee, Study of Population and Immigration, Administrative Presentations (III), Admission of Aliens into the United States for Temporary Employment and "Commuter Workers" 167 (1963).

The regulation promulgated pursuant to section 211(b), however, does not provide for the re-entry of persons "lawfully admitted for permanent residence" as that term is defined by the Act. Instead it says:

In lieu of an immigrant visa, an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding 1 year may present Form I-151, Alien Registration Receipt Card, duly issued to him . . . 19/
(Emphasis added.)

Although the immigration authorities take the position that this section was not meant to be exclusive, a strong argument can be made that by its wording it in fact excludes commuters. As one commentator has noted, a commuter "is not returning to an unrelinquished, lawful, permanent residence after a temporary absence not exceeding one year because his residence is not in the United States and as a rule he has/ maintained . . . residence in a foreign country for a period exceeding one year." 20/

In Amalgamated Meat Cutters v. Rogers,21/ a case involving the Service's interpretation and enforcement of aforementioned section 212(a)(14) of the Act (precluding admission of aliens for skilled or unskilled labor when the Secretary of Labor certifies that such admission would adversely affect American labor), doubt was cast upon the Service's position. That case involved a strike situation where a certification had been made. In response, the Service instructed the authorities at the relevant points of entry that during the effectiveness of the certification no aliens applying for admission and destined for employment at the struck operation, "except returning lawfully domiciled resident aliens", should be admitted.

The Service took the position that commuters are "aliens lawfully admitted for permanent residence". The Court disagreed - "It is clear that Mexican commuters do not reside in the United States, and that it therefore is not possible for them to be aliens

19/ 8 CER. 211.1 (6).

20/ Newman, The Legality of the "Commuters" or "Green Card Holders" Working in the United States, in Cabinet Committee Hearings on Mexican American Affairs 63 (1968).

21/ 186 F.Supp. 114 (D.C. D. C.) (1960).

lawfully admitted for permanent residence." Any other construction, the Court felt, would " . . . make shambles of a provision which . . ." was designed to " . . . assure strong safeguards for American labor". 22/ The suit had become moot by the time that final judgment was entered, and hence was not appealed by the Service. "However, the administrative authorities do not believe (the decision) is correct and do not follow it". 23/

The rationale in the Amalgamated Meat Cutters decision is equally relevant to the validity of the whole commuter system and, logically, should compel a conclusion contrary to that taken by the Service. The Court by way of obiter dictum, however, expressly limited its holding in this respect:

This should not mean, however, that Mexicans or Canadians cannot commute to work in the United States. The defendants can utilize the documentary requirements and administrative procedures they think best under the applicable law for aliens who work in this country and live in Mexico or Canada. If the defendants are satisfied that an alien can enter the United States to work here, they could then permit the alien to commute. But when the Secretary of Labor has issued a certification under §212(a)(14) pertaining to particular employment, such as an alien would be excludable. It is not sufficient to resort to an "amiable fiction" to justify a wholesale evasion of the Secretary's certification -- Mexican commuters destined for the employment covered by the certification must be excluded just as any other Mexican non-resident alien. 24/

The commuter program was squarely attacked in a 1964 case, Texas State AFL-CIO v. Kennedy, 25/ where workers from the Texas border area, alleging economic detriment, sued the immigration authorities for injunctive relief against continuation of the commuter system. The Court avoided reaching the merits by dismissing the action on the grounds that the plaintiffs lacked standing to sue. Since 1964 the law of standing has changed radically, 26/ and a similar suit has recently been brought by California Rural Legal Assistance in behalf of California farm workers displaced by commuters taking temporary

22/ Id. at 119.

23/ Immigration and Nationality Act, with Amendments and Notes on Related Laws 231 (5th ed. 1966).

24/ See n. 21 supra, at 119.

25/ 330 F.2d 217 (C.A. D.C. 1964).

26/ See Flast v. Cohen, 392 U.S. 83 (1968), overruling the 45 year old barrier to standing, Frothingham v. Mellon, 262 U.S. 447 (1923), and repudiating its doctrine of judicial restraint in this area.

employment in California and freely returning to Mexico for a period of weeks or months. 27/ The complaint seeks an order requiring immigration officials to deny admission to "returning resident immigrants" who fail to demonstrate a bona fide permanent residence in the United States (e.g., commuters). "In determining the question of bona fide permanent residence . . .", the plaintiffs suggest the following indicia might be considered:

1. Possession of a U.S. Selective Service classification card in the alien's name, reflecting a United States address.
2. Possession of state and federal income tax returns in the alien's name, showing residence in the United States.
3. A driver's license in the alien's name issued by a State of the United States, reflecting a United States residence.
4. A vehicle registration in the alien's name reflecting a United States residence.
5. If the alien is married, the fact that both wife and children reside in the United States.
6. Evidence that his children attend school in the United States, or that a child was born in the United States.
7. Evidence of active membership in clubs, associations or unions organized or incorporated in the United States.
8. Convincing evidence of permanent employment in the United States.
9. Rent receipts, other than from a labor camp, hotel or motel, tending to evidence permanent residence in the United States.
10. Place of employment, occupation and length of employment. 28/

27/ Gooch, et al. v. Clark, et al., Civil No. 49500 (N. D. Cal., 1968).

28/ Brief for Plaintiff at 10, Gooch, et al. v. Clarke et al., n. 28, supra.

Although the Service deems the commuter status to be consistent with the letter and intent of the Immigration and Nationality Act of 1952, it has been held that a commuter cannot even become a citizen (the assumed purpose for immigration under the Act) because, by definition, his assimilated status does not conform to the standard of residency (actual domicile in the United States) required by the Act for naturalization. 29/

Similarly, although a commuter must notify his Selective Service board of his current address, 30/ he is not actually subject to be drafted since he is not a resident of the United States under current Selective Service regulations 31/ because he did not reside in the United States for the required three month period.

Commuters also are treated differently from other "immigrants" with regard to Federal income tax status. An alien who has established residence in the United States is liable for Federal income tax on his entire income, from sources both within and without the United States. Whether an alien is a resident depends on the facts and circumstances of each case. The type of visa issued is only one of the elements considered. In response to an inquiry on this matter from the House Judiciary Committee, the Internal Revenue Service had this to say about commuters:

It appears from the information submitted that the aliens about whom you are inquiring have never established a residence in the United States, but have obtained permanent visas merely to facilitate their entry into and departure from this country. Under such circumstances, the status of these individuals is that of nonresident aliens. 32/

29/ See n. 9, supra.

30/ See § 35 of the Alien Registration Act of 1940, as amended, and regulations issued thereunder.

31/ 32 C.F.R. 611.13(a)(6), 611.13(b)(7), (1944).

32/ See n. 19 supra, at 170.

Hence commuters, unlike other green card holders, are not subject to Federal income tax on income from sources outside this country.

THE IMPACT OF COMMUTER TRAFFIC

Much of the border area has relatively large labor surpluses, partly because of the large number of low skilled U.S. citizens and resident aliens residing in the area. ^{33/} Commuters, however, make up a significant part of the work force in many of the border communities. Although accurate statistics are not kept by the Immigration and Naturalization authorities, sample counts of the number of commuters crossing the border are taken from time to time. One such count, taken on January 11, 1966, showed that 42,641 commuters, of which 17,653 were employed in agriculture, entered the United States. The impact of these commuters on the labor market has been enormous. It has been estimated that over 17% of the labor market in El Paso, Texas, are commuters. Further estimates have shown that 5% of the San Diego, California, labor market and 23% of the Brownsville, Texas, labor market are commuters. Their presence can be directly related to high unemployment rates in these areas. ^{34/}

Many people have commented on the impact of the commuter traffic in the border area. Senator Edward Kennedy of Massachusetts, speaking on a proposed amendment to Section 212 of Immigration and Nationality Act, said:

In El Paso, where unemployment is currently some 35 percent greater than the State average, the estimated number of commuters in 1966 was more than double the number of unemployed. In El Centro, California, where the unemployment rate is currently 13.1 percent, the estimated number of commuters in 1966 was nearly double the number of unemployed. ^{35/}

^{33/} Report of the Select Commission on Western Hemisphere Immigration, The "Commuter Problem" and Low Wages and Unemployment in American Cities on the Mexican Border 116 (1968).

^{34/} Moore, Mexican-Americans: Problems and Prospects 12 (1967).

^{35/} 133 Cong. Rec. 205 §14 (daily ed. Dec. 14, 1967).

A report by the Social Action Commission of the Catholic Diocese of El Paso indicated that one of the reasons for the low wages in El Paso is because " . . . the Mexican American must compete with some 25,000 workers from Mexico . . . legal alien commuters, U.S. citizens, and illegal entrants . . . who daily cross the bridge from Juarez to work in El Paso. Generally speaking, the workers from Mexico find no inconvenience in working for the barest of wages in El Paso." 36/

The employment of commuters in areas of high unemployment is a characteristic of the communities along the border area. Data published by the Texas Employment Commission in 1966, shows that the unemployment rate in the border towns on that date was substantially greater than in the interior cities. (See Table I) Laredo had the highest rate - 9.6%. The average rate for the four border areas (Brownsville-Harlingen-San Benito; El Paso; Laredo; and McAllen-Pharr-Edinburg) was 6.6%, compared with the 3.4 percent rate for the other 18 interior areas for which data was given. 37/

In a special survey held in Laredo by the Department of Labor during the summer of 1961, when the unemployment rate was 11.3%, the Department reported that a large number of unemployed American workers had the same occupational skills as the employed alien commuters.

36/ Catholic Conference Office of Immigration (Oct. 11, 1968). Organized labor also has shown concern. The following resolution was passed by the Texas AFL-CIO in Jan. 1968:

. . . (T)housands of commuter aliens who cross the border daily to work, cause the unemployment of American citizens and create unfair competition in the labor market by working for sub-standard wages and then returning to Mexico at night where their living costs are much lower.

37/ These unemployment rates, supplied by the Texas Employment Commission, are somewhat conservative since they are based upon the number of persons registered with the T.E.C. offices. Many farm workers secure employment through the crew leader and never register with the T.E.C.

Table I
Unemployment Rates in 22 Texas Cities
1966

City	Rate	Rank
4 Border Cities	6.6	---
Brownsville-Harlingen-San Benito	6.5	21
El Paso	4.4	17
Laredo	9.6	22
McAllen-Pharr-Edinburg	5.8	20
18 Interior Cities	3.4	---
Abilene	3.6	11
Amarillo	2.9	4
Austin	2.6	3
Beaumont-Port Arthur-Orange	4.0	15
Corpus Christi	3.7	12
Dallas	2.5	2
Fort Worth	2.9	4
Galveston-Texas City	4.7	19
Houston	2.4	1
Longview-Kilgore-Gladewater	3.3	8
Lubbock	3.8	13
Midland-Odessa	3.4	9
San Angelo	3.4	9
San Antonio	4.3	16
Texarkana	3.8	13
Tyler	3.3	7
Waco	4.4	17
Wichita Falls	3.0	6

SOURCE: The Texas Labor Market, Texas Employment Commission.

While two garment manufacturers employed 88 commuters as sewing machine operators, the Texas Employment Commission office had on file applications from 156 unemployed U.S. workers qualified for that position. 38/ The survey showed that commuters were not limited to the garment industry, but were employed in hotels, restaurants, the retail trades and service establishments. The survey included a sample of firms employing 3,000 workers.

(T)hese firms employed 438 Mexican aliens identifiable as commuters. In addition, the survey team suspected that other alien employees of these firms were commuters, although they had given U.S. addresses to their employers. 39/

The survey also included data on 19 occupational areas:

(T)he firms employing only domestic workers paid higher rates for 15 occupations; in one occupation the rates paid were the same; and for three occupations the firms employing alien commuters paid higher rates. There were also instances where the same firms paid its alien commuters less than it paid U.S. workers for the same work. The average of the wage rates for these 19 occupation areas paid by the firms employing only U.S. workers was 38 percent higher than the average rates paid by the firms employing alien commuters. 40/ (See Table II)

United States Commission on Civil Rights field investigations in Laredo showed similar discrepancies in the trucking industry. For instance it was reported that Brown Express Lines, which hires few commuters, pays drivers \$3.39 an hour; Alamo Express Lines, employing proportionately more commuters, pays \$1.85 an hour. 41/

38/ See n. 34 at 120.

39/ Id. at 120.

40/ Id. at 121.

41/ Interview with Mr. David Jacobs, AFL-CIO, in Laredo, Texas, Sept. 10, 1968.

Table II Occupational Wage Structure
Laredo, Texas, June, 1961

Industry & Occupation	Average wage rate	
	Firms employing only domestic workers	Firms employing domestic & alien computer workers
<u>Hotels & motels</u>	\$58 per week	\$34 per week
Cook	20 "	17 "
Maid	25 "	20 "
Hall boy	15 "	18 " , plus tips
Waiter	25 "	13 " , plus tips
Busboy	58 "	46 "
Bartender	15 "	16 " , plus tips
Bellboy		
<u>Drugstores & related firms</u>		
Cashier	\$27 "	\$12 "
Stock clerk	52 "	40 " , + \$3 meal allowance
Fountain girl	16 "	23 "
Drug clerk	77 "	55 per week
<u>Grocery & related firms</u>		
Cashier	\$24 "	\$24 "
Stock boy	35 "	20 "
Produce man	45 "	35 "
Butcher	65 "	52 "
Warehouseman	37 "	31 "
<u>Misc. retail firms</u>		
Porter	\$53 "	\$35 "
Warehouseman	73 "	21 "
Stockman	53 "	45 "

Technical Note: Data were collected in the survey concerning the different rates paid each occupation in each firm. For some occupations monthly rates were reported; these were converted to weekly rates by dividing the monthly rate by 4.33. The number of workers paid each rate was not reported in all cases, making it impossible to compute an average rate weighted by the number of workers paid each rate. The average rates shown in the table represent the average of the highest and lowest rates paid. These averages correspond quite accurately with the weighted averages computed for the few occupations where data were reported for each worker.

The pattern of commuter involvement in the Laredo labor market is found elsewhere with comparable effects. As in Laredo, a survey was conducted by the Department of Labor in El Paso, Texas, during the summer of 1961. About 1,000 commuters were employed in the 75 firms surveyed. It was noted, however, that " . . . these figures might be more because one firm indicated that it did not employ commuters but sent a bus to the border each day to pick up workers." 42/ The average wage in manufacturing in El Paso is extremely low. That city ranked lowest of the eight major Texas areas for which the Texas Employment Commission supplied data. (See Table III)

In El Paso, nondurable goods employment is heavily concentrated in garment manufacturing -- almost 75% of all nondurable goods workers are in this industry. The wage rate in garment manufacturing is little more than the minimum required by the Fair Labor Standards Act. Large numbers of commuters (mainly women) are employed in this occupation. Many people believe that the presence here of the garment industry, a recent phenomenon, is due to the large supply of labor and low wages -- both conditions owing, in part, to the commuter program. 43/ The El Paso survey concluded by showing that out of 11 construction firms 5 employed commuters; out of 4 retail dry goods firms, 3 employed commuters; out of 4 wholesale and warehouse firms, 3 employed commuters. In all these cases the firms employing commuters paid the lowest wages. 44/

The impact of the commuter is particularly acute in agriculture, where mechanization is rapidly reducing job opportunities. Due to the high concentration of farms along the border and the fact that commuters often work in the lowest skilled, lowest paid jobs, farm workers, who are already underpaid, are the first to suffer competition from the commuter. Furthermore, the use of commuters as strike breakers (see discussion on page 17, infra) is especially damaging to this group's organizational struggles.

The wages paid farm workers in the border area are substantially lower than in interior regions. In the Rio Grande Valley, where 37% of the alien commuters worked on farm jobs, the 1966 wage rate was \$.75 per hour, 31% less than the \$1.10 average in the rest of the state. 45/ Similarly, California farm rates are the lowest in the border areas where the bulk of the farm labor force is composed of commuters. The commuter's impact is also reflected in the

42/ See n. 34 at 121.

43/ Id. at 120.

44/ Id. at 122.

45/ Id. at 119.

Table III. Average Hourly Earnings in Manufacturing Industries

Eight Major Texas Cities
1966

	Average Hourly Earnings		
	<u>All Manu- facturing</u>	<u>Durable Goods</u>	<u>Nondurable Goods</u>
Texas	\$2.57	\$2.62	\$2.52
El Paso	1.90	2.46	1.72
Austin	1.98	1.71	2.26
Beaumont	3.35	3.03	3.48
Corpus Christi	2.96	2.57	3.26
Dallas	2.37	2.52	2.10
Fort Worth	2.81	2.97	2.39
Houston	3.00	2.87	3.16
San Antonio	1.98	1.92	2.02

SOURCE: The Texas Labor Market, Texas Employment Commission.

agricultural unemployment rate. For example, "commuters constitute about 85% of the farmwork force in California's Imperial Valley, where unemployment in 1966 was 10% of the labor force, twice the average for the entire state." 46/

EMPLOYMENT OF ILLEGAL ENTRANTS AND WHITE CARDERS

It is important to note the role of illegal entrants and white carders (see discussion on page 2, infra) in the employment picture in the border area. During 1967 the Border Patrol apprehended 86,845 deportable Mexicans working illegally, many in the border area. Of this number 27,830 were working in agriculture, 5,906 in trades, crafts and industry, and 53,109 in other occupations. 47/

The border crossing statistics kept are inadequate to accurately gauge the extent of white card employment. There are approximately 1,250,000 current white card holders, and about 450,000 new white cards are issued annually. In 1968 there were 25,000 white carders who were deported, most of these for illegal employment. 48/ But it is felt by many residents of the border area that deportation figures do not fairly represent the number of white carders actually employed. 49/

46/ See n. 3 at 45.

47/ Immigration and Naturalization Annual Report 93 (1967).

48/ Interview with Mr. Donald Coppock, Deputy Associate Commissioner for Domestic Control, Immigration and Naturalization Service, in Wash., D.C., October 15, 1968.

49/ Interview with Mr. Henry Munoz, Jr., Texas AFL-CIO, in Austin, Texas, Sept. 10, 1968. The Service's recognition of the illegal employment of white carders was evidenced by a recent announcement of proposed regulation changes. Under current regulations white carders are issued undated cards and are expected to return within 72 hours and travel no farther than 150 miles from the border. "Government officials say the lack of dates on the present crossing cards makes it almost impossible to enforce regulations."

The proposed changes would limit the travel on undated cards to within 25 miles of the border. For those wishing to travel further a supplemental card that is dated will be issued allowing a 15 day visit. Of course these new limitations will not affect the employment pattern of white carders along the border area. See San Antonio Express, p. 1 (Nov. 29, 1968).

This is because many white carded workers are employed in occupations with low visibility and even with the best efforts of immigration authorities, they cannot be easily discovered. Many white card holders use their 72 hour passes to engage in menial work as domestic maids, dishwashers, hotel and motel workers, and construction workers. Others work in such semi-skilled jobs as masonry and carpentry. 50/

One reason for this wholesale employment of white carders is the lack of legislation effectively preventing employers from knowingly hiring these workers. As it now stands, the law contains provisions expressly facilitating such employment. Section 274(4) of the Act, prohibiting the harboring and concealing of aliens, contains the following proviso:

... for the purposes of this section, employment including the usual and normal practices incident to employment shall not be deemed to constitute harboring. 51/ (Emphasis added.)

The need for legislation correcting this situation is manifest.

USE OF COMMUTERS AS STRIKE-BREAKERS

Organized labor has been deeply concerned with the use of commuters as "strike-breakers, when workers were engaged in the process of trying to negotiate conditions covering their wages". 52/ The recent strike in Starr County, Texas, presented an example of the use of commuters during labor disputes. In a hearing held by the Senate Subcommittee on Migratory Farm Workers Organizing Committee of the AFL-CIO, had this to say about one of the farms which his organization picketed:

Mr. Padilla: La Casita Farms, which we are on strike with. And this is a bona fide certified strike, issued by the State of Texas, the Texas Employment Commission. I witnessed that they load the bus full of Mexican nationals, and escort them right into the fields, and now they tell us that we don't have a right to picket, to talk to them.

50/ Id.

51/ See Immigration and Nationality Act, n.5, supra.

52/ Hearings on § 8, 195, 197, 198 Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare, 90th Cong., 1st Sess. pt. 1, at 170 (1967).

Mr. Yarborough: You mean that La Casita Farms took their transportation to the bridge and picked these workers up with the green cards and brought them straight up to their farms, and put them on the farms?

Mr. Padilla: That is correct, sir. 53/

Domingo Arrendondo, Strike Chairman, United Farm Workers Organizing Committee, AFL-CIO, said with regard to the Starr County strike:

(T)he problem about these green carders is that they come to work from Mexico every day. They will come in the morning and they will go back at night. Now that the minimum wage came up, or a little bit right after the strike started, they raised the price on these workers from 85 cents or 80 cents to \$1 an hour and to \$1.50. That was just a symbol to break the strike movement, to keep these people from joining the strike for better wages, or for a contract, or a union contract. We went and talked to these people at the bridge, international bridge. We told them to cooperate with us for better wages and working conditions, but they will always say that if their friend had already signed that they would sign, that they would sign but they would probably get laid off their jobs. So, really we couldn't get no where convincing them that a union is something that a worker needs. (Sic) 54/

A result of the misuse of green card workers as strike-breakers was the aforementioned 1967 amendment to the INS regulation, barring employment of green card holders at locations where a labor dispute has been certified by the Secretary of Labor. 55/

53/ Id. at 334.

54/ Id. at 363.

55/ See n. 7.

RELATIONSHIP OF COMMUTER TRAFFIC TO MIGRATION

As a result of its impact on wages, unemployment and working conditions, the commuter traffic contributes to the annual massive migration of Mexican Americans from the border area. The Social Action Department of the Texas Catholic Conference estimates that because of the lack of opportunities in South Texas, 88,700 farm workers must migrate to other areas of the country every year in order to find employment. These are people who live in the border areas and would otherwise seek employment there, but for the saturation of the labor market by the commuters. The Committee had this to say:

Unfortunately, because of the vast supply of green carders . . . the domestic workers are unable to compete with the depressed wages that result from the availability of cheap labor to the growers. This accounts for the fact that almost one-half of the Texas migrant workers come from the four counties of the Lower Rio Grande Valley.^{56/}

PROPOSED SOLUTIONS TO THE COMMUTER PROBLEM

Various recommendations have been made to alleviate conditions caused by the commuter program. Henry Munoz, Jr., speaking for the Texas AFL-CIO, urged that the Department of Labor issue a regulation for a minimum wage law of \$1.25 to be applicable to green-card holders and commuters. ^{57/}

In a letter from Chairman Richard M. Scammon and Stanley H. Ruttenberg, of the Select Commission on Western Hemisphere Immigration, the following recommendations to the President regarding commuters were made:

As of a date certain, all visas issued for immigration into the United States be firmly understood to include a clear commitment by those immigrating to establish and maintain their bona fide residence within the United States.

^{56/} See n. 52 at 61.

^{57/} Munoz, View of Organized Labor 3.

A new form of border crossing authorization be established, this authorization being designed for use by non-citizens who do not intend to become immigrants in the ordinary sense of the word, but who do wish to work in the United States and continue to reside in their own "contiguous territory" country.

Within a grace period, action should be taken to terminate the commuter status of present "green cards" holders. 58/

On December 14, 1967 Senator Edward Kennedy, a member of the Senate Subcommittee on Migratory Labor, introduced a bill in Congress to amend Section 212 of the Immigration and Nationality Act. As the Senator explained, the amendment would not eliminate the commuter system, but refine its current operation. The bill in essence provides ". . . that each commuter alien must be regularly certified every 6 months by the Department of Labor that his presence in the United States to seek or continue employment does not adversely affect the wages and working conditions of American workers similarly employed. The bill provides for the revocation of a commuter alien's labor clearance if he violates administrative regulations, such as a ban on strike breaking, prescribed by the Department of Labor and the Immigration Service to carry out the purpose of this bill". 59/

58/ Letter from Richard M. Scammon and Stanley H. Ruttenberg to President Johnson, July 22, 1968.

59/ 113 Cong. Rec. 205 (December 14, 1967). The amendment reads as follows:

S. 2790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 212 of the Immigration and Naturalization Act is amended by adding at the end thereof a new subsection as follows:

"(j) Any alien lawfully admitted for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States and is returning from a temporary stay in such foreign country to seek or continue employment in the United States shall be admitted into the United States only if the Secretary of Labor has determined and certified to the Attorney General within six months prior to the date of admission that the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed, and if such certification has not been revoked on any ground. The provisions of this subsection shall be applicable to any aliens lawfully admitted for permanent residence, whether or not such aliens were so admitted prior to or on or after the date of enactment of this subsection."

This bill has received strong opposition from Chamber of Commerce groups, farm grower organizations, and retailers. The Laredo Chamber of Commerce has gone on record as being opposed to any change in the commuter system. 60/ This opposition is based on economic reasons. Laredo, last year, had retail sales of over 90 million dollars, much of this being to commuters. Business interests feel that if anything happens to change the status of commuters their towns will become "ghost towns". Organized growers are afraid that they will be cut off from a valuable supply of labor. Willis Deines, attorney for the Texas Citrus and Vegetable Growers, indicated why his group is opposition to the Kennedy Bill: ". . . It is axiomatic that if our growers do not have a source of labor that can be depended upon to do their farming operations, particularly in the harvest of perishables, then of course we would not have an industry." 61/

Businessmen in the Valley area have indicated a fear that any effort to terminate the commuter program will result in a retaliatory refusal by Mexico to allow its citizens to carry on their extensive trade in American border towns. The suggestion by Antonio Carrillo Flores, Foreign Secretary of Mexico, that Mexican commuters have "acquired rights", lends authority to this suspicion. 62/

The American government also has officially voiced its concern with diplomatic relations in approaching the commuter problem. In the aforementioned case of Texas State AFL-CIO v. Robert Kennedy, et al., where the legality of the commuter program was put into issue, Secretary of State Dean Rusk, submitted an affidavit opposing interference with the commuter program on the grounds that it would ". . . do harm to good neighbor relations in the area". 63/ He stated further:

(I)f as a result of a substantial reduction in the commuter traffic across the border between Mexico and the United States, a significant number of Mexican nationals would be deprived of their earning power, the trade between the two countries along

60/ See Laredo Times, p. 4 (Mar. 1, 1968).

61/ Id.

62/ See Laredo Times, p. 4 (Feb. 4, 1968).

63/ Brief for Defendant, Texas State AFL-CIO v. Robert F. Kennedy, et al., Civil No. 3468-61, n. 25, supra.

the border would be substantially reduced. We could expect that this would have an immediate depressing effect on the economy of the region on both sides of the border. Moreover, the loss of gainful employment and dollar earnings by 30,000 to 50,000 Mexican nationals, estimated at over \$50 million annually, might compel the government of Mexico to consider compensating steps, which would do further damage to the economic life of the region.

The Mexican American in the border area is thus charged with the responsibility of protecting our diplomatic relations. The economic burdens involved in this charge, he may justifiably feel, should be borne by the Nation as a whole, not thrust upon a minority of its citizens.

COMMENT

The Amiable Fiction—Alien Commuters Under Our Immigration Laws

Charles Gordon

THE ALIEN COMMUTER'S STATUS is a device of convenience, designed to cope with an anomalous situation under the immigration laws. Since 1924 those laws have classified entrant aliens as nonimmigrants (who enter for temporary stay) and immigrants (who enter for permanent residence).¹ Soon after the enactment of the 1924 Immigration Act² it was discovered that those classifications did not adequately deal with the situation of aliens in adjacent countries who commuted daily across the border to jobs in the United States, usually returning to their "foreign" homes each night.

In 1927 the Supreme Court ruled that a nonimmigrant could not accept employment in the United States.³ The impact of this ruling threatened the jobs of thousands of commuting aliens, with anticipated dislocation in the economy of many border communities and in our friendly, reciprocal intercourse with adjacent countries. To avert this potential embarrassment and disruption, the special commuter status was established by administrative regulation.⁴ Aliens residing in adjacent countries who had stable jobs in this country

* The views expressed in this article are the author's and do not necessarily represent the views of the Department of Justice.

¹ Immigration and Nationality Act, § 101(a)(15), 8 U.S.C. § 1101(a)(15) (1964).

² Act of May 26, 1924, ch. 190, 43 Stat. 153.

³ *Karnuth v. Albro*, 279 U.S. 231 (1929).

⁴ The history and development of the commuter practice, including a description of the regulation inaugurating it, is discussed in *Matter of L.*, 4 I. & N. Dec. 454 (1951); *Matter of M.D.S.*, 8 I. & N. Dec. 209 (1958); HOUSE JUDICIARY COMM., SUBCOMM. NO. 1, 88TH CONG., 1ST SESS., STUDY OF POPULATION AND IMMIGRATION PROBLEMS, Special Series No. 11 (G.P.O. 1963). The commuter concept is not now recited in the administrative regulations. See note 8 *infra*.

were admitted as immigrants, ostensibly for permanent residence. They were thus able to continue their employment in this country and to return to their foreign homes each night by exhibiting a border crossing card attesting their immigrant status.⁵ In recent years the identifying document has been the Alien Registration Receipt Card (Form I-151), popularly referred to as the "green card," which recognizes the bearer's lawful admission to the United States and is acceptable as a reentry document for lawful residents returning from a temporary absence abroad not exceeding 1 year.⁶ Consequently the alien commuters are often known as "green carders," but this designation is misleading, since Form I-151 is issued to all aliens who have been lawfully admitted to the United States for permanent residence⁷ — the majority of whom actually reside in the United States.

Although the commuter status has never specifically been authorized by statute, it has been sanctioned by administrative interpretation and practice in the ensuing 41 years.⁸ Moreover, this status was noted with apparent approval in the comprehensive report of the Senate Judiciary Committee which preceded enactment of the basic 1952 recodification of the immigration laws.⁹ The 1952 Act defines lawful admission for permanent residence as "the status of having been lawfully accorded the *privilege* of residing permanently in the United States as an immigrant."¹⁰ Under the administrative reading of this language, an alien commuter is recog-

⁵ Since the commuter status depends on continued employment in the United States, it has been decreed that interruption of such employment for a period of 6 months will terminate the status, unless the interruption was caused by uncontrollable circumstances, such as serious illness, pregnancy, or disabling injury. *Matter of M.D.S.*, 8 I. & N. Dec. 209 (1958). *Cf. Matter of L.*, 8 I. & N. Dec. 643 (1960) (never obtained job in United States before pregnancy); *Matter of Gerhard*, 12 I. & N. Dec. ---- (Int. Dec. No. 1823, 1967) (gave up job, but was reemployed within 6 months).

⁶ See 8 C.F.R. § 211.1(b) (1968). An amusing sidelight is that in recent years the Form I-151 has been blue and not green. Yet the popular usage is hard to change, and the holders are generally still called "green carders."

⁷ 8 C.F.R. § 264.1(b) (1968).

⁸ Indeed, the commuter concept has not been explicitly recited in the administrative regulations for many years, but has been supported by administrative practice and adjudications. See *Matter of L.*, 4 I. & N. Dec. 454 (1951); *Matter of M.D.S.*, 8 I. & N. Dec. 209 (1958).

⁹ S. REP. NO. 1515, 81st Cong., 2d Sess. 535 (1950) (A resident alien's border crossing card may be issued to "an alien who has been admitted for lawful permanent residence but who resides in foreign contiguous territory and is employed in the United States, the so-called commuter."). See also S. REP. NO. 1137, 82d Cong., 2d Sess. 4 (1952); H.R. REP. NO. 1365, 82d Cong., 2d Sess. 32 (1952).

¹⁰ Immigration and Nationality Act, § 101(a)(2), 8 U.S.C. § 1101(a)(20) (1964) (emphasis added).

nized as having that privilege even if he has not actually established residence in the United States. The administrative authorities have found that Congress recognized and approved the commuter practice, at least implicitly, in the 1952 Act.¹¹ They have found nothing in the far-reaching revision of the statute in 1965¹² to indicate that Congress was dissatisfied with the administrative practice or wished to change it.

Throughout most of its 40-year history the alien commuter program has encountered little dissent. However, opposition has developed in recent years, particularly from labor organizations operating in the regions adjacent to the Mexican border. Opponents of the program contend that alien commuters from Mexico, living in a country with lower living standards than the United States, unfairly depreciate wages and working conditions in this country. Moreover, it has been contended that such commuters impede the unionization efforts of American workers.¹³ It should be noted that in recent years there have been no criticisms of the operation of the commuter program along the Canadian border, since the standards of living on both sides of the Canadian border are reasonably comparable and the affected industries on the American side are generally unionized.

In its inception the commuter program dealt with the so-called "daily" commuter, who usually returned to his home across the border each night. In the past few years there has been a large influx of "seasonal" workers who come to this country for agricultural work, follow the crops during the growing and harvesting seasons, and then return to their homes in Mexico after a stay of several months in the United States. The major rise in number and importance of the seasonal commuters occurred after the termination in 1964 of the "bracero" program, under which many thousands of Mexican nationals were imported each year for temporary employment in the United States.¹⁴ In January 1966 there were 53,329

¹¹ Matter of H.O., 5 I. & N. Dec. 716 (1954); Matter of M.D.S., 8 I. & N. Dec. 209 (1958).

¹² Act of Oct. 3, 1965, 79 Stat. 911.

¹³ SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION, COMMUTERS, S. REP. NO. 1006, 90th Cong., 2d Sess. 99-109, 111-30 (1968).

¹⁴ See 1 GORDON & ROSENFELD, IMMIGRATION LAW AND PROCEDURE § 6.9 (rev. ed. 1966), which points out that the bracero program operated for a number of years pursuant to specific statutory and treaty arrangements for the importation of temporary agricultural workers from Mexico. The bracero differed from the commuter in that he was admitted temporarily, while the commuter has attained a lawful admission for permanent residence.

daily commuters, of whom 42,641 entered from Mexico, and the balance from Canada.¹⁵ The number of seasonal commuters has never been definitely ascertained, and it is currently being tabulated by the Immigration and Naturalization Service.

In an effort to deal with some of the alleged abuses in the alien commuter program, the Department of Justice in 1967 promulgated a regulation prohibiting the entry of alien commuters coming to accept employment at a plant where the Secretary of Labor has certified that a labor dispute exists.¹⁶ Labor spokesmen have urged that further measures be taken, including the imposition of a requirement that alien commuters be subject to the present statutory mandates¹⁷ which preclude the entry of most immigrants unless they obtain a certification from the Secretary of Labor that their prospective employment will not adversely affect American labor interests.¹⁸ However, under explicit terms the "labor certification" requirements of the statute are inapplicable to returning lawful residents,¹⁹ and it has been the administrative view that since alien commuters are regarded as returning lawful residents the labor certification requirements cannot be applied to them unless the statute is changed.²⁰ A bill which would require alien commuters to obtain labor certifications every 6 months has been introduced by Senator Edward F. Kennedy and Representative Michael A. Feighan, but has not yet been enacted.²¹

There have been a number of court challenges to various aspects of the commuter program, none of which arrived at a definitive resolution. The first of these was *Amalgamated Meat Cutters v. Rogers*,²² which considered the effect of a labor certification issued during a strike at the Peyton Packing Co. of El Paso, Texas. The court declined to regard alien commuters as returning lawful permanent residents and found them barred from reentry under the terms of the Secretary of Labor's certification. The government

¹⁵ Survey by Immigration and Naturalization Service, reproduced in SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION, COMMUTERS, *supra* note 13, at 114-15.

¹⁶ 8 C.F.R. § 211.1(b)(1), *as amended*, 32 Fed. Reg. 8378 (1967).

¹⁷ Immigration and Nationality Act, 8 U.S.C. § 1182(a)(14) (1964).

¹⁸ *See Gooch v. Clark*, Civ. No. 49500 (N.D. Cal. 1968).

¹⁹ *Id.*

²⁰ *See id.* and *Amalgamated Meat Cutters v. Rogers*, 186 F. Supp. 114 (D.D.C. 1960).

²¹ S. 1694 and H.R. 9505, 91st Cong., 1st Sess. (1969).

²² 186 F. Supp. 114 (D.D.C. 1960).

was prepared to challenge this ruling on appeal, but the strike was settled and the case became moot.

A broader challenge to the legality of the entire commuter program, brought by a union and a number of individuals, was unsuccessful in *Texas State AFL-CIO v. Kennedy*.²³ However, the court's ruling was premised on the narrow ground that plaintiffs lacked legal standing to sue and did not adjudicate the merits. While limiting its holding to this technical ground, a lack of sympathy with the litigation seems manifest in the following excerpt from the court's opinion:

The present case involves the rights of many thousands of human beings to continued employment in this country. Those persons are entitled to have their status and their rights adjudicated on the particular facts of their own cases, the circumstances of their entry, the representations made to them, and the nature of their own conduct, and any other factors which might reasonably be urged on their behalf. . . . Certainly it would be most unjust to allow a labor organization and its members to attack the status of many thousands of aliens — not even naming them as individual defendants — with the aim of dislodging them from their jobs, so that those jobs might then perhaps be obtained for union members.²⁴

In 1968 another lawsuit, arising out of a strike by agricultural workers in California, was brought to challenge the validity of the regulation precluding the entry of "green card" commuters for employment at an establishment where a labor dispute had been certified.²⁵ In effect, this lawsuit entailed an attempt to assert that the alien commuter had an unassailable right to entry, which could not be restricted by the Attorney General's regulation. Again the merits were not resolved, and the suit was dismissed on the ground that plaintiffs (a grower and some individuals against whom deportation proceedings were pending) lacked legal standing to bring the litigation.²⁶ Finally, another lawsuit, brought by two individual plaintiffs on behalf of all similarly affected, once more challenges the legality of the entire commuter program.²⁷ The government is again contending that the plaintiffs lack legal standing to sue and the court has not yet announced its decision. Of course, a dismissal on this ground would leave the merits still unresolved.

²³ 330 F.2d 217 (D.C. Cir.), *cert. denied*, 379 U.S. 826 (1964).

²⁴ 330 F.2d at 219. The court also found that the *Amalgamated Meat Cutters* case, *supra* note 20, "is not persuasive authority for the maintenance of suits of the present sort."

²⁵ *Cermeno-Cerna v. Farrell*, 291 F. Supp. 521 (C.D. Cal. 1968).

²⁶ *Id.* at 530. The corporate plaintiff has appealed from the dismissal of its suit.

²⁷ *Gooch v. Clark*, Civ. No. 49500 (N.D. Cal. 1968).

At the present juncture, the legality of the commuter program has not been definitively passed upon by any court.

The status of the alien commuter has been described as an "amiable fiction."²⁸ It has been a useful administrative device, continuing for more than 40 years with apparent congressional approval, to cope with a practical situation which does not fit precisely into conventional molds. Changing needs and problems have generated discussion of the desirability of continuing this program in its present form.²⁹ Any consideration of possible changes would necessarily have to take into account the interests of the many thousands of aliens who have been employed in reliance on this program, often for many years;³⁰ the need to safeguard American labor; the effect on our friendly relations with neighboring countries;³¹ and the effect on the industry and commerce of the border communities in the United States. The assessment and resolution of these competing interests is a matter of national policy, to be decided by Congress. It is unlikely that there will be any significant changes in the administrative approach to the commuter problem. As I have noted, proposals to end or modify the program have been rejected by the administrators on the ground that they have been enforcing the will of Congress. Consequently, it may be anticipated that unless changes are enacted by Congress or required by the courts, the alien commuter program will continue to operate as it has for the past 40 years. Thus, if changes are to be made, they apparently will have to be accomplished by new legislation. Since we are dealing essentially with legislative purpose, it seems desirable that this purpose be clearly articulated.

There are several possible alternatives Congress might pursue. The first is to enact no new legislation, which would leave the

²⁸ 1 GORDON & ROSENFELD, *supra* note 14, § 2.8b; *Amalgamated Meat Cutters v. Rogers*, 186 F. Supp. 114, 119 (D.D.C. 1960). However, this fiction has not been deemed to qualify a commuter for naturalization benefits, which depend on actual residence in the United States for prescribed periods, following lawful admission for permanent residence. *In re Barron*, 26 F.2d 106 (E.D. Mich. 1928); *Petition of Wright*, 42 F. Supp. 306 (E.D. Mich. 1941). See also Immigration and Nationality Act, §§ 101(a)(33), 316(a), 8 U.S.C. §§ 1101(a), 1427(a) (1964).

²⁹ See, e.g., SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION, COMMUTERS, *supra* note 13, at 99-109, 111-30; Rummel, *Current Developments in Farm Labor Law*, 19 HASTINGS L.J. 371 (1968).

³⁰ See note 24 *supra* & accompanying text.

³¹ In affidavits submitted to the court in *Texas State AFL-CIO v. Kennedy*, 330 F.2d 217 (D.C. Cir.), *cert. denied*, 379 U.S. 826 (1964), and in *Gooch v. Clark* Civ. No. 49500 (N.D. Cal. 1968), the Secretary of State asserted that termination of the alien commuter program would have an adverse effect on the foreign relations of the United States.

commuter program untouched. The second is to terminate the program forthwith — a prospect not favored by many, in the light of its patently disruptive effect on border communities and on the affected individuals. The third alternative is to require the commuters to obtain periodic labor certifications, a solution proposed in Senator Kennedy's bill³² and favored by labor organizations and by the Department of Labor. Finally, there is a proposal by two members of the Select Commission on Western Hemisphere Immigration³³ that the present commuter program be phased out within a specified period of years, that thereafter lawful admission for permanent residence include a commitment to establish a residence in the United States, and that special work permits be issued to non-residents under appropriate safeguards protecting American labor to satisfy the needs of the border communities. This final proposal has a number of desirable features. First, it deals fairly and humanely with the many thousands of commuters who have relied on the present practice and gives them a reasonable period of time to make other employment arrangements or to establish residence in the United States, if they are so disposed. Second, it takes into account the needs of the border communities and avoids disruption of their economies and of friendly relations with neighboring countries. Finally, it makes adequate provision for safeguarding American labor interests. This proposal may well suggest a sound and enlightened solution for the commuter problem.

³² See S. 2790, 90th Cong., 2d Sess. (1968), now co-sponsored in the 91st Congress by Representative Feighan and others. See note 21 *supra*.

³³ The report of this Commission (see note 13 *supra*) made no specific recommendations. After publication of the report, a letter dated July 22, 1968, and signed by Richard M. Scammon, Chairman, and Stanley H. Ruttenberg, a Commission member, was addressed to President Johnson, and presented the recommendations discussed in the text.

LOW-WAGE LURES SOUTH OF THE BORDER

(By David T. Lopez)

From the boundless beaches where the Rio Grande joins the Gulf of Mexico at the tip of Texas, our southern border runs up the river, then turns west under New Mexico, Arizona and California, meeting the Pacific near San Diego.

The 1,800-mile-long border area between the United States and Mexico is one of sharp contrasts. There are lush orange groves and arid goat country, deep canyons and flatlands, teeming urban centers and desolate wastelands.

As far back as one cares to go, however, there has been one common denominator for the land and the people of the border; a chronic, pervasive poverty that has joined citizens of both the United States and Mexico in an endless communion of despair.

For generations, the root of the economic problem has been the worker who resides in Mexico, where the living is cheap, but who is allowed by a twisted immigration law to work in the United States.

The Mexican "commuter," as he is known, will work for a little as 35 or 50 cents an hour so he is eagerly sought out by employers while many United States residents are unemployed most of the year.

When a union on the border strikes there is an endless supply of "commuter" strikebreakers, delighted to work at the federal minimum wage.

The "commuter" system made a border city, Laredo, Texas, "the poorest city in the country," according to a national news magazine, and a border county, Starr County, Texas, scene of beatings of striking farm workers by Texas Rangers, the county with the lowest family income in the nation.

Insistent protests by organized labor at local, state and national levels have limited the problem of what the Immigration Service calls the "non-resident alien." But token action was enough to move employers into coming up with an even more insidious and devastating program.

The new plan is known by many names: PRONAF (from the Spanish-language words for National Border Program), or the Border Industrialization Program, or—to the American unions which have seen hundreds of jobs rush across the border—"runaway plants."

Regardless of the name, the program was aptly described by Dr. Ramiro Casso of McAllen, Texas, a physician friendly to the farm workers, as "bringing the mountain to Mohammed."

"They figured they might not be able to keep bringing in cheap labor from Mexico to jobs in this country, so they are taking the jobs out of the country to the cheap labor in Mexico," Dr. Casso said.

In essence, the plan, supported by the governments of both countries, is for American businesses to set up along a zone 12.5 miles deep just across the border in Mexico. The attractions offered are special tax and tariff concessions by Mexico, similar tariff concessions by the United States, and labor at sweat-shop rates.

The cheap-wage attraction is loudly touted by chambers of commerce on both sides of the border.

J. Carl Meyer, executive secretary of the Development Authority for Tucson's Expansion (DATE), boasts, "The Mexican border station at Nogales marks the gateway to an inexhaustible 30-cent-an-hour labor supply." Nogales, on the border, is an hour's drive from Tucson in southern Arizona.

Why would Tucson be so anxious to lure plants to Mexico? The answer is what promoters of the runaway industries call the "twin-plant concept." Supposedly, this calls for the company to set up a plant on the United States side of the border to be the "twin" of the one in Mexico.

Actually, the "twins" on the U.S. side, if and when they are established, turn out at best to resemble poor cousins. They employ far fewer workers and are designed mainly to justify a special import tariff on the Mexican-manufactured goods, which supposedly are to be "finished" in this country.

An example of the concept are the "twins" of Transatron, an electronics component manufacturer, employing about 75 in Laredo and 1,500 in Nuevo Laredo, Mexico.

"Finishing" could mean little more than pasting on a label. Many plants on the U.S. side hire Mexican residents anyway. Attempts to organize are met by threats to move the rest of the operation to Mexico. And for every job supposedly established on the American side, at least 10 jobs are being set up in Mexico and often at the direct expense of American workers.

The United Rubber Workers represent employees of Mattel, the toy manufacturer, at two plants in the Los Angeles area. Since Mattel opened a toy plant in Mexicali in 1967, some 820 union workers at the City of Industry plant have lost their jobs, and the Hawthorne operation has been similarly affected.

The losses can be documented by shift and job classification, but a Mattel executive denied to the Los Angeles Times that a single job has been lost. Other less restrained entrepreneurs talk about the program creating "new jobs" for the United States.

More revealing, however, are statements made by officers of a company that specializes in subcontracting electronic assembly work in Tijuana, Mexico, near San Diego.

Enrique Mier y Teran, manager of IMEC, S.A., the Mexican branch of International Manufacturing, Electronics and Consulting Corp., puts it plainly: "I believe tremendously that the future of Tijuana lies in selling its labor."

At the Beverly Hills offices of IMEC, a division of the Republic Corp. conglomerate, R. Lee Hill, operations manager, said: "We should ship \$800,000 to \$1,000,000 in labor (from Tijuana) in 1969."

Trinkets sold to tourists in border markets may bear an imprint, "Made in Mexico," but the products of the special industry program not only are not labeled, but often are even hard to trace. Portable television sets sold by Sears, Roebuck and Co., for example, are bought from Warwick Electronics Inc. of Chicago, which initially subcontracted the work to IMEC, S.A., in Tijuana.

Kayser-Roth has its Catalina-brand sportswear cut at two small plants in California and Arizona, but the sewing is done at a larger operation in Mexicali, Mexico.

District 12 President Bill Drohan of the IUE in Los Angeles said that among the firms represented in the expanding electronics complex in Tijuana are Litton Industries, Control Data Corp., and Fairchild Camera. Dozens of less well-known electronic firms are scattered throughout the border area.

Vice President Leonard Levy, director of the Amalgamated Clothing Workers West Coast Region, reports getting worried calls from his staff as more of the companies represented by the union establish Mexican operations.

"El Paso, where probably more work pants and sport slacks are manufactured than any other place in the country, stands to be hurt very badly," Levy said. "Just recently, Hicks-Ponder, which has three plants in Texas and Arizona, set up in Juárez (across from El Paso). And I just got a call from a representative in El Paso. He said a company where we are hoping to get an election soon is talking about going to Mexico."

Amalgamated has organized many of the Mexican residents commuting to U.S. jobs, helping them get fair wages. Recently, however, there have been so many "illegals" (in Texas known as "wetbacks" because they sometimes wade the Rio Grande) that there is conjecture about employer "deals" with immigration officers.

At the office of the International Ladies Garment Workers Union in Los Angeles, Vice President Sam Otto said that already there are about 30 American garment plants in Mexicali and about 20 in Tijuana.

"In Mexicali, where the border is a tall wire fence, the American and Mexican plants are almost side by side," Otto said. "Some cutting is done on this side, and sometimes when the water pressure in Mexico is not enough, they press the clothes on this side, but the rest of the work is done in Mexico."

"But you sure don't see many 'Made in Mexico' labels, and of course, not enough union labels," he added.

Among the actions called for by the AFL-CIO Executive Council in its February 1969 statement on U.S.-Mexican Border Problems was the adequate labeling of goods wholly or partially manufactured in the Mexico border plants.

The U.S. State Department tried to discourage opposition to the Mexican plan when it began in 1966 by assuring American labor that American plants would not be moved, that the idea was to move to Mexico plants which otherwise would have become established in other low-wage areas abroad, such as Hong Kong or Taiwan.

The line was echoed by the Mexican government. Mexican Minister of Industry and Commerce Octaviano Campos Salas, in a press conference August 6, 1968, told reporters: "The Mexican government does not encourage a massive exodus of American companies to the Mexican side of the border . . . specially when they operate normally and profitably in the United States."

Less than one year later, it is apparent that there is an increasing exodus of jobs and industries from the United States, perhaps without Mexican "encouragement," but certainly with the same considerable concessions given to any others.

The Mattel experience of the United Rubber Workers, and the manifold problems of the Amalgamated Clothing Workers and the ILGWU, certainly are not isolated examples.

When Transatron opened its plant in Nuevo Laredo, Mexico, employing some 1,500 electronic assemblers, a similar operation of the same company in Kansas City, Mo., lost about 45 percent of its work force. When the plant in Mexico had a three-week work stoppage, employment and overtime shot up in Kansas City, only to fall again at the end of the stoppage.

Standard Components Division of Standard Kollsman Industries, which opened a television tuner plant in Ciudad Acuña, across from Del Rio, Texas, has announced it may double production in 1970, with possible displacement of 800 workers in a similar plant of the company in Oshkosh, Wis.

IUE President Paul Jennings, who with AFL-CIO Vice Presidents Joseph D. Keenan, David Dubinsky and Jacob Potofsky served as a special subcommittee of the AFL-CIO Executive Council studying the problem, said that 48,000 jobs in the manufacture of radio and television sets and components alone were lost from 1966 to 1968.

In Harlingen, Texas, close to the border, the Albertti Seafoods Co. won a decertification election against the Amalgamated Meat Cutters and Butcher Workmen, then moved most of its Texas plant into an expanded operation in Mexico.

Two other plants organized by the Butchers in the area, Booth Fisheries and United Foods, both processors of shrimp, have decreased their operations tremendously, displacing more than 1,000 workers, since similar processing plants opened just across the border.

Last year, a newsletter which analyses Latin American affairs in the United States said that Mexican economists are projecting an eventual employment of 300,000 workers by the border industries, with a production of one billion dollars of goods a year, multiplying tenfold the already serious effect of the program on American unions and the considerable impairment of the federal minimum wage law.

Two agents of IMEC are reported contacting electronic plants in Southern California. An American company which provides sewing machines for the Mexican garment plants reportedly has trucks soliciting manufacturers in Los Angeles to send their cut patterns to be sewn in Mexico.

Nowhere in the elaborate brochures and prospectuses prepared by DATE of Tucson, or the El Paso Chamber of Commerce, or Joe Richards and Associates of Laredo, is there any mention of the Mexican program being an alternative to plants in Europe or the Far East. Their approach is direct: "If you have a labor-intensive production, move to Mexico." The same pitch is carried in Wall Street Journal advertisements.

Joe Richards and Associates says in its brochure: "The only requirements for participation in Mexico's border industrialization program are that production be exported in its entirety and that Mexican labor be used." The firm offers assistance in securing permits, handling customs, furnishing legal and other professional services, compiling statistics, negotiating leases, and selling and financing the product "worldwide," according to the brochure.

Exactly which manufacturers are being lured to Mexico is virtually impossible to determine before the fact, and the established plants are as easy to inspect as the Chinese Communist atomic plants. Photographers hired in Laredo, El Paso and San Diego all were unable to come up with pictures inside existing plants. They said they were denied permission to enter the plants and shooed away by guards.

United Press International, in a recent dispatch noted, "The stampede of American firms for locations south of the border has been a quiet one. Most of them are so security conscious they won't even admit what they manufacture until they actually have signed the papers and agreed to build their plants in Mexico."

The government has joined the hide-and-seek game. A meeting in El Paso last April to tempt U.S. manufacturers to go into Mexico was sponsored by the U.S. Department of Commerce as an "Executive Conference on World Trade." Jennings, protesting to President Nixon said in a telegram: "The Department of Commerce has no business serving as a front for international cheap labor manipulators."

A similar conference was held in Brownsville in May, and more are scheduled. The solicitousness of the government toward businessmen is not matched by its attitude toward labor.

Henry Muñoz Jr., equal opportunities director of the Texas AFL-CIO, requested information on the border program in February 1968, from Raymond Télles, until recently chairman of the U.S. Section of the U.S.-Mexico Commission for Border Development and Friendship.

When Muñoz got a reply, it was five months later, from the State Department. The letter said: "Unfortunately most of the information you requested is unavailable to us."

Andres Sandoval, a Texas AFL-CIO field representative, said that he asked Télles about the border industry program, and Télles replied: "What border are you speaking of?"

Speaking to a group of businessmen on the program, former U.S. Ambassador to Mexico Fulton J. Freeman said, "I have great confidence that this 1,800-mile boundary can continue to serve as an inspiring example of constructive and harmonious relations and of actions to the mutual benefit of two friendly neighboring nations."

The "inspiring example" may be as disastrous for Mexico as it is for the United States.

In Nuevo Laredo, a 19-year-old girl named Maria Luisa sees her new job with Transitrion in terms of a chance to get out of Mexico. "Well, maybe now I have a better chance of going to the United States," she said. "Maybe I'll get a chance to learn something."

Last year, Maria Luisa was a live-in maid, earning the equivalent of \$8 a week her meals and Sunday off. She said she still works six days, long hours at more intensive work, and now takes home \$14 a week. She went through the three-week stoppage because, among other things, workers were not getting the mandatory one-half hour off for lunch.

"They say we are going to get \$26 a week when we finish our training, but who knows?" Maria Luisa said. "I have been working here more than seven months now. We all know the government, in order to bring these factories down, made a deal with the United States so that they don't have to pay us good money like they pay the American workers."

How much does she think U.S. workers get? "At least \$60 or \$75 a week," she said. "We ought to get the same for the same work. Well, maybe at least \$50."

Through joint border committees, AFL-CIO unions along the border share information freely with their counterparts in the Mexican Confederation of Workers (CTM), and Maria Luisa's union representatives will have a chance to know exactly how much American workers are getting for the same jobs under an IUE contract.

In negotiations with other electronics manufacturers, however, CTM representatives recently reported they were told by the employers that the government would not authorize any more than a 10 percent increase from the present earnings around the Mexican minimum wage because the workers were not classed as "professionals."

Ambassador Freeman listed as one of the alleged benefits of the industry program that residents of the Mexican side of the border spend 50 to 80 percent of their earnings in the United States.

IUE Representative Juan Mariscal, a native of Mexico, recently conducted an extensive survey, and his findings are much different. Housing, food, and services, including medical attention, are at least 50 percent cheaper on the Mexican side of the border, he said. Consumer goods like clothes and appliances are priced about the same.

If Freeman were correct, then, the Mexican workers earning about \$25 a week or less, would spend most of that either for expensive consumer goods made in the U.S., or for items which they can get more cheaply in Mexico.

Asked if she shops in the United States, Maria Luisa replied angrily, "Are you crazy? You forget I get paid Mexican wages. Maybe I could buy some of the used clothing sold from boxes on the sidewalks, but the 'gringos' can keep that junk."

The only times she has been shopping in the United States, she said, have been when her cousin, a secretary in Mexico City, sends her some money to buy her some clothes or cosmetics not available in Mexico. "She always tells me to get something for myself," Maria Luisa said. "I get some hose, or maybe a sweater."

Ambassador Freeman's confusion is perhaps understandable. American shops on the border do sell a large quantity of consumer goods, particularly clothing and cosmetics, to Mexicans.

A simple check with store clerks, however, quickly shows that these sales are of the most expensive merchandise, almost always to businessmen, artists or government officials from Mexico City or other principal cities of the Mexican interior. The buyers spend \$300 or \$400 cash at a time. They certainly could not be \$25 a week industrial workers.

Maria Luisa's responses were fairly representative of those given by other workers in Matamoros, Reynosa, Piedras Negras, Ciudad Acuña, Juarez, Nogales, Mexicali and Tijuana, border cities across or near Brownsville, McAllen, Eagle Pass, Del Rio and El Paso, Texas; Nogales, Arizona, and Calexico and San Diego, California. In sum, Maria Luisa does not feel particularly lucky in having found an industrial job.

"I don't like to be treated badly," she said. "The señora where I was a maid was very nice to me. At the job now I'm always nervous."

A manager of one of the Tijuana plants would be surprised to hear such comments. He considers that American business is a blessing to the Mexican workers. "You can always tell a new gal," he said. "The first couple of days they gobble up six or seven doughnuts at every break."

Maria Luisa said: "I work on these small things under a microscope, and they get very angry if we make any mistake or if we don't work fast enough. The foreman always is trying to date us, and if we say no, we have problems, or we can get fired."

Professor Pedro Pérez Ibarra, general secretary both of the Nuevo Laredo CTM and the electronic workers local, describes Maria Luisa's bosses as "slave drivers of the worst sort."

He said he believes the three-week stoppage at Transiron was only the beginning of their problems. "These companies feel that Mexico is just a field ripe for exploitation," he said. "We're going to show them that's not so."

American plants are being established in the Mexico border zone so quickly, and security is so tight, that up-to-date figures are hard to get. Most observers estimate that already there are 30,000 to 50,000 workers employed in the runaway plants, but the total easily could exceed twice that.

There is general agreement, however, that at least 75 percent of the employees are women. Mariscal says that has created another problem.

"They are destroying the Mexican family along the border," he said. "Up to just a few years ago, Mexican women did not work outside the home after they were married. Now you see many wives working while the husbands are unemployed."

"Mexicans are proud, and nothing hurts a man's pride more than to feel 'mantenido' (kept) by his woman," he said. "Some of the men can't cope with it. They take to drinking, or they cross the border illegally to try to find work. Many don't go back."

A number of economists have pointed out other adverse effects the program probably will have in Mexico. One article suggests that productivity is significantly lower in Mexican plants, and that even the great disparity in wages may not be sufficient to keep the plants in Mexico long.

The same article claims that many companies are moving to Mexico just to postpone major capital investments in modern equipment. When the companies finally are forced to make the investment, they probably will want to return to the better trained American workers. A sudden withdrawal of such companies and the resulting unemployment would leave the area worse off than it was before the plants came in, according to the economists.

Several plants established in Tijuana have shut down, but information on the reasons is skimpy and conflicting at this time.

What is proving to be easily the most regrettable effect of the program on either side, however, is that the promise of new jobs acts like a magnet to attract thousands of families from the Mexican interior to the already overcrowded Mexican border cities.

Because of the "commuter" practice and the "bracero" agreement for Mexican farm labor (now terminated), Tijuana exploded in 30 years from 20,000 to 400,000 population. Unemployment now is estimated at close to 50 percent, and more people arrive daily.

Approaching Tijuana, or Juarez, which also has multiplied rapidly to its present 500,000 population, one is struck by the pathetic sight of countless slum dwellings precariously clinging to the hillsides.

Recent Mexican government figures indicate the country's population is rapidly urbanizing, but a full 25 percent still is "economically inactive." There are so many peasants migrating to Mexico City and the cities of the northern Mexico border that they have become a national institution with a popular nickname.

Partly because of the way they load all their belongings on their backs, and mostly because they have no idea where they will land once they leave their rural homes, these migrating peasants are known as "parachutists."

For a family of such "paracaidistas," Esteban Macias, 34, and his wife and their seven children, their landing was in an unimaginably squalid slum overlooking El Paso across the border.

For almost three months, they lived in a cave, until they could gather enough scraps of wood, cardboard and flattened tin cans to make a shack which does not look like it could stand a healthy sneeze.

Macias was no stranger to poverty, but on the border the oppressive struggle has left him drained and submissive, an old man before 40. "My life is gone, and I have nothing," he said. "Nothing for me. Nothing to leave my children."

The Macias family increasingly is dependent for support on Susano, at 15 the oldest son, who is a "commuter."

Officially, the U.S. government counts 12,000 "commuters" crossing from Ciudad Juarez to jobs in El Paso. The figure certainly is more likely twice that. Susano, who just a few months ago had never seen the United States, is not counted as a "Mexican alien commuter," and neither are about 45 to 65 percent of the "commuters" who cross with documents purporting to prove they are American citizens.

Some of the "commuters" actually are citizens. Susano, not having been born in the United States, "rents" a birth certificate. For \$2 paid in advance, he can use the certificate for one day to cross into the United States, where he can earn \$6 to \$8, if he finds work.

When there is no work, he's out \$2, and if he doesn't like the deal, there are plenty of others waiting to take his place.

"Sometimes I have to work for even \$3 a day, just to pay for 'el pasaporte,' bridge toll or bus fare, and have something left over to feed my little brothers," Susano said.

If he doesn't maintain himself as a steady customer, someone about his age (and the age on the birth certificate) will be found and will be taught by rote the facts on the document which immigration officials, if they have the time, will ask: "Where were you born? On what date? What is your mother's name?"

If he loses his turn, Susano will have to take his chances with jobs on the Mexican side, where the going rate is about 75 cents a day and work is much harder to find.

The evidence of the abject poverty faced by the thousands who hoped to find a new and better life on the border is everywhere. In Tijuana, the lean-to's sit on the right-of-way between the highway to Mexicali and the fenced-off property. In Nuexco Laredo, they are but a minute from the million-dollar mansion of the Longoria family. In Matamoros and Ciudad Acuña, they trail along the river.

In Piedras Negras, a young "wetback" named Enrique described what desperation born of poverty can bring. Over coffee, obviously pained by the memory, he told this story:

"We were screaming, praying, crying. It was so hot I could feel sweat pouring down my body.

"I was suffocating, yet when I tried to breathe the stench made me dizzy and turned my stomach. I must have gone crazy for some time, because all I remember is that finally I was so tired I wouldn't move.

"I knew—we all knew—we were going to die."

Enrique was one of 47 Mexicans attempting to enter the United States illegally who were locked in a hot and unventilated van so long that all had to be hospitalized and three died.

He left his wife and five children 50 pesos, \$4, for food and took the rest of their meager savings and some borrowed money to seek work in the United States. At Piedras Negras, he found a recruiter who signed him up for jobs of \$2 and \$3 an hour in Chicago, and offered to take him there for a fee.

In the early morning hours of Sept. 30, 1968, Enrique and the 46 others, all from the northern Mexico countryside, huddled in the darkness near the river across from Eagle Pass. At about 2 a.m., they were led into the river and waded across, where \$50 was collected from each. They then walked to a ravine near a deserted road where the man with the van picked them up around noon and collected another \$50 before letting each one board.

The men were crowded into a space 7 by 16 feet, and when the door was closed the heat and lack of fresh air quickly became intolerable. They pounded on the sides and begged the driver to let them out. He replied the door had been padlocked and he did not have the key. The van was driven to San Antonio, more than 150 miles away, and there it was parked and abandoned.

Passers-by heard noises from the van and called police, and the men were rescued many hours after their ordeal began. The three from whom rescue came too late received pauper's burials in San Antonio.

Enrique and the other survivors were returned to Mexico by the U.S. Immigration Service. But Enrique did not go home.

"I can't go back until I have the money to pay back what I owe and to give my wife for what she has suffered without me," he said.

That may take some time. In Piedras Negras, working as a laborer in the day and cleaning up three bars and a restaurant at night he seldom makes as much as \$12 a week. (Piedras Negras is about 75 miles from Marroteran, where 156 coal miners who were earning \$6 to \$17 a week recently were buried by an explosion.)

Enrique is looking for a good job, but he is not optimistic. "Every day more come. They get off the buses by the dozen. Or they say they come by train, or walking or asking for rides, any way they can."

Why do they keep coming if there are no jobs? "They hear there's much money to be made on 'la frontera' (the border)," Enrique said. "They're fools like me. Some may be lucky, but most of them come to suffer."

"What's worse," he said, "some bring their families. Here you can't grow food. You don't have any land, or chickens, or goats for milk. For everything you have to pay."

"Those are the ones I pity. You see them get more and more desperate. Then they get drunk because some little one died, or because their daughter ran off and they think she's selling herself to the 'gringos.' At least my woman and my children, they're where they can get food, too little maybe, but still enough to live. God keep them."

Crossing from Mexicali into the U.S. at Calexico, one can't escape seeing a large sign in two languages informing "commuters" that their crossing cards, which "allow them to work in the United States" are not to be used to work at places where labor disputes have been certified by the Department of Labor. A list, the sign informs anyone interested, is available in the immigration office.

In preparation for their drive in the Coachella Valley of California, members of the United Farm Workers Organizing Committee recently followed five busloads and assorted cars and pick-ups full of "commuter" farm workers going from Calexico the 90 or so miles to Coachella.

The buses stopped at many of the farms on the certified strike list, and the UFWOC members questioned the workers as they got off. They discovered that most of the "commuters" had to arise at 1 a.m. to catch the bus and had long trips home after they were returned to Calexico.

"I figured they were spending 16 hours for 8 hours pay," says the Rev. Jim Drake, an aide to UFWOC Director Cesar Chávez. "That figures around 80 cents an hour."

"Most of them didn't know they were going to work at a struck place," Drake said. "But once they got there, they had the choice of staying in the bus for eight hours without pay, or getting commercial transportation back, or, of course, going to work. In other words, they had no choice."

In Texas, a January 1968 survey showed 80 percent of the "commuters" interviewed in Laredo were earning less than \$1.60 an hour.

The presence of a seemingly limitless supply of "commuter" labor compounds the daily work of union representatives on the border.

David L. Jacobs, business agent of a Laborers local in Laredo, recalls a group of cafeteria workers striking for union recognition. "One of the pickets had a sign saying they were paid 25 cents an hour," Jacobs said. "The owner was very angry when he saw it. He said he actually was paying 32 cents."

The strike resulted in recognition and a contract calling for \$1 an hour in the third year.

In El Paso, Hector R. Garcia, president of the El Paso Central Labor Union, tells of a recent strike in which, after a 20-year bargaining history, the union had to remain out six months to keep arbitration in the agreement. Garcia said the union struck with 250 of 256 production employees on a Thursday to see 300 strikebreakers hired by the following Monday at \$1.60 an hour.

By letting selfish economic interests mold its policy toward Mexico, the United States has managed to bring about the worst imaginable situations on either side of the border.

On the United States side, there is talk of putting up picket lines at the international bridges to keep out the "commuters."

On the Mexican side, anti-American literature circulates freely and thousands of industrial workers, students, and teachers call themselves "communists" because they can't think of any other word which can adequately express their antipathy towards the United States. And one hears often repeated, not always with a smile, the plaintive lament of a former Mexican President, who said: "Poor Mexico—so far from God—and so close to the United States."

Mr. THOMPSON. I call particular attention to the staff report of the U.S. Commission on Civil Rights and an article on border commuters by Mr. Charles Gordon, General Counsel of the Immigration and Nationality Service.

At the outset, I would also like to announce that these hearings will conclude tomorrow morning at 10 a.m., in the main committee hearing room, room 2175, in this building. The hearing record will be open for approximately 10 days to receive statements of a number of organizations who have indicated a desire to set forth their views on the pending legislation.

Our first group of witnesses this morning will be from the Department of Labor.

Mr. Frank A. Potter, Director of the Farm Labor and Rural Manpower Service, and Mr. William Haltigan, Acting Assistant Director of Job Corps, Manpower Administration of the Department of Labor.

Good morning, gentlemen.

STATEMENT OF FRANK A. POTTER, DIRECTOR, FARM LABOR AND RURAL MANPOWER SERVICE, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY ROBERT M. GUTTMAN, DEPUTY ASSOCIATE SOLICITOR, OFFICE OF THE SOLICITOR

Mr. POTTER. Good morning, Mr. Chairman.

I am Frank Potter, Mr. Chairman, and there has been a change. Mr. Robert Guttman of the solicitor's office is with me in the place of Mr. Haltigan.

Mr. THOMPSON. You are very welcome, both of you.

Mr. POTTER. I have no prepared statement regarding the bill, Mr. Chairman, but I am prepared to discuss the procedures that we use with respect to designating a dispute or strike as it relates to agriculture.

Mr. THOMPSON. Please do.

Mr. POTTER. Thank you.

Rather than read the entire procedure, if I may just briefly tell you how we handle this, this may suffice.

(The procedure mentioned above follows:)

U.S. DEPARTMENT OF LABOR,
BUREAU OF EMPLOYMENT SECURITY,
Washington, D.C., October 13, 1967.

Regional memorandum No. 1334.

Functional file classification : 710.

To : All regional administrators.

From : Robert C. Goodwin, Administrator.

Subject : Revised instructions concerning holders of forms I-151.

References : 8 CFR part 211.1.

Purpose : To provide a revised procedure for processing requests for issuance of determination of the existence of a labor dispute in which holders of form I-151 are, or may become, involved.

The Department of Justice has revised 8 CFR 211.1 to provide :

"When the Secretary of Labor determines and announces that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, Form I-151 shall be invalid when presented in lieu of an immigrant visa or reentry permit by an alien who has departed for and seeks reentry from any foreign place and who, prior to his departure or during his temporary absence abroad has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention, of accepting employment at the place where the Secretary of Labor has determined that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's determination.

"The basis and purpose of the above prescribed rule is to preclude the use of Form I-151 by a lawful permanent resident alien in lieu of his obtaining a returning resident immigrant visa or, prior to departure, of his obtaining a reentry permit, when such use would adversely affect a domestic labor dispute."

Below are instructions for processing requests for the issuance of a determination of the existence of a labor dispute involving a work stoppage or layoff of employees when such a dispute involves, or may involve, holders of Form I-151. This may include labor disputes at places of employment in an area beyond commuting distance of the border (over 100 miles from the border) when there is an indication that the employer is seeking to employ holders of Form I-151. These instructions supersede any previously issued instructions on the subject.

The effectiveness of the Immigration and Naturalization Service (I&NS) regulation will depend greatly on the speed with which the Secretary of Labor is able to determine and announce the existence of a labor dispute in which holders of Form I-151 are, or may become, involved.

Request for Determination of Existence of Dispute

The Secretary of Labor, on his own initiative or upon request, will consider the appropriateness of issuing a determination pursuant to 8 CFR 211.1 that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment. The request may be oral or written. It may be made to the Secretary of Labor or his designated representative in Washington, D.C. ; to a BES regional administrator who has jurisdiction over the location where the dispute is reportedly in progress ; or to the director of a State employment service or his designated representative who has jurisdiction over the area where the dispute is reportedly in progress. If such a request is made to a director of the State employment service or his designated representative, the director should communicate immediately, by teletype, all available information concerning the alleged dispute to the BES regional administrator having jurisdiction over the area where the dispute is reportedly in progress.

The request may be made by any interested party, such as a representative of a labor union or other organization, or a representative of workers. The person or organization making the request should supply as much of the following information as possible :

1. The name, address, and telephone number of the employer involved, and the location of the alleged dispute.
2. The date the dispute began ; the date and place of any alleged work stoppage or layoff ; the number of employees involved in any such work stoppage or layoff, and their identities.
3. A brief summary of the issues involved in the dispute.
4. The identity of the labor union involved, if any.
5. The name, address, and telephone number of the person or organization requesting the issuance of a determination pursuant to 8 CFR 211.1.

6. If the dispute is beyond commuting distance (over 100 miles from the border), the basis for believing that holders of Form I-151 will be or are involved.

Confirmation of Existence or Non-Existence of Dispute

The BES regional administrator having jurisdiction over the area where a labor dispute involving a work stoppage or layoff of employees is reportedly in progress will take the following action when a request for the issuance of a determination pursuant to 8 CFR 211.1 has been made:

1. Contact the employer involved in the alleged dispute, by telephone or telegram, if possible, and furnish him the information which the regional administrator has received concerning the alleged dispute. Request the employer to comment on the accuracy of this information and to provide any additional information which will aid in determining whether or not a labor dispute involving a work stoppage or layoff of employees is in progress.
Notify the employer that all available information about the alleged dispute will be transmitted to the BES national office for consideration of the appropriateness of issuing a determination pursuant to 8 CFR 211.1. It should be made clear that the finding will not be delayed to await the employer's response.
2. Contact the appropriate State agency, by telephone or telegram, and request it to furnish any information already available which will confirm or refute the allegation that a labor dispute involving a work stoppage or layoff of employees is in progress at the named place of employment, or information which will aid in determining if such a dispute exists.
3. Contact appropriate representatives of any labor union involved in the alleged dispute, when applicable, to obtain any additional available information or to resolve any conflicting information.
4. When a request for the issuance of a determination has been made with respect to a place of employment which is located over 100 miles from the border, attempt to determine if the employer employs or is likely to employ holders of form I-151. If the place of employment is located less than 100 miles from the border and there is evidence that the employer does not employ and is not likely to employ holders of Form I-151, include such information in the report.

After obtaining and reviewing available information concerning the alleged dispute, endeavor to determine if such information supports the issuance of a determination pursuant to 8 CFR 211.1 that a labor dispute involving a work stoppage or layoff of employees is in progress at the named place of employment. The regional administrator will communicate to the BES national office (Attention: FLC), by teletype, his determination as to whether or not there is a labor dispute and all available information concerning the dispute.

To facilitate handling and to the extent possible, the regional administrator should provide the national office with the following information concerning the dispute in the following order:

1. The name, address, and telephone number of the employer involved, and the location of the alleged dispute.
2. The identity of the labor union involved, if any.
3. The date the dispute began, the date and place of any work stoppage or layoff of employees, and the number of employees involved in any such work stoppage or layoff.
4. A brief summary of the issues involved in the dispute, including whether or not the dispute involves agricultural or nonagricultural issues.
5. The identity of the person or organization requesting consideration for the issuance of a determination pursuant to 8 CFR 211.1.
6. The sources of the information obtained concerning the dispute.
7. His views on whether or not holders of Form I-151 are, or may become, involved in the dispute.
8. His recommendation concerning the appropriateness of issuing a determination pursuant to 8 CFR 211.1.

If unable to determine, due to the lack of readily available information, whether or not a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, report all available information concerning the alleged dispute to the national office promptly for review.

When the Secretary of Labor has issued a determination pursuant to 8 CFR 211.1, the concerned regional administrator should remain in contact with the disputants. Any labor disputes declared in the area should be reviewed not less frequently than every 2 weeks to determine whether or not they are still in progress. Upon receipt of information which indicates the dispute has ended

or has been abandoned, the regional administrator should make every effort to confirm this information. This may require a communication to the union and the employer involved. The national office should be informed, by teletype, of the termination or abandonment of any such dispute. This notice should include the source of the information received.

In most cases there will be no need to inform the national office of a labor dispute pursuant to 8 CFR 211.1 unless an interested party requests consideration for the issuance of a determination. However, if the regional administrator learns of the existence of a labor dispute which he considers will be of interest to the Secretary of Labor and which involves, or may involve, holders of Form I-151, he should obtain the information requested in this memorandum about the dispute and forward the information promptly to the national office.

The above procedures are effective immediately.

Rescissions: RM 1325.

Mr. POTTER. We generally are notified of disputes or the existence of a dispute by interested persons. It could be the worker, the worker's representative, unions, the employer, or other sources.

Immediately upon notification that a dispute exists or is alleged to exist, we immediately look for certain basic information. We request from the organization who has notified us or the individual:

1. The name, address, and telephone number of the employer involved, and the location of the alleged dispute.
2. The date the dispute began; the date and place of any alleged work stoppage or layoff; the number of employees involved in any such work stoppage or layoff, and their identities.
3. A brief summary of the issues involved in the dispute.
4. The identity of the labor union involved, if any.
5. The name, address, and telephone number of the person or organization requesting the issuance of a determination pursuant to 8 CFR 211.1.
6. If the dispute is beyond commuting distance; that is, over 100 miles from the border, the basis for believing that holders of form I-151 will be or are involved.

The regional administrator of the Manpower Administration having jurisdiction over the area where a labor dispute involving a work stoppage or layoff of employees is reportedly in progress takes the following action when a request for the issuance of a determination pursuant to 8 CFR 211.1 has been made:

1. He contacts the employer involved in the alleged dispute, by telephone or telegram, if possible, and furnish him the information which the regional administrator has received concerning the alleged dispute, and requests the employer to comment on the accuracy of this information and to provide any additional information which will aid in determining whether or not a labor dispute involving a work stoppage or layoff of employees is in progress.

He will also notify the employer that all available information about the alleged dispute will be transmitted to the manpower national office for consideration of the appropriateness of issuing a determination pursuant to 8 CFR 211.1. It is always made clear to the employer that the finding will not be delayed while awaiting the employer's response.

2. The regional manpower administrator will contact the appropriate State agency, by telephone or telegram, and request it to furnish any information already available which will confirm or refute the allegation that a labor dispute involving a work stoppage or layoff of employees is in progress at the named place of employment, or information which will aid in determining if such a dispute exists.

3. Contact appropriate representatives of any labor union involved in the alleged dispute, when applicable, to obtain any additional available information or to resolve any conflicting information.

4. When a request for the issuance of a determination has been made with respect to a place of employment which is located over 100 miles from the border, attempt to determine if the employer employs or is likely to employ holders of form I-151. If the place of employment is located less than 100 miles from the border and there is evidence that the employer does not employ and is not likely to employ holders of form I-151, include such information in the report.

After obtaining and reviewing available information concerning the alleged dispute, the regional manpower administrator must endeavor to determine if such information supports the issuance of a determination pursuant to 211.1 that a labor dispute involving a work stoppage or layoff of employees is in progress at the named place of employment. The regional manpower administrator will then communicate to the national office, by teletype, his determination as to whether or not there is a labor dispute and all available information concerning the dispute.

The regional administrator in providing this information also transmits the name, address, and telephone number of the employer involved and the location of the alleged dispute, the identity of the labor union involved, if any, the date the dispute began, the date and place of any work stoppage or layoff of employees, and the number of employees involved in any such work stoppage or layoff, a brief summary of the issues involved in the dispute, including whether or not the dispute involves agricultural or nonagricultural issues, the identity of the person or organization requesting consideration for the issuance of a determination pursuant to Code of Federal Regulations 211.1, the sources of the information obtained concerning the dispute, and his views on whether or not the holders of form I-151 are, or may become, involved in the dispute and, lastly, his recommendation concerning the appropriateness of issuing a determination pursuant to 8 CFR 211.1.

Mr. THOMPSON. How long does this procedure usually take?

Mr. POTTER. I would say in most instances, Mr. Chairman, not more than 48 hours. Now, there can certainly be exceptions to that.

Mr. THOMPSON. According to the Immigration Service, there were 56 certified labor disputes in effect in California and Texas as of July 23.

Mr. POTTER. That is approximately right. There was one removed yesterday, I believe.

Mr. THOMPSON. That would make it 55.

Are there any other Government agencies employed in this determination, Federal or State, as to whether or not there is a labor dispute?

Mr. POTTER. We ask for and obtain from the State all the basic information that they can give us. They are required under the Wagner-Peyser Act to also make determinations where strikes exist or disputes.

Mr. THOMPSON. Have you changed the procedure in this administration from that of the last administration?

Mr. POTTER. Not basically. We ask for and obtain, which I have indicated, the State's recommendation. The final determination rests with the Secretary of Labor.

Mr. O'HARA. Will the gentleman yield to me?

Mr. THOMPSON. Yes.

Mr. O'HARA. With respect to that question, I had been informed, and I perhaps am incorrect in this regard, but my recollection is that in the last administration when a complaint was made or an allegation was made that a particular grower was involved in a labor dispute, that the U.S. Department of Labor would cause an investigation of that allegation to be made and would make a determination, and that sometime this year, earlier this year, a change in the procedure was made and, as I understand it now, these allegations are not investigated by the Department but that the Department only acts when it has received a report from a State employment service that a labor dispute exists. Perhaps my recollection is faulty.

Has there been some change of that sort?

Mr. POTTER. There has been a change to the extent that we do accept a State's recommendation as to whether a dispute exists or does not exist. If there is a question in our mind our field staff also makes their own investigation.

Mr. O'HARA. In other words, in the first instance, in comes the State's recommendation—and you accept it and then you go out and make your own investigation if you have any question about the validity of the determination within the meaning of your regulation; is that right?

Mr. POTTER. This is correct.

Mr. O'HARA. Would you be able to advise the committee—if the gentleman will yield for just one more question—as to how many reports of this sort you have received from State employment services since you initiated the variation in your procedure, how many of them have been accepted at face value and how many have resulted in further investigation by the Department. And, of those resulting in further investigation by the Department, in how many of the cases did you agree with the State and in how many of them did you disagree?

Mr. POTTER. Mr. Congressman, we have only had one agricultural dispute this year, which was in February, and two nonagricultural disputes this year, and those that we observed this year were at farms where disputes were continued in existence from a year or 2 years ago, so there was no reason for making new determinations at this time.

Mr. O'HARA. Maybe you can help me on that, but that seems rather strange. I was under the impression that a strike had been called by the United Farm Workers Organizing Committee in the grapes in Coachella Valley. Is that a continuing strike? I am surprised that you haven't gotten at least more allegations that a labor dispute exists.

Mr. POTTER. The great majority of the strikes that we have been concerned with took place last June and July, a year ago in June and July, in Coachella Valley as well as other areas of California. In other words, they have been on the books since then.

Mr. O'HARA. I see.

Mr. POTTER. I have a copy of all of the strikes in existence, if you would care to have it.

Mr. O'HARA. You haven't received any complaint that certain other growers have been subjected to a labor dispute in the Coachella Valley this summer?

Mr. POTTER. None that we didn't already have on the books.

Mr. THOMPSON. Would you make that available for the record, the list of the disputes?

Mr. POTTER. Yes, sir.
(The list referred to follows:)

LABOR DISPUTES—CURRENT: AUG. 6, 1969

CALIFORNIA

Employer	Address	Date determined
Agricultural		
Giumarra Vineyards Corp.	Post Office Bin 1969, Bakersfield, Calif.	July 28, 1967
W. B. Camp, Jr.	Post Office Box 576, Bakersfield, Calif.	Jan. 31, 1968
*Anton Caratan & Sons.	Route 1, Box 720, Delano, Calif.	Do.
*M. Caratan.	Route 1, Box 258, Delano, Calif.	Do.
Jake Cesare	1835 Terrace Pl., Delano, Calif.	Do.
Louis Caric & Sons.	Route 1, Box 360, Delano, Calif.	Do.
*Bruno Dispo	Post Office Box 1148, Delano, Calif.	Do.
P. J. Divizich Fruit Corp.	Post Office Box 97, Ducor, Calif.	Do.
Frank Gallo	Post Office Box 337, McFarland, Calif.	Do.
George A. Lucas & Sons.	Post Office Box 74, Earlimart, Calif.	Do.
*Frank A. Lucich	Post Office Box 1266, Delano, Calif.	Do.
*John Pagliarulo	Route 1 Box 869, Delano, Calif.	Do.
*Pandol & Sons.	Route 2, Box 388 Delano, Calif.	Do.
Gene Radovich	Post Office Box 69, Celano, Calif.	Do.
Jack Radovich	Corner of Road 200 and Ave. 4, Richgrove, Calif.	Do.
Sandrini Bros.	Route 1, Box 362, McFarland, Calif.	Do.
D. M. Steele & Sons.	Post Office Box 1350, Delano, Calif.	Do.
*Tudor & Sons.	Route 1, Box 217, Delano, Calif.	Do.
A. and N. Zaninovich	Trocha Strip between Road 184 and Road 188, Delano, Calif.	Do.
George Zaninovich	1837 Terrace Dr., Delano, Calif.	Do.
*Marko Zaninovich	Route 1, Box 725, Earlimart, Calif.	Do.
Marion Zaninovich	Ave ue 24, Road 192, Richgrove, Calif.	Do.
Vincent Zaninovich	1839 19th St., Val Verde Lane, Delano, Calif.	Do.
*Vincent Zaninovich & Sons.	Post Office Box 1268, Delano, Calif.	Do.
*Chuchian Farms.	Route 1, Box 66, Coachella, Calif.	June 18, 1968
*David Freedman Co., Inc.	Post Office Box 501, Thermal, Calif.	June 20, 1968
*Ara Herbekian/Mel-Pack Ranch.	Post Office Box 534 Thermal, Calif.	June 26, 1968
Coachella Vineyards.	561474 Hiway 111, Thermal, Calif.	Do.
John Zaninovich	2124 Riviera Dr, Vista, Calif.	Do.
Ross Cariaga	1120 Date St., Coachella, Calif.	Do.
H. & M. Ranch Co.	Highway 99, Oasis, Calif.	Do.
*Richard Bagdasarian	Post Office Box 698, Mecca, Calif.	Do.
*Richard Glass & Co., Inc.	Post Office Drawer SSS, Indio, Calif.	Do.
Cy Muradick & Sons.	81078 Ave. 45, Indio, Calif.	July 2, 1968
R. W. Blackburn & Sons.	Route 2, Box 266, Thermal, Calif.	July 5, 1968
*Karahadian & Son, Inc.	Post Office Box 756, Thermal, Calif.	Do.
Eugene Nalbandian, Inc.	Post Office Box 665, Lamont, Calif.	July 19, 1968
*John Kovacevich	Post Office Bin 488, Arvin, Calif.	Do.
*William Mosesian	Route 6, Box 522, Bakersfield, Calif.	Do.
Berge Kirkorian	2720 Rio Vista Dr., Bakersfield, Calif.	Do.
Charles Malovich	Post Office Box 541, Arvin, Calif.	Do.
Kern Valley Farms	Post Office Box 505, Lamont, Calif.	July 23, 1968
Frank Guidera	Post Office Box 2384, Bakersfield, Calif.	July 31, 1968
Johnston Farms	Edison Highway, Edison, Calif.	Aug. 7, 1968
R. & L. Farms, (Roberts and Laborde)	986 Davis Ave., Post Office Box 326, McFarland, Calif.	Feb. 19, 1969

Non-Agricultural

Bermite Co. (Division of Whittaker Corp.)	Post Office Box 1751, Indio, Calif.	Apr. 23, 1969
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* Asterisk indicates that employer has labor dispute appeal pending.

TEXAS

AGRICULTURAL		
Griffin & Brand (Trophy Farms)	Post Office Box 1840, McAllen, Tex.	July 10, 1967
La Casita Farms	Rio Grande City, Tex.	Do.
A. B. Margo Farms	do.	Do.
Rancho Grande & Ringgold Farms	do.	Do.
Starr Farms Co. (Los Puertos Plantation)	Rio Grande City, Starr County, Tex.	Do.
Sun-Tex Farms	do.	Do.
NONAGRICULTURAL		
Transport Co. of Texas	2728 Agnes St., Post Office Box 151, Corpus Christi, Tex.	May 3, 1968
Alamo Express, Inc.	51 Essex St., San Antonio, Tex.	June 14, 1968
Darbyshire Steel Co., Inc.	1900 East Paisano Dr., El Paso, Tex.	Mar. 7, 1969
Texas Steel Corp.	Post Office Box 991, Harlingen, Tex.	July 2, 1969

Mr. THOMPSON. I am at something of a loss to understand your determination that if the dispute is more than 100 miles from the border you look at it differently than if it were closer. In that area there are many good roads and fast transportation facilities and, further, the traffic is relatively light.

Another point is that a number of green carders, according to our information, don't commute on a daily basis but commute on a week-end basis or a monthly basis. Is it possible that that arbitrary line of 100 miles might not be perfect?

Mr. GUTTMAN. If I may, Mr. Chairman, when the regulation first came out we considered making strike determinations throughout the country, but when we realized, I think there is something on the order of 50,000, 60,000 labor disputes in the United States in a year, we realized that Mr. Potter and his pretty minimum staff just couldn't handle that kind of thing so we tried to find a line which would make the regulation effective for its purpose and not involve us in making a lot of determinations where the commuters wouldn't be a factor.

We picked 100 miles just because it seemed like a reasonable distance.

Mr. THOMPSON. I didn't mean to indicate that I considered it unreasonable.

Mr. GUTTMAN. We did provide, though, that if any interested party supplied us with information or if we had any information that commuters were likely to be used at a greater distance that we would make the determination. We just didn't want to be flooded with reports about every strike in the United States.

Mr. THOMPSON. We have evidence, for instance, that there are Mexican green carders as far north as on our Canadian border, and then, of course, there are a tremendous number of Canadians who are commuters. Only yesterday I was informed by the representatives of an organization in Alaska that Canadians are being used exclusively on a major construction project up there.

We are going to go into that later.

Now, you are aware of the regulation that went into effect 2 years ago in which Labor and the Immigration Service are jointly involved?

Mr. GUTTMAN. Yes, sir.

Mr. THOMPSON. Dealing with the same problem which is the subject of this legislation, namely, the hiring of border commuter aliens as replacements during a labor dispute. How do you feel that has worked in practice?

Mr. POTTER. I think it has worked quite well, Mr. Chairman. I am not saying that it is perfection but where you are dealing with an operation of this type I don't imagine you could expect perfection.

Immediately when we make a decision as to whether a dispute exists, of course, Immigration is informed, the employer is informed, and the State employment service is informed, as well as the individual or group that brought about the allegation, and this is done immediately and, of course that is where our responsibility rests.

Mr. THOMPSON. Do you expect that the present administration will continue this regulation?

Mr. POTTER. At the moment, I have no reason to believe otherwise.

Mr. THOMPSON. Can you tell us of, or give us an occupational breakdown of the green card labor certification over the last several years?

Mr. POTTER. I would not have that information, Mr. Chairman.

Mr. THOMPSON. Might the Immigration Service have it?

Mr. POTTER. Immigration would, yes.

Mr. THOMPSON. The Immigration Service told us about the identification of commuter aliens by the method which they use of putting grommets in the green cards. It would seem to me that that would make it relatively easy to identify at least a great number of them.

Mr. POTTER. I may have spoken a bit too hastily, Mr. Chairman. There was a study made in one border town, Laredo—this was in 1968—which gives us some broad occupational breakdowns. Actually, it was in 1967.

It is broken down by building occupation, business occupation, hotel and restaurants, or miscellaneous or other occupations. This made a total of 40,176, broken down into the three States of Texas, California, and Arizona.

Mr. THOMPSON. I would like to have that for the record, if I may.

Mr. POTTER. All right, sir.

(The information referred to follows:)

NUMBER OF MEXICAN ALLEN COMMUTERS, BY STATE AND OCCUPATION, 1967

Occupation	Total	Texas	California	Arizona
Total.....	40,176	19,714	15,284	5,178
Building occupations.....	2,421	1,801	521	99
Carpenters.....	895	732	131	32
Painters.....	487	319	153	15
Other building occupations.....	1,039	750	237	52
Business occupations.....	3,285	2,405	429	451
Cashiers.....	232	167	28	37
Clerks, office.....	354	233	47	74
Clerks, sales.....	1,713	1,248	207	258
Clerks, stock and receiving.....	309	232	64	13
Managers.....	377	309	41	27
Secretaries.....	199	150	24	25
Other business occupations.....	101	66	18	17
Hotel and restaurant occupations.....	2,235	1,308	812	115
Bartenders.....	93	56	28	9
Bellhops.....	35	25	10	0
Chambermaids.....	223	100	108	15
Cooks.....	651	390	232	29
Kitchen helpers.....	675	410	236	29
Waiters, waitresses.....	328	228	70	30
Other hotel and restaurant occupations.....	23	4	19	0
Other occupations.....	32,235	14,200	13,522	4,513
Automobile shop workers.....	536	246	253	37
Beauty operators and barbers.....	72	53	19	0
Custodial workers.....	344	215	116	13
Drivers, truck.....	1,093	647	315	131
Farmworkers.....	16,035	3,436	9,171	3,428
Fishermen.....	183	92	91	0
Florists.....	41	3	38	0
Food-processing occupations.....	848	524	299	25
Gardeners.....	534	210	301	23
Hospital helpers.....	88	53	17	18
Jewelers.....	39	16	22	1
Laborers, general.....	3,668	2,517	940	211
Laundry workers.....	590	292	245	53
Maids, private household.....	2,779	2,169	412	198
Metalworkers.....	1,627	1,435	147	45
Parking lot attendants.....	47	12	34	1
Professional occupations.....	342	244	44	54
Repair occupations.....	248	196	49	3
Sewing machine operators.....	1,167	809	290	68
Service station workers.....	227	150	58	19
Upholsterers.....	222	125	94	3
Warehousemen.....	255	164	54	37
Miscellaneous.....	1,250	592	513	145

Source: I. & N.S. Commuter Census, November-December 1967.

Mr. THOMPSON. That figure, incidentally, coincides very, very closely with a survey done about that time where an actual count of daily commuters was made and it is an almost identical figure.

Mr. POTTER. I believe this is an Immigration and Naturalization Service commuter census which was made in November and December of 1967.

Mr. THOMPSON. We would like to have that.

Mr. O'Hara?

Mr. O'HARA. Mr. Potter, I am sorry I missed part of your testimony. I will explain by saying I have been meeting with the new Administrator of the Wage-Hour Division.

At any rate, I don't know if you have covered this, but it is my understanding that at some of the border crossing points in areas where a great deal of migrant farm labor is used and many green carders come across, the State Farm Labor Division of the Employment Service maintains special facilities, sort of like a hiring hall, for the convenience of the growers, the workers, and the contractors, and it is my further understanding that at these employment centers, as it were, you maintain some standards, that is, you don't let a contractor use your facilities unless he is taking workers to a job that pays a particular kind of a wage and so forth.

Is that correct?

Mr. POTTER. This is correct, sir.

Mr. O'HARA. In connection with the operation of those centers do you assist in enforcing this regulation about farms at which a labor dispute exists?

Mr. POTTER. This is correct.

Mr. O'HARA. You do?

Mr. POTTER. Yes.

Mr. O'HARA. In other words, you don't let people use the center if they are contracted with a farm where a labor dispute exists?

Mr. POTTER. That is correct. We would not accept, first, a substandard order from any employer nor would we accept an order from a farm where we know a dispute is in existence.

Mr. THOMPSON. Thank you very much.

Your testimony is very valuable.

Mr. RUTH, do you have any questions? Excuse me.

Mr. RUTH. I would like to ask one question.

Do you favor the bill or not?

Mr. POTTER. I did not speak to the bill itself.

Mr. RUTH. Thank you.

Mr. THOMPSON. Thank you very much.

Mr. POTTER. Thank you.

Mr. THOMPSON. Our next witness is Mr. Mark Miles, representing the El Paso Chamber of Commerce and the United States/Mexico Border Cities Association.

Good morning, Mr. Miles.

STATEMENT OF MARK MILES, EL PASO CHAMBER OF COMMERCE, EL PASO, TEX., AND ALSO REPRESENTING UNITED STATES/MEXICO BORDER CITIES ASSOCIATION

Mr. MILES. Mr. Chairman, I am Mark T. Miles. I am employed as director of plans and programs for the El Paso Chamber of Commerce at El Paso, Tex., and have been associated with this organization since 1963. My testimony today is on behalf of the El Paso Chamber of Commerce and its membership who constitute the major portion of the business, professional, and civic community of El Paso. I also submit this testimony on behalf of the United States-Mexico Border Cities Association, an organization of United States and Mexican city governments and chambers of commerce in border cities from San Diego, Calif., to Brownsville, Tex., with administrative headquarters in El Paso, Tex.

I will say at the outset, while we are a little bit irritated with this legislation and especially with the statements made in support of it, our reason for being here is to offer our assistance to this committee in understanding the problem and arriving at an adequate solution.

The official position of the Border Cities Association on these matters is stated in its resolutions. As director of plans and programs of the El Paso Chamber of Commerce, I am responsible for staff support for chamber of commerce committees on Government relations, international affairs, business development, transportation, and research; and the United States/Mexico Border Cities Association. This experience has given me an extensive background on the socioeconomic problems involved in the border situation.

With reference to H.R. 12667 and its companion bill in the Senate, S. 2568; it would seem, on first reading, that no reasonable person could object to them. According to the Congressional Record, Members of the Congress have been told that "when a union on the border strikes, there is an endless supply of commuter strikebreakers eager to work at the Federal minimum wage." As partial refutation of this statement, may I refer you to the commuter worker survey, conducted November 1 through December 29, 1967, by the U.S. Department of Justice, Immigration, Naturalization Service, exhibit B.

In spite of statements to the contrary, we believe this survey is an accurate description of the effect of the green card commuter problem. It shows that only some 7,000 commuter industrial workers and 3,000 commuter construction trade workers are employed along the entire border out of a population of 4 million people, 1.5 million in Mexico, and 2.5 million in the United States. An El Paso Chamber of Commerce letter to Congressman Thompson, July 22, see exhibit C, states, "the green card strikebreaker charge has been made many times in hearings and testimonies, and in Federal court cases. The inference that large numbers of green card commuters have been continuously and extensively used for strikebreaking purposes has always been

proven false. Following up on every instance we have heard of, we have yet to obtain a documented case of green card commuters being employed to replace workers on strike in the United States." Therefore, my first point is, that we believe that H.R. 12667 attacks a problem that is already adequately and effectively covered by existing regulations.

Our second objection to H.R. 12667 is that the reference to "an alien lawfully admitted to the United States for permanent residence whose principal actual dwelling place is in a foreign country contiguous to the United States" is a condition that, in the vast majority of cases, cannot be determined with certainty by employers. To a great extent, the so-called commuter alien is as much a state of mind as something provable by actual events.

This is best illustrated by the fact that many commuters give El Paso addresses to their employers and it is not uncommon for them to actually have a place where they stay in the United States. In other cases, they may normally return to Mexico only on weekends or less frequently, and this pattern will vary with individuals from time to time for various reasons.

I claim no expertise in organized labor/management matters; however, this bill would provide labor unions with an extremely powerful and potent weapon that could be used to intimidate employers and aliens of Mexican ancestry employed along the border whether resident or commuter.

Third, H.R. 12667 seems redundant in view of the existing restrictions limiting the immigration of green card holders for employment at a struck plant. Reference: Federal Register 32, line 89, Tuesday, May 8, 1967.

When the Secretary of Labor certifies that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, form I-151—the green card—shall be invalid when presented in lieu of an immigrant visa or reentry permit by an alien who has departed for, or seeks reentry from any foreign place, and who, prior to his departure or during his temporary absence abroad, has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention of accepting employment at the place where the Secretary of Labor has certified that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's certification.

The only conclusion we are able to draw on the intent of H.R. 12667 is that, because labor unions have been unsuccessful in organizing labor in the border areas, a weapon is now being sought by labor unions which would force employers and aliens, resident or nonresident, to comply with union demands or face penalties or loss of employment. This is done by making it unlawful, per se, to employ certain classes of persons under certain conditions, whether or not the employer had knowledge of the person's status at the time of employment.

We believe in the right of people to organize into labor unions, bargain collectively, and seek qualified assistance to accomplish this purpose; however, we are opposed to laws, rules, and methods intended to force union organization on unwilling employee groups.

Though the subject of this bill appears only related to the use of commuter aliens to replace workers on strike, according to the Congressional Record, discussions in support of H.R. 12667 have consid-

ered the entire spectrum of border development, including the green card commuter system itself, border industrialization, and U.S. import-export regulations.

The stated motives of the proponents of H.R. 12667 are to provide a better way of life for the poor and underprivileged people on the border. No one is more concerned about the well being of all the people residing along the border than the residents of the border area. Our organizations are concerned about the well being of everyone, Mexican-American or Anglo, and Mexican as well as U.S. citizens. It appears to us, on the other hand, that organized labor is interested in only one group, and that is the members or potential members of their unions in the United States.

Our community, as a whole, does not consist of just union members, business agents, and international representatives. These are only a very small segment of our border population. I do not think their point of view, and those who espouse it, take into consideration what is good or bad for our communities as a whole. Their point of view is basically selfish and shortsighted. They feel that by barring aliens from working, which is apparently what they want to do, they can thereby limit the availability of labor and their job of capturing dues-paying members is made easier.

Another point intimated in discussions reported in the Congressional Record, is that the green card commuter is some sort of well-to-do Mexican national who owns a luxurious home or ranch as a result of the relatively high income he is able to earn in the United States. A few of these persons may exist, but I assure you it is not a picture of the average commuter. The vast majority of commuters qualify and would like to move into the United States. Living costs in Mexico on the border are not substantially lower on the Mexican side and frequently are higher in many areas of essential family needs. The majority of commuters do not move into the United States only because other members of their family do not qualify for immigration and they do not want to divide their families. In the border areas, most of the things that are cheaper in Mexico than in the United States can be purchased in Mexico by a U.S. resident if desired. Housing, utilities, and other needs tend to cost as much or more in the Mexican border cities as in the U.S. border cities. In the United States, children can obtain free education through the 12th grade and ample schools are available. To a Mexican resident, this opportunity is only available through the sixth grade. In Juarez, for example, adjacent to El Paso, this year facilities are not available for 25,000 of the children qualifying for these limited educational opportunities. For these reasons, most commuters, I would estimate 90 percent or more, would move to the United States if they could do so and bring their families.

Mr. THOMPSON. May I ask a question at that point?

Mr. MILES. Yes, sir.

Mr. THOMPSON. Isn't it so that they can't bring their families in if they don't make what the Immigration and Naturalization Service considers enough money for them to support the family? Isn't that so?

Mr. MILES. There are generally two reasons why they can't come in. One is the one you mentioned. They must meet minimum wage requirements, which I understand average around \$4 to \$5,000 a year.

Mr. THOMPSON. \$4 to \$5,000?

Mr. MILES. Yes.

The other reason would be, of course, if they were not eligible to come in because they had been convicted of a felony or something of that sort.

Keep in mind that many of these people are women and though they have a job on this side that would bring an income, it is the man that is involved.

It is our understanding, based upon the people in the U.S. Consulates, and Immigration and Naturalization, that the problems related to this are as I have described.

We believe legislation such as H.R. 12667, aimed at barring commuters from working in the United States, will result primarily in the disruption of family units requiring the commuter to maintain a home in Mexico and a residence in the United States. The maintenance of two homes and the payment of two monthly rents does not put more money in the individual worker's pockets or make the family unit stronger. It has been stated that the commuter adversely affects the wages and working conditions of our U.S. citizens and residents. The inference is clear that if you cut off the commuter, the wages, hours, and working conditions of all U.S. citizens and residents will improve. That is, somehow or other, we cut off the Mexican side of the border and the employment problems of our neighbors in the Republic of Mexico, that the loss of the Mexican-Americans residing in the United States would then reach the millennium. There are many fallacies in this theory.

1. Without the creation of a 2,000 mile iron curtain and Berlin-type wall along the border, the entry of Mexican nationals into the U.S. labor market will not be seriously curtailed by restrictive laws based on past experience and the deportation records of the Immigration Naturalization Service. See Aliens Apprehended Report, Exhibit D.

2. If the present job opportunities for the people of the border cities in Mexico could be cut off, the result would be the elimination of many sources of income that support the border economy such as tourism, industry, and retail trade from Mexico, thus we would reduce or eliminate job opportunities for Mexican-American citizens in the United States, rather than increase them.

3. If H.R. 12667 is, as I have stated, not needed to accomplish the strikebreaking purpose but, in fact, is a proposed tool to intimidate employers and resident and commuting aliens, it is then a part of the overall effort that would eliminate economic opportunity for our Mexican neighbors who have never asked for, or received, aid or other direct monetary assistance from the United States. Rather, they have worked diligently to improve their economy and the economic well-being of their people through their own efforts and resources. In the opinion of the organizations I represent, our efforts to improve the lot of the U.S. population along the border, must be directed to helping the Mexican border people to improve their economies, rather than continuously harassing them and eliminating their opportunities with changes and restrictions in U.S. laws and regulations. In support of these statements, I call your attention to the affidavit of former Secretary of State Dean Rusk before the U.S. District Court, District of Columbia, civil action 3468-61, see exhibit E.

In conclusion, I would like to make the following points for consideration of this committee:

1. That you eliminate consideration of H.R. 12667 on the basis that it is unnecessary legislation for its stated purpose.

2. That your committee make an in-depth and impartial study of the real problems of the border, so that you can develop realistic solutions to the problems as they actually exist.

3. The recommendations of our organization on the entire green card commuter subject are contained on page 155 of exhibit H of my testimony and conform to the recommendations made to the President of the United States by the Select Commission on Western Hemisphere Immigration on page V, VI and VII of the same exhibit.

4. We are opposed to any legislation not based on a careful study of facts. Discussion on H.R. 12667 as reported in the Congressional Record indicates that much misinformation and distortion of fact has surrounded the development of this bill. We stand ready to refute these, and to assist in a realistic factual approach, with full consideration of the interests of opposing parties, in arriving at satisfactory and acceptable solutions.

5. I reiterate the invitation stated in the El Paso Chamber of Commerce letter of July 22 to Congressman Thompson, the chairman, that the El Paso Chamber of Commerce would welcome the opportunity to host the members of your subcommittee in El Paso, so that you can view the border effect of these matters firsthand and add this information to the background available to assist in arriving at your conclusions.

To further support this testimony and to insure that the information is available to your committee in its deliberations I submit copies of the following publications in evidence:

Exhibit F. El Paso Industrial Development Information Fact Book, which I think has a bearing on this subject.

Exhibit G. El Paso/Juarez Twin Plant Concept Fact Book, which was mentioned in the discussion related to this bill in the Congressional Record.

Exhibit H. Testimony before the Select Commission on Western Hemisphere Immigration at El Paso, Tex., part I, which contains their recommendations and the statements of the El Paso Chamber of Commerce and many other people in regard to these matters.

Exhibit I. Report to the "U.S. Department of Commerce on Industrial and Employment Potential on the Border" prepared by Robert R. Nathan Associates.

On behalf of the El Paso Chamber of Commerce and the United States-Mexico Border Cities Association, I thank this subcommittee for your courtesy in hearing our testimony and the opportunity to appear as a witness at this hearing.

Of course I would be pleased to attempt to answer any questions you may have on the subject I have discussed.

(Exhibits A through E referred to follow:)

EXHIBIT A.—U.S./MEXICO BORDER CITIES ASSOCIATION COMMUTER ALIEN WORKER RESOLUTIONS

I. PRESENTLY COMMUTING GREEN CARD HOLDERS

Whereas, persons who hold "Green Card" Immigrant Alien Visas, United States Department of Justice Form I—151, and use this authority to commute to employment in the United States from residences outside of the United States have been vested with certain rights by the Government of the United States by custom, tradition and interpretation of the law fully recognized by the Legislative, Administrative, and Judicial branches of the government of the United States; and

Whereas, the laws of the United States do not specifically state the authority permitting persons who have been issued Form I—151 to commute from residences outside of the United States to employment with the United States, and

Whereas, The United States/Mexico Border Cities Association believes that the United States is obligated to maintain its good faith with those who have been granted and who have used these rights to which they are presently legally and morally entitled,

Now Therefore Be It Resolved, that the United States/Mexico Border Cities Association recommends that the Immigration and Naturalization laws of the United States be amended to clearly provide that persons who have been issued Form I—151 with the understanding that this constituted authority to commute from residences outside of the United States to employment in the United States, can continue their commuter status.

II. FUTURE COMMUTER WORKER PROGRAMS

Whereas, the immigration laws of the United States have been established and amended over the years so that there is not presently an orderly and clearly legal procedure for the United States to permit persons who live outside of the United States to commute to employment in areas of the United States immediately adjacent to their residence, and

Whereas, because of the interdependent nature of the economy and society of contiguous populations along the United States International Boundaries, it is essential to the well being of these populations that a legal and orderly basis in law be provided for the free flow of labor as needed between border areas of the Republic of Mexico and the United States.

Now Therefore Be It Resolved, that the United States/Mexico Border Cities Association recommends that the governments of the United States and Mexico enter into studies to determine the most appropriate procedures to provide for the free flow of labor as needed between their respective immediately adjacent border areas under provision of laws which protect the interests of the respective nations, and the welfare of their citizens who reside in population centers immediately adjacent to their international boundaries.

III. SENATE BILL 2790

Whereas, Senate bill 2790 introduced in the United States Senate by Kennedy of Massachusetts, would deprive persons who have been granted "Green Card" immigrant visas, Form I—151, of rights with which they have been vested by the Government of the United States by custom, tradition, and interpretation of the laws of the United States, and

Whereas, by providing that each commuter green card holder must have a certification by the Department of Labor within the past six months that they are not contributing to unemployment or low wages of United States residents before the Labor Department will authorize admission to the United States to work, this law retroactively revokes rights which have been previously granted to persons who have been issued Form I—151.

Now Therefore Be It Resolved, that the United States/Mexico Border Cities Association opposes adoption of Senate Bill 2790 as presently constituted.

Adopted January 19, 1968.

DONALD W. HOLMBERG,
Secretary.

EXHIBIT B.—COMMUTER WORKERS IDENTIFIED BY OCCUPATIONAL CLASS, NOV. 1, 1967, THROUGH DEC. 31, 1967

Port	Industrial workers	Building and construction workers	Agricultural workers	Sales and service workers	Private household workers	Total
California:						
San Ysidro.....	2,005	409	2,827	1,950	344	7,535
Tecate.....	6	4	30	14	2	56
Calxico.....	195	93	6,810	517	75	7,690
Andrade.....	1	0	2	0	0	3
Arizona:						
San Luis.....	39	14	3,325	146	29	3,553
Lukeville.....	0	0	0	0	0	0
Sasabe.....	0	0	0	3	0	3
Nogales.....	179	136	6	682	115	1,118
Naco.....	3	31	10	47	3	94
Douglas.....	48	28	175	99	30	380

See footnote at end of table.

EXHIBIT B.—COMMUTER WORKERS IDENTIFIED BY OCCUPATIONAL CLASS, NOV. 1, 1967, THROUGH DEC. 31, 1967

Port	Industrial workers	Building and construction workers	Agricultural workers	Sales and service workers	Private household workers	Total
New Mexico: Columbus...	2	1	26	1	0	30
Texas:						
El Paso:						
Sante Fe						
Bridge.....	1,801	844	1,088	2,725	1,388	7,846
Cordova.....	1,145	704	136	1,387	119	3,491
Ysleta.....	132	60	165	46	20	423
Fabens.....	60	14	195	1	9	279
Fort Hancock.....	3	1	46	0	3	53
Presidio.....	1	3	17	2	1	24
Del Rio.....	144	65	18	70	20	317
Eagle Pass.....	185	147	751	398	154	1,635
Laredo.....	106	212	321	1,825	205	2,669
Roma.....	1	7	54	10	1	73
Hidalgo.....	70	146	472	199	50	937
Progreso.....	0	6	41	2	1	50
Brownsville.....	724	215	198	632	148	1,917
Total.....	6,850	3,140	16,713	10,756	2,717	40,176

Submitted by the U.S. Department of Justice Immigration and Naturalization Service Southwest Regional Commissioner.

EXHIBIT C

EL PASO CHAMBER OF COMMERCE.

El Paso, Tex., July 22, 1969.

HON. FRANK THOMPSON, Jr.
U.S. Congressman,
Washington, D.C.

DEAR CONGRESSMAN THOMPSON: This letter refers to statements attributed to you in an El Paso newspaper report July 17, 1969, and other statements from your Labor Subcommittee hearings on H.R. 12667 reported in the Congressional Record July 8, 1969. As there are several facets to this problem, I will itemize the points I wish to make:

1. You are quoted by the local newspapers as stating "Green-carders have for many years been recruited as strike breakers by employers on the American side and this practice has seriously undermined labor organization". The "green-card strike breaker" charge has been made many times in various hearings and testimony, including Federal court cases. The inference that large numbers of green-card commuters have been continuously and extensively used for strike breaking purposes has repeatedly been proven false. We have extensively investigated these charges and have yet to obtain one documented case of green-card commuters being employed to replace workers on strike. If you have documentation of such a case, we would appreciate the information.

If proponents of legislative action to restrict commuter alien workers desire to charge that green-card commuters per se "seriously undermine labor organization", it would be a reasonable position for argumentation; however, responsible citizens on the Border deplore these false green-card commuter strike-breaker charges.

2. It is my understanding that by Department of Justice ruling, green-card commuters have been restricted from being hired at a struck plant (Reference—Federal Register Number 32, Line 89, in Tuesday, May 8, 1967.); therefore, I am curious as to why H.R. 12667 is desired or necessary.

3. I note from your remarks in the Congressional Record of July 8, 1969, your concern about the Border Industrialization program. In this and the other matters I have discussed, as well as many other International problems related to Mexico, there are practically always at least two factors that should be analyzed and reconciled on the basis of effect on the people involved. They are:

(a) The needs and well-being of the entire United States or special interest groups with the United States, and

(b) The well-being of the people who live on the Border, both in the United States and Mexico.

I have an impression that aside from the Select Commission Hearings, primarily those held in El Paso, the problems or needs of the Border people have not been presented in testimony and discussion on these various labor and labor-related problems.

In support of the above statements, I enclose the testimony of the El Paso Chamber of Commerce before the Select Commission on Western Hemisphere Immigration, January 26, 27, 1968. This entire testimony was extensively researched and subjected to intensive cross examination (Reference—The Impact of Commuter Aliens Among the Mexican and Canadian Borders Hearings Before the Select Commission on Western Hemisphere Immigration, Part I, January 26, 27, 1968, Page 82 to 176.)

The El Paso Chamber of Commerce would welcome the opportunity to host you and members of your committee in El Paso so that you could have the opportunity to view the border effect of these matters first hand, and add this knowledge to the background information used at arriving to your conclusions.

Sincerely yours,

DONALD W. HOLMBERG,
Executive Director.

EXHIBIT D.—ALIENS APPREHENDED, ALIENS DEPORTED, AND ALIENS REQUIRED TO DEPART—YEARS ENDED
JUNE 30, 1892-1966

Period	Aliens apprehended ¹	Total	Aliens expelled	
			Aliens deported	Aliens required to depart ²
1892 to 1966	5,843,161	6,531,237	543,162	5,988,075
1892 to 1900		3,127	3,127	
1901 to 1910		11,558	11,558	
1911 to 1920		27,912	27,912	
1921 to 1930	128,434	164,390	92,157	72,233
1931 to 1940	147,457	210,416	117,086	93,330
1931	22,276	29,861	18,142	11,719
1932	22,735	30,201	19,426	10,775
1933	20,949	30,212	19,865	10,347
1934	10,319	16,889	8,879	8,010
1935	11,016	16,297	8,319	7,978
1936	11,728	17,446	9,195	8,251
1937	13,054	17,617	8,829	8,788
1938	12,851	18,553	9,275	9,278
1939	12,037	17,792	8,202	9,590
1940	10,492	15,548	6,954	8,594
1941 to 1950	1,377,210	1,581,774	110,849	1,470,925
1941	11,294	10,938	4,407	6,531
1942	11,784	10,613	3,709	6,904
1943	11,175	16,154	4,207	11,947
1944	31,174	39,449	7,179	32,270
1945	69,164	80,760	11,270	69,490
1946	99,591	116,320	14,375	101,945
1947	193,657	214,543	18,663	195,880
1948	192,779	217,555	20,371	197,184
1949	288,253	296,337	20,040	276,297
1950	468,339	579,105	6,628	572,477
1951 to 1960	3,584,229	4,013,547	129,887	3,883,660
1951	509,040	686,713	13,544	673,169
1952	528,815	723,959	20,181	703,778
1953	885,587	905,236	19,845	885,391
1954	1,089,583	1,101,228	26,951	1,074,277
1955	254,096	247,797	15,028	232,769
1956	87,696	88,188	7,297	80,891
1957	59,918	68,461	5,082	63,379
1958	53,474	67,742	7,142	60,600
1959	45,336	64,598	7,988	56,610
1960	70,684	59,625	6,829	52,796
1961	88,823	59,821	7,438	52,383
1962	92,758	61,801	7,637	54,164
1963	88,712	76,846	7,454	69,392
1964	86,597	81,788	8,746	73,042
1965	110,371	105,406	10,143	95,263
1966	138,520	132,851	9,168	123,683

¹ Aliens apprehended first recorded in 1925. From 1960, deportable aliens located including nonwillful crewman violators.

² Aliens required to depart first recorded in 1927.

(Exhibits E through I are available for examination in the subcommittee files.)

Mr. THOMPSON. Thank you, and thank you for the various exhibits and appendices which we will look over very carefully.

Mr. MILES, can you explain to us the objectives and the operations of the United States-Mexico Border Cities Association?

Mr. MILES. This association was formed about 3 years ago. The initiative which brought it about was an attempt at that time to change the tourist import regulations which we thought would be damaging to tourist business and economic opportunity along the border. It is an association of cities and chambers of commerce on both sides of the border.

Our objective is to try to get the needs and the problems of the border people realistically presented to the people that may be concerned with legislation that might adversely affect or favorably affect it.

Mr. THOMPSON. Do your members pay dues?

Mr. MILES. Yes.

Mr. THOMPSON. How much are those dues?

Mr. MILES. Membership is \$10 per person per year.

Mr. THOMPSON. How about an organization or a municipal entity—does a town belong?

Mr. MILES. Yes; we have \$100 a year dues for organizations such as the chamber of commerce or cities, and then \$10 for individuals.

Mr. THOMPSON. How many members do you have?

Mr. MILES. We have approximately 200 individual members and we have practically all of the cities along the border in the United States.

Mr. THOMPSON. Are any of your members in the local labor community?

Mr. MILES. No.

Mr. THOMPSON. How does this organization relate to the so-called border industrialization program?

Mr. MILES. It has no formal relationship. However, each of the cities and chambers of commerce involved believe that this is an economic opportunity for the border area and are actively engaged in supporting it.

Mr. THOMPSON. Do you know what the average wage rate per hour is in plants on the Mexican side of the border as part of the program?

Mr. MILES. Actually, I am only intimately familiar with the wages in Juarez. The minimum wage established in Juarez at this time is approximately 32 cents per hour, plus their fringe benefits, their seventh day pay and that sort of thing.

Mr. THOMPSON. Do you know how many new industries or plants have been located on the border in your area?

Mr. MILES. In our area approximately 20 have been established since the program was instituted.

Mr. THOMPSON. Are they all on the Mexican side?

Mr. MILES. Of the 20, I believe 13 have establishments on the El Paso side.

Mr. THOMPSON. Do you know anything about the number of people that are employed?

Mr. MILES. We estimate that at this time there are about 1,000 people employed in these industries on the El Paso side and about 2,000 on the Juarez side.

Mr. THOMPSON. On the El Paso side, how many of those are green card workers; do you know?

Mr. MILES. I would have no way of estimating. You mean commuters or people who are immigrants?

You see, 16 percent of the people of El Paso are immigrant aliens. In other words, they are immigrants to the United States and they hold green cards, also.

Mr. THOMPSON. No; I am concerned with the commuters.

Mr. MILES. I would have no knowledge of any, though I am sure there are some.

Mr. THOMPSON. You see, our principal concern here relates to the commuters and although it is not within our jurisdiction we are very sensitive to the feeling such as expressed by former Secretary Rusk in your exhibit. We have seen that before. Our concern is to help, of course, those intending immigrants who are residents in the United States and indeed to help the green card commuters as well. We recognize that there is some use for them in the labor market.

What is the average wage on the El Paso side in the plants that have been established?

Mr. MILES. I would say the average starting wage in most of the plants concerned at the laboring level would be the minimum wage, \$1.60. However, there are many who are supervisory personnel and that sort of thing employed. I couldn't say what the wage was, but it does contribute substantially to employment in El Paso.

Mr. THOMPSON. So the difference is 32 cents approximately to \$1.60 on the other side?

Mr. MILES. What was that again?

Mr. THOMPSON. The difference in hourly wages is the difference between 32 cents on the Mexican side and \$1.60 on our side.

Mr. MILES. I would say it was probably closer to between 40 and 50 cents an hour on the Mexican side and \$1.60 on the U.S. side because of the way they calculate.

For example, it is 32 cents plus pay for Sunday.

Mr. THOMPSON. I see.

Mr. MILES. Then they have specified holidays and so on, but it runs about 50 cents an hour.

Mr. THOMPSON. About a dollar an hour difference then?

Mr. MILES. Yes.

Mr. THOMPSON. What is the relationship of your organization with the El Paso Chamber of Commerce?

Mr. MILES. The El Paso Chamber of Commerce is, of course a member of this association and because we are central and a large population center on the border, the administrative headquarters have been set up with the El Paso Chamber of Commerce.

Mr. THOMPSON. Do you know Mr. Donald W. Holmberg of the Chamber of Commerce?

Mr. MILES. Yes. He is my boss.

Mr. THOMPSON. He is the executive director—

Mr. MILES. Yes.

Mr. THOMPSON (continuing). Of your association, or of the chamber?

Mr. MILES. Of both.

Mr. THOMPSON. Are you familiar with correspondence between Mr. Holmberg and Mr. Meyer of DATE of Tucson about a year ago?

Mr. MILES. Yes.

Mr. THOMPSON. It is really quite an interesting thing. Mr. Holmberg wrote to Mr. Meyer after having seen a publication called "Date Line, Tucson, Arizona," and that was on October 28, 1968, in which Mr. Holmberg wrote, and I quote:

The emphasis your bulletin makes on certain points, I believe, will provide concrete evidence that opponents of the Border Industrialization Program can, and will, use effectively in bringing about legislative action and policy decisions harmful to the program.

I refer specifically to such statements as "It's (Labor) . . . available right here . . . for as low as 30 cents an hour in virtually inexhaustible numbers," "Twin Plants bring increased profits . . . greater profits for stockholders," "There is profit for you in Twin Plants." Because of the political implications, we have emphasized such statements as "low cost labor," "readily available," "opportunities for better competitive positions". I realize that these statements are less meaningful than those you have used, however, we have found that the majority of manufacturers have no problem grasping our meaning. In any event, we believe it is better to use a soft-sell promotion rather than face the potential of losing the entire program.

Mr. MILES. Yes, sir.

Mr. THOMPSON. Now, this is in response to the Tucson group's efforts to recruit Mexican labor at 30 cents an hour.

Mr. Meyer responded:

At this point, I will take under advisement future Dateline editions dealing with the twin plant program regarding 30 cents per hour labor . . . inexhaustible labor, etc. Don, we certainly do not want to jeopardize this program which can benefit both countries.

The appeal being, of course, for labor at 30 cents an hour. The appeal by the Tucson group also talked about readily available labor, opportunities for better competitive positions, and so on. Mr. Holmberg congratulates the Tucson people on a fine promotional effort. It seems to me that with such efforts, and I will put these two letters in the record, there does not seem to be such a great concern for the economic well-being of that Mexican worker if the appeal is being made on the basis of paying 30 cents an hour. That isn't as altruistic as some of your statements would seem to indicate you are.

Mr. MILES. May I respond to that, Mr. Chairman.

Mr. THOMPSON. Surely.

Mr. MILES. In El Paso, and we have encouraged this attitude throughout the border, we hope that the low wage will not always be the attraction. While it is in a sense at this time the minimum wage in Juarez, the wage structure has increased dramatically and we advise industrial prospects that we talk to that they should not count on this low wage staying where it is. In other words, if all their location depends upon is that wage staying where it is, they better go someplace else.

But the availability of labor, the willingness of labor to perform tasks which in many cases employers can't get done at all in the United States, and the ability to compete in the U.S. market with products that have more of U.S. initiative invested in them are the attractions that we try to sell on this program.

Mr. THOMPSON. Well, you have, as Mr. Holmberg indicates in his suggestion to Mr. Meyer, sort of "code words." He said, "I realize these statements"—referring to Mr. Meyer's direct statements of 30 cents labor—"are less meaningful than those you have used. However, we have found that the majority of manufacturers have no problem grasping our meaning."

In other words, you hope that the labor conditions, and rates of pay, and so on, will improve and you so advise those whom you are in communication with, but the fact is that a great part of the appeal to date has been labor cost, has it not?

Mr. MILES. Well, certainly. You see, most of the prospects we talk to either are considering replacing Oriental production, that they already have under contract now, or their operations are such they are going to have to go there and help learn about this. There are literally hundreds of promoters throughout the United States encouraging plants to go to the Orient—I mean to the various countries there—and certainly our efforts are very minute compared to that. We feel that it is much better for the United States for these plants to go to Mexico on the border than to be lost somewhere else in the world. For example, in one plant we talked to recently that has a pilot project over there, 13.6 percent of their total cost was paid in Mexico. The rest of it on these products was spent in the United States.

(The letters referred to follow:)

EL PASO CHAMBER OF COMMERCE,
El Paso, Tex., October 28, 1968.

Mr. KARL MEYER,
Executive Director, Development Authority for Tucson's Expansion,
Tucson, Ariz.

DEAR MR. MEYER: I am in receipt of a copy of your official publication "Date Line, Tucson Arizona", Vol. 1, No. 1. I commend you on the program you have initiated and the aggressive manner of the approach that characterizes your publication.

There are several points you emphasize that, in my opinion, could lead to problems for the "Border Industrialization Program". As you probably know, because of our significant location, the El Paso Chamber of Commerce has been very heavily involved in this problem and its promotion since it was initiated in 1965. We also are the Headquarters for the U.S.-Mexico Border Cities Association and, therefore, matters that are related to this program are frequently called to our attention. The "Border Industrialization Program" has been a subject of considerable and intensive opposition by the AFL/CIO. The emphasis your bulletin makes on certain points, I believe, will provide concrete evidence that opponents of the Border Industrialization Program can, and will, use effectively in bringing about legislative action and policy decisions harmful to the program.

I refer specifically to such statements as "It's (Labor) . . . available right here . . . for as low as 30 cents an hour in virtually inexhaustible numbers", "Twin Plants bring increased profits . . . greater profits for stockholders", "There is profit for you in Twin Plants". Because of the political implications, we have emphasized such statements as "low cost labor", "readily available", "opportunities for better competitive positions". I realize that these statements are less meaningful than those you have used, however, we have found that the majority of manufacturers have no problem grasping our meaning. In any event, we believe it is better to use a soft-sell promotion rather than face the potential of losing the entire program.

Again, congratulations, on your fine promotional effort. I hope you will accept these comments in the constructive manner intended. For reference, I enclose a copy of our El Paso "Twin Plant Concept Fact Book".

Sincerely,

DONALD W. HOLMBERG,
Executive Director, El Paso Chamber of Commerce, Secretary, U.S.-
Mexico Border Cities Association.

DATE, DEVELOPMENT AUTHORITY FOR TUCSON'S EXPANSION,
October 31, 1968.

Mr. DONALD W. HOLMBERG,
Executive Director,
El Paso Chamber of Commerce,
El Paso, Tex.

Thank you very much, Don for your constructive comments regarding our Needletrade Edition of Dateline, Tucson, Arizona. This method of direct contact with an extremely selective mailing list has generated a number of bonafide leads for our Tucson area.

Our counsel in Tucson and Nogales, Sonora recommended that companies seeking "off shore" facilities should be apprised of the advantages closer to home which could be realized, having a plant in the United States and one in the Mexican Free Perimeter. In Arizona we have developed a Continuing Education Program regarding the advantages of a Twin Plant facility as a method of increasing employment, primarily in the United States. We are also concerned about the delicate nature of the Twin Plant Program regarding the AFL/CIO legislation similar to the Bracero Program in 1965. At this point, I will take under advisement future DATELINE editions dealing with the Twin Plant Program regarding 30¢ per hour labor . . . inexhaustible labor, etc. Don, we certainly do not want to jeopardize this program which can benefit both countries.

Thank you for your very fine "Twin Plant Concept Fact Book and I do appreciate your comments regarding our direct mail program.

Sincerely,

J. KARL MEYER.

Mr. THOMPSON. Well, I just have one comment. I don't think in your analysis of this legislation that you understand the intention of the sponsor of this legislation. It is a very narrow bill in scope, purposely because of our awareness of the need for labor from Mexico, because of our relations with Mexico, which have been splendid and are constantly improving, we hope. Our sole purpose is to make an unfair labor practice the hiring of a green card worker to replace someone who is out in a legal, legitimate labor dispute, not to coerce anyone. That is the only purpose in this bill.

Mr. MILES. We realize that this is the purpose of the bill as is apparent, but in my testimony I attempted to show that this bill could have a considerably broader effect. At this point this is speculation but you see, No 1, we don't believe that there is an extensive problem. It has never been proven to us that there is an extensive problem.

No. 2, we can sit here and say that a commuter is an easy thing to identify. The fact is that it is not easy. I mean, for example, when they made this survey and they were putting grommets in they had a group of citizens being sworn in. After they were sworn the forms were picked up and one of these forms had a grommet in it. If they had not done that, that man would have become a citizen of the United States. So I say you just can't say this person is a commuter. Maybe he was a commuter last week and this week he is not a commuter.

Mr. THOMPSON. Mr. Ruth?

Mr. RUTH. No questions.

Mr. THOMPSON. Mr. Miles, thank you very much.

When these hearings were set we weren't aware of the fact that the House would be in session at 11 o'clock, and those bells mean a quorum call. We would have to get unanimous consent to sit further and we took you because you have come from so far.

Mr. MILES. Thank you.

Mr. THOMPSON. In closing, I would like to acknowledge—and I will write the chamber—acknowledge their letter and thank them for

their invitation, and I shall ask the members of the subcommittee if any of them would like to go down as your guests and see firsthand what you have to show them.

Mr. MILES. We would very much like to have you come down and we would like to assist the subcommittee in any way we can in arriving at a sound solution to these problems.

Thank you very much.

Mr. THOMPSON. Thank you very much.

I am afraid we will have to ask the other witnesses to either leave their statements with us, or if they can return tomorrow morning—we have a relatively light schedule—we will hear them.

Mr. Thornton, can you come tomorrow?

Mr. THORNTON. Thank you, sir.

Mr. THOMPSON. Mr. Wasserman?

STATEMENT OF JACK WASSERMAN, MEMBER, BOARD OF GOVERNORS, ASSOCIATION OF IMMIGRATION & NATIONALITY LAWYERS

Mr. WASSERMAN. I am not at all sure I will be able to come tomorrow. I will try to make it but in the meantime may I have my statement filed?

Mr. THOMPSON. You may indeed.

(The statement referred to follows:)

STATEMENT OF JACK WASSERMAN IN BEHALF OF ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS

My appearance before your Committee is on behalf of the Association of Immigration and Nationality Lawyers in opposition to H.R. 12667. My name is Jack Wasserman. I am an attorney with offices in the Warner Building, Washington, D.C. I am a member of the Board of Governors of the Association of Immigration and Nationality Lawyers and a past president. I was a member of the Board of Immigration Appeals in the Department of Justice. My appearance here has been authorized by John Manos, President of the Association of Immigration and Nationality Lawyers and by Antia Streep, Chairman of our Committee on Legislation.

The Association is a bar association duly organized and chartered under the laws of the State of New York and its members are lawyers who specialize in immigration, naturalization and nationality matters. The Association has chapters in various cities of the United States and its membership spreads throughout the United States. Many of its members were former officers of the Immigration and Naturalization Service of the United States Department of Justice who have returned to the practice of the law.

The Association opposes that portion of H.R. 12667 which would make it an unfair labor practice to employ "any alien unlawfully present in the United States". We appreciate the problem created by Mexican laborers who commute to jobs here and who cause adverse social and economic effects on working standards in the United States. This problem needs solution.

However, H.R. 12667 would apply not only to labor along the Mexican border but also along our northern border and elsewhere. It would apply to many deserving and needed aliens who may be in the United States out of lawful status. It paints with too broad a brush. It would apply to the following aliens who are here unlawfully.

1. Aliens in the process of adjusting their status through relative petitions, through preference categories upon the basis of needed skills, or through other means.

2. Aliens who have served in the armed forces of the United States.

3. Aliens in the professional classes, including physicians and other needed hospital workers. Note should be made that President Nixon observed on July 10,

1969, that we face a massive crisis in the field of health care caused by shortages of doctors and hospitals.

4. Alien workers in fields where there are critical shortages.

5. Alien refugees, escapees and defectors who cannot return to countries of their former nationalities or residences.

6. Aliens who are the beneficiaries of private immigration bills.

7. Aliens with long time residences here and aliens who cannot be deported because of the absence of a receiving country.

Alien workers here legally and illegally have in the past contributed greatly to industry, to the professions and to the welfare of the United States.

The problem created on our southern border can be solved administratively by requiring commuters to secure annual or semi-annual labor clearances. It can be solved by a strict interpretation of 8 U.S.C. 1101(a)(33) which defines "residence" as "the place of general abode, * * * a person's principal actual dwelling place in fact without regard to intent". It can be solved by limiting the issuance of permanent residence cards solely to those who maintain actual dwelling places in the United States. If legislation is needed, the problem can be solved by making it an unfair labor practice to employ aliens illegally here as replacements during a labor strike. As worded, the bill contains a flat and unnecessarily broad limitation against any employment of aliens illegally here, whether or not there is a labor strike and whether or not the aliens are hired as replacements. As worded, the bill declares employment of illegal aliens an unfair labor practice even though there is no National Labor Relations problem presented. For these reasons we oppose H.R. 12667.

Mr. WASSERMAN. I might say our primary concern was with the broad language of the first part of the bill. We felt it painted with too broad a brush and despite your statement, Mr. Chairman, we can't see how you can use the language just to apply to wetbacks and say that it doesn't apply to other aliens who have either entered illegally or who remain unlawfully after they are out of status.

Mr. O'HARA. Mr. Wasserman, what I would appreciate your doing is submitting a further statement to us that would suggest to us how we can correct that.

Mr. WASSERMAN. I do suggest it: If you will confine it to aliens illegally here who are hired as replacements during the labor strike.

Mr. O'HARA. No, we want to get the commuter. We don't think we get all of the various people that you describe on page 2 of your statement. We want to get language in here that would prevent the hiring of a commuter, of someone who is commuting to employment within the United States from a place of abode outside the United States.

If you can somehow make a suggestion that would refine that language, we would appreciate having that because we are anxious to prevent employment not just of the illegal aliens, but of the commuting aliens. If you have some other language by which you can define the commuting alien that you think would be better we would certainly like to look at it. At least I would.

Mr. THOMPSON. I would, too.

Mr. WASSERMAN. I think our position on that is that you have language in the immigration statute today which can cover it if you strictly interpret it. If a man's home is in Mexico, he is not entitled to a green card under the statute. Immigration, through administrative practice, has not enforced that provision, but they can enforce it if that is what the committee desires them to do. I think you don't need legislation for that purpose.

Mr. O'HARA. I don't think we want to go that far. Many of us, at least, or some of us recognize that some of these commuting work-

ers have been a part of the labor force in border areas for many years and we don't wish to simply arbitrarily exclude them. We simply want to exclude them from being used as replacements for other workers in the course of a labor dispute.

Mr. THOMPSON. Just that one narrow purpose, you see.

Mr. WASSERMAN. Yes.

Mr. THOMPSON. Certainly this committee would never recommend, I don't think, certainly I wouldn't, to the Immigration Service that they prevent commutation. These people are an essential part of the economy of El Paso and Juarez, and any number of American communities. We don't want to deprive them of their work opportunities.

In a great many retail establishments, for instance, and there are small stores and so on along the border, they depend on commuters for every day appearances. The only thing that we are trying to do is that, if there is a farm or a plant along the border and there is a legitimate labor dispute there, we want to make it an unfair labor practice to employ a commuter in the place of someone who is a legitimate resident and who is a part of the labor dispute.

I am glad we have had time for this colloquy. If you give it further thought, we would be very grateful to hear from you because none of us is married to the language of the bill, but we are very deeply convinced of the principles involved.

Mr. WASSERMAN. The association's main concern was with the first part of the bill. We think that if that language covers a wetback is also covers all the categories of individuals we have set forth on page 2 of our statement. It would cover any alien defector. It would cover an alien who was in the Armed Forces of the United States, but who is technically here illegally. It would cover all sorts of aliens who are in the process of adjusting their status. We submit that, despite the chairman's statement, the language is just too broad. It covers all these other cases.

Mr. O'HARA. But only under a very particular and rather unusual set of circumstances, which is their employment as replacements for workers who are out on strike.

Mr. WASSERMAN. But the bill doesn't say that with regard to aliens unlawfully here.

Now, we would have no objection if you said, "Aliens illegally or unlawfully here who are hired as replacements during a labor strike. The bill does not say that."

Mr. THOMPSON. Thank you very much.

Mr. WASSERMAN. Thank you.

Mr. THOMPSON. The subcommittee will adjourn to tomorrow morning at 10 o'clock in room 2175.

(Whereupon, at 11:20 a.m., the subcommittee recessed, to reconvene at 10 a.m., Friday, August 8, 1969.)

EMPLOYMENT OF "GREEN CARD" ALIENS DURING LABOR DISPUTES

FRIDAY, AUGUST 8, 1969

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. Frank Thompson, Jr., (chairman of the subcommittee) presiding.

Present: Representative Thompson.

Staff members present: William G. Phillips, Director, Special Subcommittee on Labor; Jeunesse M. Beaumont, clerk, Special Subcommittee on Labor; Robert E. McCord, chief clerk and senior specialist, Committee on Education and Labor; and Michael J. Bernstein, minority counsel, Committee on Education and Labor.

Mr. THOMPSON. Our colleagues have commitments elsewhere, but have been kind enough to indicate that we can proceed.

Our first witness this morning will be Mr. Leonard Lesser with the Committee for Community Affairs, Washington.

Good morning; nice to see you.

STATEMENT OF LEONARD LESSER, SECRETARY-TREASURER, COMMITTEE FOR COMMUNITY AFFAIRS, WASHINGTON, D.C.; ACCOMPANIED BY JACK BEIDLER, EXECUTIVE DIRECTOR

Mr. LESSER. Thank you, Mr. Chairman.

My name is Leonard Lesser and I am secretary-treasurer of the Committee for Community Affairs. I am accompanied by Jack Beidler, who is executive director of the Committee for Community Affairs.

I do have a prepared statement which I would appreciate having placed in the record, and I will just talk from it rather than read it.

Mr. THOMPSON. Without objection, it will be printed in the record at this point.

(The statement referred to follows:)

STATEMENT OF LEONARD LESSER, SECRETARY-TREASURER COMMITTEE FOR COMMUNITY AFFAIRS

Mr. Chairman and members of the Subcommittee, my name is Leonard Lesser. I am Secretary-Treasurer of the Committee for Community Affairs, a non-profit corporation organized to serve the interests of the poor and disadvantaged throughout the country. We have worked closely with Mexican American groups in Texas and California who are most affected by the influx of "green card commuters" across the border.

(221)

I am pleased to appear before this Subcommittee in support of H.R. 12667 which would make it an unfair labor practice for an employer to hire aliens during a labor dispute as a replacement for persons ordinarily employed by such employer. We support the proviso to the new Section 8(a) (6) proposed by the bill which makes it applicable to the employment of agricultural workers, domestic employees and other categories of workers who are excluded under Section 2 (3) of the Act.

Finally we support the provisions of section 2 of H.R. 12667 which would apply the injunctive relief provisions of section 10(1) of the Act to the unfair labor practice created by the new section 8(a) (6). This Committee is well aware of the delays built into the normal processes of the Act for determining the existence of unfair labor practices. To make the employment of an alien as a strike breaker an unfair labor practice but to assure that no determination of its existence in a particular case can be made until the labor dispute is over would be a farce. Providing for an injunction under section 10(1) would at least offer some hope for the imposing of a timely remedy.

I want to direct my remarks to the so-called "green carders." As you know, green carders are Mexican Resident Aliens admitted to this nation on a permanent basis. The green carder appellation refers to the Immigration-Naturalization Form I-151 (Resident Alien) Registration Card.

The annual alien address registration statistics of the U.S. Immigration and Naturalization Service indicate that as of January, 1969, there were about 700,000 Mexican Nationals residing in the United States as lawful permanent residents. The largest concentrations are in the states of California and Texas, which together contain about 80 per cent of the permanent resident aliens.

Mr. Hennessey, Executive Assistant to the Commissioner of the U.S. Immigration and Naturalization Service in testifying before this Committee indicated that about 50,000 included in the overall number of Mexican Nationals with the status of lawful permanent residents are "commuters," who register in cities along the border. Other estimates have ranged as high as 100,000. Commuters are actually residents of Mexico who cross the border to work on the American side of the international boundary line. Although they live in their own country, commuters are granted the status of green carders—that is, permanent resident aliens.

The status is admittedly an artificial one contrived partially to maintain good relations with a good neighbor and partly to meet human problems arising from the historical fact that people have commuted across the border to work since the border was established. Thus, there has been for many years a pattern of regular, fairly easy, border crossing by workers from Mexico who commute to jobs in the United States. The same consideration is enjoyed by Canadian aliens commuting to jobs in our country across our northern border.

While we do not oppose the right of Mexican and Canadian alien workers to cross our borders freely and improve their economic lot by finding jobs here, we strongly believe that when they do so they do not deprive our own workers of jobs and are not used by exploitive employers to depress wage scales or working conditions.

The basic thesis of immigration regulations has long provided that Mexican Nationals seeking to enter the United States to work cannot be granted admission if their employment adversely affects wages and working conditions of other workers in similar employment in the United States.

Under present law and regulations, if a Mexican National seeks to enter the United States to reside and work he must first obtain an immigrant visa. He must also present a certification issued by the Secretary of Labor which states that there are not sufficient workers in the United States able, willing, qualified or available at the place where the Mexican National will perform the work; and that his employment at that place will not depress wages and working conditions of other workers similarly employed.

Thus, when a Mexican National is originally granted an immigrant visa and "green card" status, protections for the wages and working conditions for domestic workers are afforded. However, after a Mexican National originally meets these qualifications and is granted green card status, there is no continuing guarantee that he will not be forced into a situation contrary to the spirit and letter of the regulation under which he was admitted.

For example, a Mexican National could have been legitimately granted green card status ten or twenty years ago for a job that then met the admission requirements but which did not keep him employed for more than a short time.

He could then be forced by his economic circumstances to accept employment at inferior wages and working conditions.

It has been circumstances such as these that have forced literally hundreds of thousands of green carders into poverty pools which are dipped into by employers for cheap labor or employment to replace workers on strike.

This circumstance is especially true of green carders who are commuters. As we have pointed out, the green card commuter does not live in the United States but retains his residence across the border in Mexico. His status as a permanent resident of the United States has been called an "amiable fiction" by the courts and an "awkward fiction" by the Board of Immigration Appeals. We believe this kind of contrivance is wrong, but because we recognize that many human problems are intricately involved, we are willing to go along with it provided that it is made completely clear that commuters cannot be used at any time or in any way as strike breakers or to depress wages and working conditions of domestic workers.

The commuter problem along the border is scandalous. Every morning when the work day is beginning and every night when it is ending, streams of commuters cross the border. These hundreds of thousands of commuters obviously compete against domestic workers for jobs. They work for less wages and will accept worse working conditions. For example, a commuter living in Juarez, Mexico, will work in El Paso, Texas for less than half the salary required to maintain a tolerable standard of living by a Mexican American citizen who has lived all his life in El Paso.

The problem of the green carder is not confined to the border area, or to the green-card commuter. Large numbers of green carders enter into migrant worker streams and follow the crops as far north as the Canadian border. Farm workers are the most poverty-stricken, most depressed, most under-privileged working people in our nation and the hardest to organize into unions. One of the major reasons this is true is because the huge corporations that operate factories in the fields of agribusiness have developed the exploitation of the green carder to a highly sophisticated, completely cynical level.

But the problem of the exploitation of the green carder is not confined to agribusiness. The green carder is found in large numbers in industrial plants, in garment factories and in the service trades in California, Texas, Arizona and other states.

We know that green carders are used as strike breakers and are hired to prevent the organization of the workers into unions because they are easily frightened and manipulated by employers who will threaten to fire them and send them back across the border if they support a union.

For a long time attempts have been made to get adequate governmental procedures that will hit squarely at the evil of exploitation of the green carder and that at the same time will protect both the domestic worker and the alien resident worker. We recognize that it is the Department of Justice and the Immigration and Naturalization Service which have the authority and responsibility to do something effective to bring the green card problem under control.

In June of 1967, the Immigration and Naturalization Service recognized its authority to control commuters and to bar the use of the green card (Form 1-151) for the purpose of taking employment at a place where the Secretary of Labor has certified that a labor dispute exists. For years the Immigration and Naturalization Service which have the authority and responsibility to do it finally did in 1967.

Experience under the rule since 1967 already has revealed that it is far too limited. It is aimed only at those green carders who come over to take a job with a struck employer. It doesn't cover the great numbers of green card commuters who might be working at the place of employment, or who say they have come over to work elsewhere, or the huge number of green carders already here. The problem of finding and separating the green card commuters who actually come under the narrow definition of the rule poses a tremendously complicated and difficult administrative and enforcement problem.

While we recognize that amendment of the rule to make it meaningful in labor dispute situations is not within the jurisdiction of this Committee, we would recommend the following changes as consistent with the objective of H.R. 12667:

1. That the rule be extended to those "commuters" who were already employed when the strike began and who therefore are crossing picket lines. Presently, it is limited to those workers who use Form 1-151 for the purpose of accepting

or who have the intention to accept employment in a specific place after the Secretary of Labor certifies that a labor dispute exists.

2. The rule now applies only from the date the Secretary of Labor certifies that a labor dispute exists. It ought to apply instead from the time the labor dispute begins.

3. The rule ought to provide for effective notification of the Secretary's certification that a labor dispute exists in such a way that green carders will become aware of such certifications. At the very least, large signs in both English and Spanish should be posted at border crossings.

4. The rule needs to provide for an effective penalty for those violating it, such as loss of the offender's green card.

5. The rule should be extended in its scope to authorize the Secretary of Labor to make findings that green card holders are contributing to substandard conditions in wages and working conditions or to underemployment or unemployment of United States workers and to provide immigration restrictions when such findings are made.

We believe that the Immigration and Naturalization Service already has sufficient authority to amend and strengthen the rule as an administrative function. If they do not have this authority—though we firmly believe that they do—then the law should be amended so that the objective of strengthening the order would be achieved.

Amendment of the rule along the lines which we have recommended is consistent with the purposes of H.R. 12667. The amended rule would at least assure that all "commuters" would be proscribed from taking jobs where labor disputes exist, just as H.R. 12667 would make it an unfair labor practice to hire them.

The justice of such a result should be obvious. Commuters are not permanent residents of the United States, the basis on which they were originally admitted. If the "fiction" is to exist, it should be permitted to do so only so long as it does not result in a violation of the basic intent of the immigration laws and the specific objectives of the labor certification provisions.

We recognize that such a needed modification of the rules or enactment of H.R. 12667 would not eliminate all problems of alien residents being employed as "strike breakers" or in substandard jobs. There is a broader issue. When an alien is admitted to the United States under specific conditions intended to insure that American labor will be protected, should such conditions continue to be applicable so long as his status as an alien resident is not converted to one of citizenship? In other words, should such an alien who would be precluded from entering the United States in order to take a proscribed job be permitted after entry to violate the conditions which would have precluded his entry?

Finally, we would like to call to the attention of the Committee reports that American manufacturers are running to the Mexican side of the border to establish plants and make use of low wage labor to assemble U.S. products for the American market.

We also have noticed reports about the establishment of "industrial parks" as so-called free zones in which low wage labor in the border area could be made easily available.

It may be that these subjects are beyond the scope of the current hearings of this Committee. They may require further hearings. We should like to go on record, however, as saying that we will strongly oppose the continued exploitation and manipulation of poverty-stricken workers on both sides of our border in whatever form we find it.

If the "commuter" fiction is to continue to exist, steps must be taken immediately to bring the green card problem under control so that the rights and equities of all workers will be adequately protected. H.R. 12667 is a first step in this direction. We urge its enactment by the Congress.

Mr. LESSER. The Committee for Community Affairs is a nonprofit organization which was organized to serve the poor and the disadvantaged. We have been working closely with the Mexican-American community and community groups in both Texas and California. These are the persons who are most affected by the influx of green card commuters across the border.

We are very pleased to appear before this subcommittee in support of H.R. 12667. We think that the designation as an unfair labor prac-

tice of the hiring of certain aliens during a labor dispute as replacement for persons ordinarily employed by the employer is sound.

We particularly support the application of the bill to agricultural workers, domestic employees, and other categories of workers who are excluded under section 2(3) of the act.

Finally, we think that in making the provisions of 10(1) applicable to the new 8(a)(6), the proposed legislation recognizes the problems and delays inherent in the normal processes of the Labor Relations Act. It would be a farce to make the employment of an alien as a strikebreaker an unfair labor practice and yet fail to provide a meaningful remedy. An injunction under section 10(1) would at least offer some hope that action to stop the wrong will be timely.

While the bill is directed at aliens unlawfully in the United States as well as commuters, I would like to direct my remarks primarily to the so-called green carders. As you know, these are people who are admitted to the United States as permanent residents but who live in Mexico or in Canada, in a country whose borders are contiguous with the United States.

Statistics as to the number of these persons have already been presented to the committee. Mr. Hennessey talked about 50,000 people. The United Farm Workers have estimated that they range up to 150,000 people.

The status of these persons is admittedly an artificial one. It was one that was contrived to maintain good relations with good neighbors and partially to meet some of the human problems resulting from the historical fact that prior to 1924 persons did commute across the border without any restrictions.

While we do not oppose the right of Mexican and Canadian alien workers to cross our borders, we strongly believe that when they do so they should not be permitted to deprive American workers of jobs and be used by exploitative employers to depress wage scales, working conditions, or to break strikes.

The basic thesis of our immigration law is that for a person to enter the United States as a permanent resident as a condition he must show, or it must be shown, that his admission would not adversely affect wages and working conditions. A person would not be permitted to enter the United States and be granted a visa if the purpose of that admission were to act as a strikebreaker. In fact, the first step which the Immigration Service took in 1967 specifically said that an individual could not use his green card to come over for the specific purpose of accepting employment which is vacant due to a labor dispute.

Unfortunately, as I pointed out in my testimony, that regulation does not go far enough and did not meet the problem.

But when the Mexican or the commuter was originally granted a visa he had to show that his entrance would not undermine protection for American workers. We do not believe that once he is in the country and has been given the visa he should be permitted to abuse the conditions under which he entered. This problem is particularly true in the case of green carders who are commuters. As we pointed out, the green card commuter does not live in the United States, but retains his residence across the border. His status as a permanent resi-

dent has been called an "amiable fiction" by the courts and an "awkward fiction" by the Bureau of Immigration and Naturalization Service.

I would like to just read one thing from the decision of the Board which illustrates the absurdity of the situation. The decision number is 1601 and it discusses the status of commuters and the history which led to their being granted status as resident immigrants. After going through the situation up to 1927 it says:

A compromise arose which followed the form of the law, yet permitted a limited continuance of the commuter status. It was to treat the commuter who obtained an immigrant visa as if he lived in the United States although he continued to live in the contiguous territory, a clear recognition of the fact that he is not a resident of the United States.

It goes on to explain what they did to treat the immigrant or the commuter as a person and really what they indicated was that the solution was to issue him a border crossing card and then permit him, if he did not desire to live in the United States, to return to his home in foreign contiguous territory and to enter the United States daily on his border crossing card on the theory that he was returning from a temporary visit.

In other words, the border crossing card, or the green card became a work permit for an individual who commuted daily.

We believe that this arrangement is more than a fiction. We believe it is illegal. But we do say if it is to continue it must be made clear that commuters cannot be used at any time or in any way as strike-breakers or to depress wages and working conditions of domestic workers.

We point out the situation which does exist and the numbers of commuters and how they cross freely.

We also point out in our testimony why the 1967 regulations of the Immigration and Naturalization Service do not meet the situation, and although we recognize that amendment of these regulations and the basic immigration and naturalization law are not within the jurisdiction of this committee, we do point out certain amendments of the rule which might be helpful in correcting the situation.

We believed that the Immigration and Naturalization Service already has sufficient authority to amend and strengthen the rule. If they do not, then the law should be amended so that the objective of strengthening the order would be achieved. I think amendment of the rule which we propose would be along the lines and would be consistent with the purpose of H.R. 12667. The amended rule would at least assure that all commuters would be proscribed from taking jobs where labor disputes exist, just as H.R. 12667 would make it unfair labor practice to hire them.

In this connection, I would like to point out, Mr. Chairman, that there are other bills which have been introduced to meet this problem.

The provisions of H.R. 9505, of which you are cosponsor, would directly meet the problem of employers hiring illegal immigrants (that is, persons who are illegally in the United States) by taking away the current exclusion of the immigration law which protects them from any criminal penalties if they do knowingly hire such individuals.

However, while that, too, we do support, we also support the provisions of H.R. 12667 which go beyond that and which also go beyond

the recertification every 6 months which would be required by H.R. 9505. During the 6-month period, H.R. 12667 would meet the problem and would make it an unfair labor practice to hire a person who during that 6-months period is in on a commuter status.

We would like to point out, of course, that the recognition that Government resources should not be used for the employment of persons as replacements of individuals who are on strike is not a novel thing. The Federal law now provides that no State can deny unemployment compensation to an individual who refuses to take a job as a strikebreaker. If a State does deny benefits under the Federal law, the State law would be out of conformity and employers in that State would lose the tax offset against the Federal Unemployment Compensation Tax even though they themselves were not involved in the hiring of strikebreakers.

Second, the Employment Service provides that no State Employment Service shall refer any individual to jobs which are vacant due to a labor dispute. I might say that those regulations are applicable to the referral of persons to jobs in agriculture which are vacant due to a labor dispute. The Employment Service will not refer a person to a job in agriculture which is vacant due to a labor dispute.

There was a recent decision of the California Superior Court which held that an individual could not be denied unemployment compensation for refusing to accept agricultural labor—this happened to be an insurance agent who was referred to agricultural labor—where it was not demonstrated that the job on the farm met all of the conditions of the State law.

In conclusion, therefore, we would like to go on record and clearly indicate that if the "commuter" fiction is to continue to exist steps must be taken immediately to bring the green card problem under control so that the rights and equities of all workers will be adequately protected.

H.R. 12667 is an important step in this direction, and we urge the committee to report it out and that it be enacted by the Congress.

Thank you.

Mr. THOMPSON. Thank you very much.

You pointed out some of the difficulties involved in this whole area. It is a terribly complicated situation, complicated not only by the manner in which the laws are administered but by the potential conflict with the Department of State, where their major interest is, quite naturally, the continuing improvement of our relationships with Mexico.

Then it is complicated by the fact that, as you indicate, this committee doesn't have sufficiently broad jurisdiction to take the whole problem and put the puzzle together and work it out. It is complicated, also, by the fact of State laws.

Texas, for instance, is a right-to-work State, is it not?

Mr. LESSER. Yes, it is.

Mr. THOMPSON. So, obviously, it is difficult enough to organize American workers, no matter who they are, and it would be even more difficult to try to organize green card commuters in any way.

Then there is the very complicated matter of the identification of them and the relative lack of funds by the Immigration and Naturalization Service to deal effectively with the border commuter problem.

So the purpose of H.R. 12667 is really a very narrow one, to get at just one aspect of the whole picture.

We appreciate your support very much.

Mr. LESSER. I might say it is a very important aspect and it does, Mr. Chairman, meet some of the problems.

One, it does help, by being much broader in its impact, meet some of the problems of identification.

Secondly, I think it is important to point out that while we recognize, as you indicate, the State Department's interest in this and the maintenance of friendly relations, yet at the same time unless something is done to meet the problem, the situation will become more and more explosive and, as I say, I don't think the objection of most people is even to the continuance of the commuter thing, although we do think it is illegal. The objection is to permitting employers to use commuters to exploit them and to use them to depress wages, working conditions, and to break strikes.

As you say, H.R. 12667 is limited. It doesn't go into the whole organization question, but it is a terribly important step and a first step which should be taken.

Mr. THOMPSON. Some of the opponents of the legislation view it as an attempt to coerce employers into having union labor or doing things that they do not want to do. They just do not seem to want to recognize that all we want to do is to prohibit these aliens from taking the place of a regular worker who is involved in a labor dispute.

Mr. LESSER. That is right, Mr. Chairman. I don't recall the exact terms of the law, but it is illegal to transport workers across State lines to break strikes. It seems to me it ought to be at least an unfair labor practice to transport them across a border to break a strike.

Mr. THOMPSON. I quite agree with you.

Thank you very, very much for your testimony.

Mr. THOMPSON. Our next witness is Mr. Richard V. Thornton, the executive vice president of the National Council of Agricultural Employers.

Good morning, Mr. Thornton.

STATEMENT OF RICHARD V. THORNTON, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. THORNTON. Good morning.

Mr. THOMPSON. We appreciate your kindness in coming back.

Mr. THORNTON. That was no problem.

I will read my statement, if I may, Mr. Thompson.

My name is Richard V. Thornton, speaking for the National Council of Agricultural Employers. This association represents agricultural employers in 42 States whose workers are engaged in the production of perishable food and fiber.

We appreciate the opportunity to present our views in opposition to H.R. 12667, and will confine our remarks to its impact on agriculture.

This bill would make it an unfair labor practice to employ two certain specific groups of persons in the United States. The first one is to "employ any alien unlawfully present in the United States." Obviously, no one should be given permission to use or to hire any per-

son unlawfully in the United States. However, the proposed legislation would place an unrealistic burden on the back of agriculture.

As you know, many farms in the United States, especially in the Western portion, are large and cover many acres. The work force fluctuates in accordance with the harvest of various crops and the farmer needs large numbers of workers for short periods of time. Frequently, climatic conditions will accelerate at harvest time so that almost overnight a farmer is faced with the necessity of securing large numbers of persons rapidly.

We are aware that there are many illegal aliens in agricultural areas. However, many of them possess convincing documents which would purport to give them a legal status. Enforcement of the bill as it is written would make the employer the judge of the validity of such documents.

Frequently such a decision would require elaborate procedures and verification, all of which the farmer is not equipped nor has the time to do at harvest. A foreman, in his anxiety to secure a harvest crew at critical times, probably would be unable to make more than a cursory examination of a person's papers. To place upon him the burden of determining validity or falsification of identity cards is not equitable. We are in no way suggesting that agriculture be given permission to employ illegal aliens with impunity, but suggest, rather, that any penalties should apply to those who knowingly and wilfully violate any laws.

The second part of the bill is aimed at the daily commuters who live in Mexico and work in the United States. It is alleged that these commuters cause adverse social and economic effects on wages in agriculture. This is not correct, as the green carders who work in the fields are the real professionals of agriculture. For the most part they are paid piece rates, as they do not care to work an hourly wage rate. They are the men who know the crops as well as the growers themselves, the ones who know where the good fields are, what is the right time for the harvest and are considered in agriculture as the real pros of farm labor. Rather than depressing wages, these people tend to increase them. They are some of the highest paid workers in agriculture and because of their skill and experience, are most desired by farmers. The competition for these green carders is keen, and has resulted in a constant increase in field wages.

In 1968 in hearings in San Diego by the Select Commission on Western Hemisphere Immigration, evidence was given to show that in Yuma, Ariz., average wages in citrus for the month of December 1967 resulted in \$1.888 cents per hour. Lettuce harvest that same month amounted to \$2.42 per hour. In the Imperial Valley of California it was estimated that the average wage during the harvest season of 1967 was around \$2 per hour. Since that time these wages have been increased. There has not been time to prepare to present to you gentlemen certified payrolls in many of the agricultural occupations of the west. However, should you so desire, we would be glad to do so. These payrolls will definitely show that agricultural green carders are among the best paid in this industry.

I would appear from INS reports that the majority of daily green card crossers are in occupations other than agriculture. We would like to point out that the number of green carders in agriculture is de-

creasing every year. To our knowledge there are practically no new young farmworkers today whether they come from Mexico or the United States. The number of farmworkers in this country has been steadily declining for many years, and we believe it will continue to do so.

In 1968, INS issued 43,563 new green cards to Mexican immigrants. The Department of Labor advises that there were practically none issued for farm laborers, and that since 1965 the number has been extremely small. No actual count was made, but they estimated 25 or 30, most of these in unusual occupations such as jockeys, horse and animal trainers. Therefore, the green card working force in agriculture has been steadily reduced by the normal attrition of workers and the agricultural laborers going into other occupations.

From previous testimony it appears that there is some thinking, that passage of such a bill as this will make it possible for the unions to more easily organize various industries along the border. Again speaking only for agriculture, I do not think it would accomplish this purpose. I have talked to many green carders who work in the Western States. Some of them commute on a monthly basis, some of them stay in this country for 6 to 8 months. Their native homeland has strong ties, but almost invariably each one of them when questioned, stated that he would give up his residence in Mexico rather than his green card. It is a prized possession and is one of the few ways in which he can increase his earnings and obtain a better standard of living for himself and his family.

Most of the agricultural workers would simply move across the border into an adjacent town where they still would have access to their homelands. If this were the case, the communities on the U.S. side of the border would suffer a severe economic impact. For example, in Calexico, a city of approximately 10,000 people, some 7,500 commuters cross each day. If half of these commuters moved across the line together with their families, Calexico would be faced with the problem of absorbing into their housing, schools, and other facilities some 12,000 to 20,000 additional persons. This problem is not confined solely to the Mexican-American border, as some 5,300 people come across each day from Windsor, Ontario to Detroit, Mich.

There is no doubt but that such a mass migration across our borders would cause serious effect on both the Mexican and American border communities, and I am sure you are aware of the corresponding political impact. The border cities are mutually entwined and dependent on each other for their wellbeing. Any disruption of the harmonious relations which have existed in the past could not help but be injurious to both sides.

The Labor-Management Relations Act of 1947, starts out its declaration of policy with the words "Industrial strife which interferes with the normal flow of commerce . . ." We in agriculture have maintained for many years that the National Labor Relations Act is not applicable to agriculture, because it is designed for the solution of industrial labor problems; that agriculture has certain peculiarities and, therefore, Congress, in its enactment of the NLRA, excluded agriculture workers. For the last few years, Congress has rejected proposals to place agriculture under the NLRA. Passage of this legislation would be a "foot-in-the-door" approach, and establish a prec-

edent for the inclusion of agriculture under other sections of the act and not, perhaps, in keeping with the intent of Congress.

If I may add one more point, Mr. Chairman, I have been trying to find the number of green carders actually in agriculture, and I came across a survey made by the Department of Labor in 1967. This survey from the 1966 Immigration figures shows there were about 315,000 green carders in California alone and, as you know, when they register on the card they have an occupation line. This survey of green carders in agriculture was not an actual count. It was a projection from cards secured from Immigration and they projected a total of 24,000 green carders in agriculture in California out of 315,000 green carders.

I would also like to point out that in the harvest of crops in California the work force ranges from around 260,000 to 335,000 or 340,000 and 24,000 out of roughly 300,000 agricultural workers, is a very small percentage of the total number of workers. The workers that are working in the central part of the valley are frequently locals. They live and work within 15 or 20 miles of the harvest of the crops.

Thank you for hearing our views.

Mr. THOMPSON. Of course, Mr. Thornton, it is obvious why you would emphasize the agricultural aspects of this legislation, but I might point out to you that it goes to industrial situations as well.

Mr. THORNTON. I understand that, sir.

Mr. THOMPSON. And indeed your last statistic would seem to indicate how really imperative it is lest these green carders—more than 80 percent of whom are in other pursuits than agriculture—be used as strikebreakers in industrial situations.

What is the organizational structure of the National Council of Agricultural Employers?

Mr. THORNTON. It is a voluntary membership. We have members in 42 States. They pay annual dues and it is a purely voluntary support organization.

Mr. THOMPSON. How many members do you have?

Mr. THORNTON. Approximately 800, slightly less, 794.

Mr. THOMPSON. Do you know how many employees those 800 members have?

Mr. THORNTON. It is rather difficult to tell, Mr. Thompson, because a good many of our members are associations and, in turn, their members are the employers. For instance, we have several large labor associations who are members of this organization in California, Texas, and other parts of the country.

Mr. THOMPSON. How does one become a member of your council?

Mr. THORNTON. Fill out an application form and send us a check.

Mr. THOMPSON. How much are the dues?

Mr. THORNTON. The dues for individual grower members are \$50 a year. For an association whose members are engaged in the growing of agricultural products, it is \$500 a year.

Mr. THOMPSON. You feel you represent the viewpoint of a majority of the agricultural employers?

Mr. THORNTON. Yes, sir, I think so.

Mr. THOMPSON. Have you circulated this legislation among your affiliates?

Mr. THORNTON. Yes, I have.

Mr. THOMPSON. And by what process did they make a decision to have you testify against it?

Mr. THORNTON. The decision was made at a board of directors meeting about 3 weeks ago in which we had representatives from each State in. We had a quorum. We had, I think, 18 representatives, each representing their own State.

Mr. THOMPSON. I gather they sat down and reviewed the legislation.

Mr. THORNTON. That is correct.

Mr. THOMPSON. Took a position to oppose it and then you proceeded to draft your testimony.

Mr. THORNTON. I am sure you can appreciate that the interest was mostly confined to the States along the border. Some of the other States don't have too much interest in this legislation one way or the other.

Mr. THOMPSON. Except in general they support the view of their colleagues in the border area?

Mr. THORNTON. Yes. They seem to realize any reduction in the labor force in any part of the country has an effect on the overall picture.

Mr. THOMPSON. On page 2 of your statement, you say the following:

"It is alleged that these commuters cause adverse social and economic effects on wages in agriculture. This is not correct, as the green carders who work in the fields are the real professionals of agriculture."

I pointed out earlier that our interest is broader than just agriculture. While the Immigration Service statistics show that in the test period of 1967, November and December, agriculture employment accounted for 40 percent of the border commuter jobs, the other 60 percent give us great concern, also, because they are machine operators, service station operators, metalworkers, many other occupations.

If these alien commuters aren't having an adverse effect on the economy of the border communities, I wonder why it is that the unemployment rate in these communities is so much higher than elsewhere in the United States.

Are you aware of that fact?

Mr. THORNTON. Yes, I am, and I think one of the answers could be that these are all agricultural communities. Agricultural communities have usually a high unemployment rate overall because they have such highs and lows. Everyone works very hard for a short period of time and quite a few are unemployed.

Most of these statistics you mentioned, sir, were also taken down in the Imperial Valley, and Calexico, and Yuma and in November and December are the two high harvest seasons there. I know personally many green carders who permanently reside in the United States and work in the crops in California during the summertime and even the fall. They will then go back to Mexico and live across the border and work in November, December, and January there and go north on weekends to their family. They live in Mexico because it is cheaper to live there and also they have a lot of friends there. They are backing down there and they leave their families north and go south, and a lot of these people were counted as commuters, rightly so, in the months of November and December.

If that count had been taken, I think, in July and August you would have found that the percentage of agricultural employees, agricultural occupations, in the border crossings would be reduced.

Mr. THOMPSON. Well, the unemployment rates in the border areas, according to the statistics that we have, show for instance, in June there was a 3.7 percent unemployment rate overall in the State of Texas, and El Paso alone it was 5 percent, considerably higher.

Now, of course, you talk about how much these green carders make and they are some of the highest paid workers in agriculture. How many months a year could these green carders be expected to receive the type wages that you say they get?

Mr. THORNTON. Well, I am more familiar with the western part of the country so I will speak for that.

In California they can receive 12 months out of the year if they wish. There is work available 12 months out of the year in agriculture in California.

Mr. THOMPSON. I wonder what percentage of these farm workers that you refer to earn enough to be above the OEO poverty index scale? For example, for a family of six it is \$4,400. For a family of eight it is \$5,400. For a family of four it is \$3,300.

Mr. THORNTON. I would say of the green carders in agriculture the great majority of them would be well above. Mr. Thompson, there is work 12 months out of the year out there if they would accept it. A lot of them don't wish to accept it. They wish to work as they desire.

I was talking with a grower out there last week in the cantaloup harvest and one of the principal problems has been to get the workers to stay all day. The growers are offering all sorts of inducements to come to work for them and work a full day.

Mr. THOMPSON. What do they pay?

Mr. THORNTON. Well, this was a cantaloup harvest and they were being paid at that time, I think, around 50 cents a crate. This was on a crew basis.

Mr. THOMPSON. Fifty cents a crate?

Mr. THORNTON. Yes.

And it was a good wage rate then because the melons were quite large.

Mr. THOMPSON. What would that amount to in terms of hourly wages?

Mr. THORNTON. It all depends upon a crew and it all depends on the field, but the minimum, I would say, would be around \$3 an hour because I don't think you are going to get the green carders to stay and work for you unless you do have crops which would give them at least \$3 an hour.

Mr. THOMPSON. We had some testimony here during the last Congress from Mexican-Americans who worked in the cantaloup area and they indicated tremendous unhappiness with the working conditions. One of them, a tractor driver, described working nearly 18 hours a day, eating whatever he had to eat right on the tractor while he was driving, driving a tractor with lights at night. He wanted to organize. He wanted to join a union in order that he could improve his working conditions and in order that he could improve his wages.

The employers, obviously, have been very reluctant to bargain with these people.

The description of their work by their own testimony would indicate to me, at least, that their working conditions and the amount of money that they can make is nowhere near as you say. Of course you in your

statement point out that agricultural workers aren't included in the NLRA. This is quite true. I have legislation which would accomplish that objective, if enacted. I don't think that there are enough votes in the Congress now to include them. This bill, H.R. 12667 couldn't be a "foot in the door" or a "nose under the tent," or whatever figure of speech you want to use because this relates only to labor disputes and the employment of green carders to replace those legitimately involved in a labor dispute. I can't understand your reluctance to accept this very narrow suggestion that this be made an unfair labor practice under the act.

Do you really think that it is fair to use a green card worker in place of an American worker who is involved in a legitimate labor dispute?

Mr. THORNTON. Well, sir, you said a green card worker in place of an American worker, and I understood that the green carder had practically all the rights—

Mr. THOMPSON. Instead of green card, let's say alien.

Mr. THORNTON. No, I don't think it is right to use an alien in place of an American worker, but, on the other hand, many of these green carders in California live there permanently.

Mr. THOMPSON. We are not talking about them. We are talking about illegal aliens and commuter aliens, not those who live there permanently.

Mr. THORNTON. Wetbacks.

Mr. THOMPSON. A large number of the population of El Paso is, percentage-wise, Mexican-American, green carders who have lived their whole life there or nearly their whole life there. We are not talking about them. We are talking about these other categories of aliens.

Mr. THORNTON. Yes.

Mr. THOMPSON. And I just cannot understand why you oppose it.

Mr. THORNTON. As I say, we do not feel that anyone should be permitted to employ illegal aliens.

Mr. THOMPSON. To employ what?

Mr. THORNTON. Illegal aliens, wetbacks.

Mr. THOMPSON. But, then, you say, "Well, look, it rained the day before yesterday. The sun shined all day yesterday, and my crop needs harvesting 2 days earlier than expected, so I am going to call my foreman and I need a large supply of farm workers right now," and you go on and say, "How can we identify them? They have documents which appear to us to give them legal status."

What sort of a document would that be? A social security card?

Mr. THORNTON. I have seen some forgeries that I think it would take an expert to tell the difference; social security cards, I.D. cards, all sorts of cards.

Mr. THOMPSON. A social security card is the easiest thing in the world for anyone who works in the United States to get.

Mr. THORNTON. Not only that, I have seen forged green cards.

Mr. THOMPSON. Well, there is no doubt that there are forged green cards. That is really sort of silly, because the Immigration people are so generous with them they certainly can't be too hard to get.

But it seems to me that an organization such as yours must be made up of a large number of corporate farmers. Is that not so?

Mr. THORNTON. Yes, sir; some of them are.

Mr. THOMPSON. They have highly skilled lawyers with the ability at least to sort out a large percentage of those who would be illegal aliens. It has to be incumbent on someone to enforce the law.

Mr. THORNTON. I agree, sir.

Mr. THOMPSON. But the effect of your statement to me is really that, "Well, you know, there is a law and it is very difficult to enforce and so we won't bother."

Mr. THORNTON. No, sir, that is not the intent at all. It is not my intent or the intent of the people I represent. I hope you can appreciate that when a foreman is out recruiting men he does not have his superior with him. It is usually a man who perhaps hasn't had too much education, but knows his crops and so forth. He is hiring maybe 100 or 150 men in the space of 2 hours. I have seen these men hire them and they ask for the document and they say, "Are you legal?"

"Yes."

"What do you have?"

And they show them various cards.

It would be very easy for a fellow with an illegally forged document to get in that line and go right through. It is done. I know it is done every day.

To make the employer responsible for the employment of that illegal, I do not think is just. I think someone should be responsible.

Mr. THOMPSON. I wouldn't say that the employer should go to any unreasonable lengths, but here you sit as an executive and you say you have seen forged documents and you know any number of illegal aliens.

Mr. THORNTON. I say I know of instances. I don't know of them personally.

Mr. THOMPSON. So must a lot of members of your association.

Mr. THORNTON. I did not mean to say that I knew them personally, or I could recognize them. I assume in these lineups where an employer hires 100, 150 men in an hour or two there probably are some illegal aliens. I wouldn't be able to pick them out. I don't think the foreman would be able to pick them out.

Mr. THOMPSON. Really, that is not the problem we are getting at here.

Mr. THORNTON. That is true.

Mr. THOMPSON. We simply want to make it an unfair labor practice for anyone to hire a commuter alien as a replacement for a worker in a labor dispute.

Mr. THORNTON. Well, at any time they know if a man is illegal he is generally let go because the employers don't want the trouble any more than anybody else. The Immigration Border Patrol is quite active out there in the West. It is quite active all over and, as you know, they go to camps frequently and it causes quite a disruption of the employer's work force. So far as I know, and I talked to many employers, they do their best to avoid the employment of illegals, but somehow they slip in. They are very clever and there is a great number of them.

Mr. THOMPSON. Suppose the administration were to decide to restrict the continuation of this legal fiction of a commuter. Would you favor such a policy?

Mr. THORNTON. Well, my personal opinion would be yes, provided there is an adequate phasing out period. I think the U.S. Government owes a certain obligation to the green carders who are in this country now, and to abruptly cancel their status would be wrong. I think there could be an adequate phasing out, but I personally can see nothing wrong with amending the fiction, as you put it.

Mr. THOMPSON. Thank you very much, Mr. Thornton. We appreciate your testimony.

Mr. THORNTON. Thank you.

Mr. THOMPSON. Our next witness is Mr. Howard Samuel, vice president of the Amalgamated Clothing Workers of America, AFL-CIO, who has with him Mr. Tony Sanchez, international representative of the Amalgamated Clothing Workers, of El Paso.

STATEMENT OF HOWARD SAMUEL, VICE PRESIDENT, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO; ACCOMPANIED BY ANTONIO SANCHEZ, BUSINESS REPRESENTATIVE, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

Mr. SAMUEL. Mr. Chairman, I would like to read my statement and then ask Mr. Sanchez to read his. Neither is very long. They won't take too much time.

My name is Howard D. Samuel, and I am a vice president of the Amalgamated Clothing Workers of America, representing 400,000 workers in the men's and boys' apparel and related industries. Our members live and work in 41 States, in Puerto Rico, and in four provinces of Canada. Among these places is the city and vicinity of El Paso, Tex., which in recent years has become a growing center of men's and boys' apparel manufacturing, with a number of firms, among them one of the largest in its branch of the industry, making slacks, sportswear, and work clothing.

Following this statement, which will deal with the economic and legislative implications of the problem of "green-carders" you will hear a statement by Tony Sanchez, a business representative of the amalgamated in El Paso, who will discuss some of the actual effects of the practice in this important city.

In any statement on the problem before us, that of the so-called commuter alien, I would like to mention that the subject of immigration, and the opportunities and problems that come with immigration, are well known to my organization. The amalgamated was founded largely by immigrants, from a dozen countries, more than 50 years ago, and today as always there are many immigrants and members of minority groups among our members.

Because of this heritage, the amalgamated was one of those unions which from its earliest history worked to widen the doors to immigrants to this Nation. We opposed the built-in bigotry of our earlier immigration laws, and supported efforts to establish a new immigration policy, one which gave equal opportunity to peoples from all parts of the world. We regarded the passage of the Immigration Act of 1965 with much satisfaction, for in the eyes of this law immigrants are judged not by their nationality or their religion or the color of their skin, but by the contribution they can make to the United States.

In large part this change in the basic criteria of immigration came about through the awakening conscience of America. It paralleled the passage of new civil rights laws and other efforts to eliminate the legal basis of discrimination and prejudice.

But in some measure the increased emphasis in the law on the economic effect of immigration—as provided for in the elaborate labor certification procedure—was recognition of deep-seated changes in the economy of our Nation. At the turn of the century and for years thereafter, the United States needed an almost unending supply of strong backs and willing hands. Our industrial machine was growing convulsively, and the hordes of unskilled immigrants provided a necessary supply of labor to industry. The process slowed down somewhat after the First World War, first during the postwar depression, and then during the years of the great depression, but nevertheless unskilled labor was still in pretty continuous demand through the end of World War II, and insofar as immigrants helped supply the demand they were welcomed.

In the postwar period, however, there has been an accelerating change in our economy. What we rather loosely call automation has cut deeply into the need for unskilled labor. Today we have found it impossible to meet the job demands of our own citizens who are trying to enter the labor market without skills, and, as a result, we are spending billions of dollars to educate and train the unskilled. The immigrants who arrived on these shores in 1900 or 1910—some of them to become founders of my union—suffered from the cruelties of the sweatshop and the misery of the slums, but at least they could find jobs. If they were to arrive in large numbers today, without industrial skills or knowledge of the language or customs, they would end up on welfare, a burden to the community and to themselves.

How does all this relate to the problem we are discussing today? What does the “green-carder,” the commuter alien, have to do with the facts of life, and into the basic thrust of our immigration law?

It doesn't take much scholarship to realize that the typical green carder today is an economic anomaly. More than 40,000 green-carders, most of them unskilled, come streaming into the border towns of Texas and California on a regular basis, many of them daily. They work in the least skilled jobs, many in agricultural labor, others in relatively low-skilled factory or service jobs. They work at low wages—their average wage, according to a Department of Labor study about 18 months ago in Laredo, Tex., was \$1.40 an hour, at that time the Federal minimum wage. But many received lower than the Federal minimum—as low as 81 cents an hour—in occupations where the Federal standard did not apply.

But the green-carder commuter alien earning even the bare Federal minimum, is earning four or five times what his relative is earning who remains on the other side of the border. As a result, as you have already heard, the typical green-carder is entirely out of the mainstream of American workers. For him, substandard wage or a wind-fall. For him, long hours are a financial blessing. For him, the lack of skills opens the door to family security.

Talk to him about joining a union—try to involve him in the age-old American drive for economic improvement—approach him to join

with his fellow workers in the struggle for security on the job—and you can imagine the answer. His only response is to get back on the bus which brought him to work—safely insulating him from contact with anyone in the community except the workers nearby in his shop.

The result has been serious economic dislocation in the border areas most affected by green-card migration. Two years ago a Department of Labor study showed that the unemployment rate in Texas border towns was almost double that for other parts of the State. Unemployment decreases the further one gets from the border. Wage rates for farmwork were about 30 percent lower in the border areas of Texas than anywhere else in the State. And a disproportionate amount of the minimum wage underpayments were found in the border areas.

I said that greencarders were an economic anomaly—they are also legally obsolete. The green-card system came into being more than 40 years ago. In terms of our current immigration legislation, they clearly violate the basic thrust of the 1965 act. Under the terms of that law, in recognition of the changing industrial conditions I described above, immigrants have to demonstrate that they would not adversely affect the wages and working conditions of American workers. In carrying out this mandate, the Labor Department has established an elaborate set of controls. But the more than 40,000 commuter aliens flow back and forth regardless of the mandate, seriously and bitterly affecting the wages and working conditions of American workers. It is almost as if we were still living in the economy of 1900, and the 1965 Immigration Act had never become the law of the land.

I have discussed the green-card problem in terms of immigration partly because I have heard a number of well-intentioned people claim that it really isn't an immigration problem at all, just a labor problem, which can best be handled through labor legislation. I suspect that this is a little easier said than done. As a matter of fact, as I have tried to indicate, the commuter alien problem is much more than a labor problem or a strikebreaking problem. Above all, it is an immigration problem and it affects the entire communities in which commuters greencarders work.

Furthermore, it is not a theoretical problem, which some observers seem to think it is. It is an actual problem, causing great damage to the economic security and welfare of workers in border areas, particularly in Mexican-Americans who live and work in those areas. To talk of the green card as a so-called legal fiction, and pretend it is sanctified by decades of use, is to walk from the problem. To pretend we can solve it by halfway measures is to avoid it.

Because I don't think that the problem of the commuter alien is only a labor problem, I cannot regard H.R. 12667 as a complete solution to it. We know from long experience with the first five prohibitions of section 8(a) of the National Labor Relations Act that Board procedures represent a slow path to justice. Trying to solve a problem as massive as the green-card challenge through the NLRB is like using a poodle to pull logs. It is my belief that the full solution will come through the kind of legislation introduced by Senator Kennedy in the Senate and Congressman Feighan in the House. Their approach is to regulate the entire practice of the commuting aliens, to assure that in fact it does not violate our basic immigration policy by undermining wages and working conditions of American workers.

However, insofar as these hearings help to focus attention on the problem and on its consequences, and bring about a higher degree of public education, I'm for all of them. And if this bill should become a law, at least it would offer some kind of remedy to some of the worst exploitive practices affecting the employment of green carders. It is time these practices were ended entirely, and commuter aliens given an opportunity with ample time allowed them, to become either the permanent resident aliens they are supposed to be, or the aliens they actually are.

I have some other comments I would like to make, Mr. Chairman, which I would like to defer until Mr. Sanchez is able to read his statement.

Mr. THOMPSON. Go ahead, Mr. Sanchez.

STATEMENT OF ANTONIO M. SANCHEZ, BUSINESS REPRESENTATIVE, AMALGAMATED CLOTHING WORKERS OF AMERICA

Mr. SANCHEZ. Thank you, Mr. Thompson.

My name is Antonio Sanchez. I am a native of Mexico who has been residing in the United States for more than 17 years. I now live in El Paso and serve as a business representative of the Amalgamated Clothing Workers of America for the El Paso District Joint Board.

Gentlemen, we all know that green-card holders are technically supposed to reside in the United States. These workers are considered to be part of the U.S. working force with all the rights of U.S. citizens except the right to vote or hold office.

But, gentlemen, I think you are also well aware of the fact that there are many thousand—probably more than 40,000—green-card holders who are actually living in nearby Mexican territory, and “commuting” across the border daily to jobs in this country.

As a result of this situation, the organization of workers for collective bargaining is far more difficult for the unions concerned.

What causes these conditions which seriously jeopardize the earning capacity and living standards of workers residing on the U.S. side of the border?

Let us examine the facts.

First of all, the green card holder who earns merely the U.S. minimum wage of \$1.60 an hour is extremely well off in comparison with the worker who has a job on the Mexican side of the border.

In fact, he is earning four or five times as much as that worker. At the same time, living costs are much lower in Mexico so that the green-card commuter gets three or four times as much value from his wage dollar as his American fellow worker.

And since the greatest part of his earnings go back with him across the border, he is making next to no contribution at all to the economy of the town or community in which he works.

There is also the fact that the commuter's uncertain status makes him more dependent on his present job than he would be as a U.S. resident. He is afraid that if he were fired because of union activities (and he believes that this might very well be the result) that he might be unable to find other work in the United States or even in Mexico where unemployment is widespread.

In my capacity as business representative for the Amalgamated Clothing Workers, I have talked at length with many of these commuters who are in the clothing industry.

I have tried to explain to them the various benefits they would gain through union representation.

In most cases they do not argue or disagree with my reasoning but merely say they need a little time to think it over.

Often I visit these people at home in the evenings or talk with them outside of the factory. But it is always the same story. They need a little more time to think it over.

We have been told by a number of sources that this reluctance to join the union is due to intimidation by their employers who have warned them that if they would join they will lose their jobs.

When I have questioned these people about this and asked them to testify to such threats either verbally or in writing, they refuse. It is my impression that their refusals are motivated by this same fear.

Now, gentlemen, what is the reaction of these green-card commuters when a strike is called in one of the factories where they are employed?

In most cases, they have taken the employer's side and continued to work. To cite a specific example, it is well known that in 1966 when the Amalgamated members went on strike at the Jerry Shore Co., a large men's single pants plant in El Paso, the company tried to break the strike through the extensive use of green-card commuters.

Why do these commuters continue to serve as strikebreakers?

It seems very obvious to me and my fellow workers in the labor movement that these green card commuters have little, if any, incentive to join the strikers since they are satisfied with their present wages, high by Mexican standards. Even the minimum wage of \$1.60 an hour seems like a lot of money to a worker who then returns to Mexico where the cost of living is lower than it is on our side of the border.

In addition to their self-interest, in many cases the fear of reprisals by employers is an added inducement for these commuters to cross picket lines during a strike.

And, after a strike has been terminated—whether successfully for the union or otherwise—I have noticed that the apathy of the commuters to further union activities serves to obstruct and slow up the progress of labor organization in the plants concerned.

In many El Paso men's apparel plants, green card commuters make up from 40 to 50 percent of the working force. In every case the sharp separation of interests and living standards between U.S. residents and commuters results in hardship for the U.S. worker—if not actual unemployment—and interferes seriously with the whole progress of union organization. It thus holds back the welfare and economic advancement of the American workers involved.

Thank you.

Mr. THOMPSON. Yesterday, Mr. Sanchez, Mr. Miles of the El Paso Chamber of Commerce said in his testimony that housing, utilities, and other needs tend to cost as much or more in the Mexican border cities as in the U.S. border cities. Do you agree with that?

Mr. SANCHEZ. No, I don't agree with that, for the simple reason that evidently this gentleman is referring to a higher standard of living. He is obviously not referring to the working people.

Mr. THOMPSON. Is food less expensive in nearby Mexico than it would be in El Paso?

Mr. SANCHEZ. Yes, it is.

Mr. THOMPSON. Is housing cheaper?

Mr. SANCHEZ. Also.

Mr. THOMPSON. And the average Mexican worker gets about 32 cents an hour, does he not?

Mr. SANCHEZ. The average will be at the most \$2.50 a day for 8 hours work, a Mexican.

Mr. THOMPSON. Quite a difference, is it not?

Mr. SANCHEZ. Yes, it is.

Mr. THOMPSON. Mr. Miles also said yesterday, among many other intriguing things, that the charge of green carders being used as strike-breakers has always been proven false. Your testimony indicates that that is not so, especially in the case of the Jerry Shore Corp.

Mr. SANCHEZ. That is a well-known fact.

Mr. THOMPSON. Of course I can understand and sympathize with the green carder. I can understand his reluctance to join a union or to take part in any union activity if the employer threatens to take his job away from him. It is, of course, even worse in agriculture than it is in an industrial situation since in the industrial situation the workers are covered by the act and in agriculture they are not. I suppose that there is a big enough supply of green carders so that the employer could perfectly well afford to fire 40 or 50 of them and replace them with others, could he not?

Mr. SANCHEZ. Yes, he can very well do that.

Mr. THOMPSON. Do you know what they are paying the workers in the so-called twin plants that have been established under this new policy?

Mr. SANCHEZ. Yes. To my knowledge, so far, there are 16 plants of various types located across the border in Juarez, and I have an inclination to believe that if this continues it will affect us also greatly due to the fact that as it is at the present time we have a great number of people unemployed.

Mr. THOMPSON. What do they pay in terms of hourly wages in the new plants in Juarez?

Mr. SANCHEZ. In terms of hourly wages, it is around 30 cents, 35 cents an hour, although I would like to bring this to the attention of this committee; that I have information from people that have been involved directly that they do not pay anything at all for 2 months. They call it a training period. Some of these people I know personally. I have talked to them. And some of them refused to continue this training because they were not getting any money at all for it, even though they started to produce gradually as time went on. When they reach the standards of production that these people require for them, then they will get the maximum of \$2.50 per eight hours.

Mr. SAMUEL. Mr. Chairman, I wonder if I could add to that, not with the direct testimony that Mr. Sanchez can, but on the basis of surveys that we have had made in the larger border area in regard to the twin plants they are supposed to pay the Mexican minimum wage which varies from province to province, but it is at its highest level in the border provinces. This highest level is approximately, in the factory industries, about 30 cents an hour.

And what Mr. Sanchez has said is true not only in the Juarez but in other communities, that there have been frequent violations of the apprentice training period laws. As a matter of fact many of these plants are not even organized by the Mexican trade unionists, and they really have a very serious exploitive situation in the border towns, to the extent that in our industry, workers in Hong Kong are paid more than they are in Mexico, in the Mexican border area, and Hong Kong is supposed to be the symbol of the Far Eastern sweatshop.

Mr. THOMPSON. And in Japan, as counsel points out, there is quite a difference, too.

Mr. SAMUEL. Pardon me?

Mr. THOMPSON. Counsel points out that in Japan there would be even greater difference, I am sure.

Mr. SAMUEL. Japan, I think, would be higher than Mexico.

Mr. THOMPSON. I can't help but wonder in some of these industries, agricultural and otherwise—where the employers know that they are using green card commuters—whether Social Security taxes are being paid on behalf of those people, or whether this represents additional net profit to the employer by not paying them. Of course you would have to have access to the employer's records in order to make that determination.

Mr. Sanchez, how do you feel about the apparent reluctance of the employers to encourage Mexican nationals to actually move into the United States and live here?

Mr. SANCHEZ. Will you repeat that question again, please?

Mr. THOMPSON. How do you feel about the apparent reluctance of the employers to encourage the green card workers to actually live in the United States?

Mr. SANCHEZ. I couldn't really say how they feel about it, but to my estimation, in the past if green card commuters have been helpful to them as far as strikes and continue to have workers when there is a labor dispute, it is my estimation that they will like this situation to continue. However, it is also my belief that this is a problem that must not remain unsolved because it has been increased since it started and a proper solution must be applied as soon as possible. Otherwise, the working force of the community of El Paso will suffer a great deal more.

Mr. THOMPSON. I agree with you, and I thank you very much.

Mr. Samuel, I think that your testimony is excellent. I am sure you realize that we are working in this very narrow area because of the limitation of our jurisdiction. I am sure you are equally aware of the difficulties of enacting constructive labor legislation at the present time.

Mr. SAMUEL. I wonder, Mr. Chairman, if you have a moment or two, if I may add a couple of points which have been raised in the earlier testimony, perhaps to clarify it a little bit.

First of all, of course I think that with respect to the previous witness there was some confusion between the green carder who resided in this country, against whom we have nothing, and the green carder who commutes either daily or otherwise. The effect on unemployment is caused by the green carder who commutes, who is not in the labor force,

but who causes unemployment among, very often, green carders who live here. In other words, it is the Mexican-American who resides here in fulfillment of his obligations who is the worst sufferer of the commuter.

Another argument which has been used and I have heard quite often against trying to solve the problem at all is what would happen to these border communities if thousands of commuters suddenly had to take up residence here. I think this is a false argument for a couple of reasons.

First of all, it is not going to be sudden. No one has ever recommended that we wave a magic wand and several thousand commuters have to take up residence, and their families. It would be a very long process. Many of them would choose to remain in Mexico. The fact is I am not sure that it wouldn't be better if some of these people who are working during the day would also live here and pay taxes who at the moment are paying nothing to their communities and are taking the wages back to Mexico.

Mr. THOMPSON. The employers don't want that.

Mr. SAMUEL. No, the employers don't want it, right.

Mr. THOMPSON. Running through their testimony is this thread of, "Well, we are going to have to build schools for them, we are going to have to have more firemen, and policemen, and housing, and we just can't afford to have these people here. All we want to do is get them in, pay them a bare minimum wage, and say goodbye in the evening to them."

Mr. SAMUEL. I think, from the point of view of the community's welfare, it might be better if some of these workers did live in the communities and pay taxes in support of the services which they use now during the day. Inasmuch as I commute to work to New York, I now pay taxes to New York in recognition of the fact that although I don't live in New York, I work there and I require community services which I should pay for. The commuter to El Paso pays not a cent.

Another point I would like to emphasize, which Mr. Sanchez made. This is a problem not only, No. 1, of commuters coming in to break strikes whom we can't reach; No. 2, commuters are very difficult to organize because their stay is relatively minimal and they have considerable fears besides. We even have the problem of commuters who work in our shops now and because this is a right-to-work State do not join our union, which means that every 3 years when our contracts expire we have a problem of trying to bring together the workers in existing union shops to try to give them the strength to let them bargain collectively and usefully with maximum strength. Here we have this segment, medium, large, or small, whatever it is, who have really no interest in it and, in effect, undermine from within our efforts.

Finally, I would like to point out one point which the committee may wish to look into a little bit further and that is the possible abuse of green cards. As you are probably aware, when a green card commuter loses his green card he can have it replaced for a very small charge, and there is considerable evidence to indicate that there is probably considerable abuse of green cards so that people who are allegedly green carders may actually be illegal, and the green card is

simply a blanket covering immigration by large numbers of people who really aren't even permanent resident aliens at all.

Mr. THOMPSON. Yes, we are aware of that.

I thank you very much.

This will conclude the testimony on H.R. 12667, and the subcommittee will adjourn subject to call of the Chair.

(Whereupon, at 11:24 a.m., the subcommittee recessed, subject to call of the Chair.)

(The following statements and letter was submitted for the record:)

STATEMENT OF REV. JOHN MCCARTHY, DIRECTOR, DIVISION FOR POVERTY OF THE
U.S. CATHOLIC CONFERENCE

On behalf of the Division for Poverty and the Division for Migration and Refugee Service of the United States Catholic Conference I wish to express our support for legislation in the nature of HR 12667 which will amend the National Labor Relations Act to make it an unfair labor practice to employ certain aliens in circumstances which destroy the rights of workers to organize and bargain collectively.

The impact of the so called "green card" commuter, aliens whose principal dwelling place is in a foreign country, on wages and working conditions in our border areas and the victimization of "illegals" have been subjects of study and discussion for a number of years. It is time for words to be changed into action.

A lifetime of personal experience in Texas and years of organizational work among the Spanish Speaking of the Southwest have made me fully aware of the effect our present laws are having on the standard of living of the labor force in our border areas near Mexico. By now this Committee has the essential facts. The basic fact is that wages and working conditions along the U.S. side of the Mexican border are considerably below the U.S. average while unemployment is much higher. The Border area is poor—very poor! Everyone admits that fact—they have to do so since it cannot be disputed. Everyone also admits that the reasons for this poverty are many, varied and complicated!

What everyone does *not* admit is the role that the "green card" commuter plays in being a partial cause of this poverty and suffering among U.S. citizens—or how much this system, as it presently functions, adversely effects wages and working conditions among American workers.

The rationale behind H.R. 12667 is, in my opinion, a very clear one. The power balance between organized labor and management in the Southwest is made unique by the ready availability of unorganized workers from across the border. Time and again this resource has been used by employers to defeat the efforts of workers to bargain for better wages or working conditions. The injustice of this tactic was recognized in the June 1967, Immigration Service regulation which prohibits the entry of green carders who intend to take employment in situations where a certified strike is in effect.

H.R. 12667 will extend to the National Labor Relations Board, and indeed to the employers themselves, the responsibility for enforcing limitations on a practice which is wrong in principle, namely using aliens as strikebreakers. Quite properly the burden for compliance and the penalty for violation is placed squarely where it belongs—upon the unscrupulous employer who engages in such tactics. The protection is afforded those who have the right to such protection—the employees who seek through collective action to better their working conditions and the responsible employer who seeks to live by the spirit of the law and finds himself forced into unfair competition with the employer who seeks to skirt the boundaries of established national policy and law. It is important to note that the green card holder who establishes his residence in this country is not discriminated against in H.R. 12667.

The statements and testimony delivered on this issue have reflected very divergent positions. Now that your own hearings are nearing completion, it is easy to see the makeup of the two opposing camps. On one side stand the growers, employers, merchants, and Chambers of Commerce: in short, business and fi-

nancial interests. These are for the status quo, fearing that a change will bring increased labor costs.

On the other side are the labor unions, church groups, Mexican-American organizations and what we might call, people oriented groups. They are for necessary restrictions. It is important that we keep in mind that all this second group asks are reasonable restrictions to protect American citizens from unwarranted exploitation.

In deciding which position is more correct, I urge you to consider the differing viewpoints of the two groups. I have great respect for business men. Their technical and professional accomplishments are mirrored in the Gross National Product of this country. I am sad to say, however, that in the past the sense of social awareness and responsibility among some has not always kept up with their technical competence. Their overall record of opposition to needed social legislation is a historical fact.

Limiting myself merely to agricultural interests, I would like to point out that it was this same group that fought for years to keep Public Law #78 claiming that if ever repealed it would be impossible for American growers to harvest their crops. That position could not have been more incorrect.

This group has fought such other necessary measures as minimum wage legislation for agricultural worker. When finally enacted into law not only did it not harm the growers but rather it began to pump badly needed dollars into the pockets and cash registers of the Southwest.

This group has for 35 years been able to exclude farm workers from the right to protection afforded other workers by the National Labor Relations Act. I am hopeful that in this session of Congress that inequity will be erased.

On the other hand recent years have seen a marked change in the stance of the American business community regarding social issues. Enlightened labor policies, acceptance of necessary social legislation, and a concern for the common good have been the rule rather than the exception among American business interests.

This change of attitude has never been more marked than during the past three years. Recent disorders and riots combined with a growing awareness of the ghetto's real costs to America are causing business men to be more aware of the need to cooperate with government in a joint effort to eradicate poverty.

I am hopeful that business interests along our Southern border will follow the enlightened position of their national leaders and see that in the long run poverty profits no one but rather that its social costs are incalculable. I am hopeful that they will see that an economy that attempts to make poverty a necessary factor in production will continue to be a failure.

Regarding "illegals," we feel that the wording of the bill is too broad in its application and should be restricted to the areas of greatest concern, namely to natives of the countries contiguous to the United States. Within those areas clarification is needed regarding to whom the phrase "any alien unlawfully present in the United States" will apply. We assume of course that the provisions of the bill would not affect the employment of persons determined by the Department of Justice as having been eligible for administrative relief, such as

- (a) aliens who are in the United States on parole status;
- (b) those who have been granted the privilege of voluntary departure;
- (c) those who have filed an application for suspension of departure;
- (d) those who have been granted a stay of departure pending disposition of legislation introduced on their behalf;
- (e) those who have been given written permission by the Immigration and Naturalization Service to work.

Gentlemen, I have spent my entire life in Texas. My work has taken me into the poorest counties, towns, barrios, and homes in the Southwest. I have seen, as you may have, the slums of South El Paso, the squalor at the edge of Phoenix, and the hopelessness in towns like Laredo and Calexico. I have stood in the pre-dawn hours at the bridge in Roma, Texas, and seen bus loads of strike breakers from Mexico being transported across the border to defeat the efforts of poor American citizens to improve themselves. These are things we must work to change.

Needless to say, a tightening of the regulations for "green card" commuters will not bring wealth or success to the Border area. It will, however, be a step in the right direction and I urge you to endorse that step.

Thank you.

NATIONAL FEDERATION OF INDEPENDENT UNIONS,
Washington, D.C., August 15, 1969.

HON. FRANK THOMPSON,
Chairman, Special Subcommittee on Labor, Committee on Education and Labor,
U.S. House of Representatives, Washington, D.C.

GENTLEMEN: In behalf of the National Federation of Independent Unions, and its affiliated unions representing workers throughout the United States, we wish to hereby endorse the intent of H.R. 12667 whereby it would be illegal for an employer to employ any alien unlawfully present in the United States, during a labor dispute as a replacement for a person or persons ordinarily employed by such employer. We have found from experience that this unconscionable practice has been used by unscrupulous employers in their efforts to deny the rights guaranteed employees under terms of the Act.

An outstanding example of this unfair tactic was demonstrated during a strike at the Roegelien Provision Company in San Antonio, Texas, which was in effect from September 24, 1968, to November 9, 1968.

During that time Roegelien Provision Company hired a substantial number of aliens, who had entered this country illegally or were living unlawfully in the United States, as strike breakers.

It is significant to note that during the period of this strike a rental truck was found abandoned on a side street in San Antonio. Locked in this truck were a number of illegal immigrants. Due to the heat there were casualties. This incident and others of a similar nature, indicates the type of criminal and the related activity that is encouraged when such aliens can be used as strike breakers.

We feel that unless preventative legislation, such as that proposed in H.R. 12667 is enacted, this situation will get worse in the future as competition by illegal immigrants with American Labor is stepped-up.

Yours truly,

DON MAHON,
Executive Secretary.

STATEMENT OF J. J. MILLER, EXECUTIVE VICE PRESIDENT AGRICULTURAL
PRODUCERS LABOR COMMITTEE

We thank you for the opportunity to present our views in opposition to H.R. 12667.

My name is J. J. Miller. I am the Executive Vice President of the Agricultural Producers Labor Committee. The contributors to this non-profit organization constitute 98% of the growers of citrus fruits and avocados in the states of California and Arizona. The organization has for its primary purposes studies relating to the needs for and availability of agricultural workers, publicizing the laws, rules and regulations applicable to such employment, and cooperation with Federal and State bureaus having concern with such employment. In carrying out these purposes, we are familiar with the problems arising from the immigration status of some of the workers employed in citrus and avocados.

Contributors employ special immigrants lawfully admitted for permanent residence in the United States from Mexico. These special immigrants have received the required clearance from the Secretary of Labor that there are not sufficient domestic workers available at the place where the alien is destined, and that the employment of the alien will not adversely affect wages, hours and working conditions of domestic workers. Such immigrants have been issued an alien registration card—the so-called "green card".

Most of these special immigrant workers employed by contributors to Agricultural Producers Labor Committee return to Mexico during the off-season (a short period of time during which work is unavailable), and then return to the United States to resume employment. At the present time, no labor disputes exist at the establishments where contributors to Agricultural Producers Labor Committee employ these special immigrants. However, a union organizer, by merely demanding the right to represent employees, can create a labor dispute at any time. Certification by the Secretary of Labor of the existence of a labor dispute subjects these special immigrants to deportation unless they terminate their employment. (8 CFR 211.1(b)) Furthermore, after a temporary visit to Mexico, they

may be denied re-entry into the United States if they seem to resume employment for such an employer. (8 CFR 211.1(b))

I. Our first opposition is to the proviso to Section 8(a), as amended, which reads:

"*Provided, That this section 8(a) (6) shall apply to any employer, whether or not he employs employees as defined in section 2(3).*"

We are concerned with this proviso because its purpose is to make agricultural workers subject to the National Labor Relations Act. It would also bring under the Act persons employed in domestic service, sons and daughters employed by parents, supervisors, professional employees, independent contractors, individuals employed by an employer subject to the Railway Labor Act or by any other person who is not an employer as herein defined, and this would include persons who are excluded as employers under Section 2(2) of the Act, such as employees of the United States, etc.

We are not opposed to collective bargaining for agricultural workers, but it is our position that agricultural work differs so substantially from industrial work that agricultural workers should not be made subject to the National Labor Relations Act, but a separate law should be provided for that purpose, similar to S. 2203 which is now before the Committee on Agriculture and Forestry. This bill provides standards under which collective bargaining in agriculture can be carried out, with balanced protection for the worker, the farmer, and the consumer. To bring farm workers under the NLRA would tend to result in disruption of the growing and harvesting of agricultural products, impede the free flow in commerce of agricultural products, reduce agricultural employment, and increase food costs to the public.

II. Our second opposition goes to the first clause in 8(a) (6), which makes it an unlawful labor practice:

"to employ any alien unlawfully present in the United States".

The administration and enforcement of immigration laws is a highly specialized field. For that reason, Congress has placed all immigration matters under the jurisdiction of the Immigration Service and the Attorney General of the United States. This is a long established policy of Congress and should not be changed.

Section 1324 of the Immigration Act (8 U.S.C.A. 1324, sub-section 4) makes it unlawful to encourage or induce illegal entry into the country and provides penalties for anyone who *willfully or knowingly* conceals, harbors or shields any illegal immigrant. The section specifically provides that:

"Employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

There was adequate reason for Congress making this exception, as we shall hereafter point out.

The major categories of farm workers from Mexico, for example, are as follows:

(1) Persons who are citizens of the United States, being born in this country of Mexican parents.

(2) Persons who have become citizens by naturalization procedures after lawful admission to the United States.

(3) Persons lawfully admitted to the United States who maintain permanent residence in the United States, but who have not yet become United States citizens (called "green card" workers).

(4) Persons who are lawfully admitted to the United States but who still maintain a residence in Mexico. They may enter the United States several times a year to seek employment or they may be daily commuters if they live close to the border (called "commuter green card" workers).

(5) United States citizens of Mexican ancestry who now live in Mexico.

(6) Persons who have entered the United States illegally, many of whom speak English and usually have a Social Security number. Many carry forged or borrowed identification cards indicating they are lawfully in the United States, making it difficult to identify as unlawfully within the United States.

Section 1324 of the Immigration Act provides that no officer of the State or Federal government shall have any authority to enforce the Immigration Act except the officers of the Immigration Service or those specifically designated by

the Attorney General. Congress, recognizing the highly specialized character of this enforcement, has purposely excluded all other enforcement agencies of the State and Federal government from this specialized area. The Attorney General has issued a regulation dealing with employment of aliens at a place where a labor dispute exists (Reg. 211.1(b)(1)). This regulation is now before the courts in *Cermeno-Cerna v. Farrell*, 291 F. Supp. 521, C. D. Calif. 1968, on the ground that the regulation is issued without statutory authority and attempts to control the employment of aliens who have been lawfully admitted for permanent residence. While the issue is now before the court, Congress should wait the outcome of the case before attempting to obliquely legislate the case out of court.

The rules and regulations relating to each of these classes of immigrants have become extensive and technical and would require the National Labor Relations Board to have a corps of employees specialized in this field.

This provision of Section 8(a), as amended, would be in direct conflict with Section 1324 of the Immigration Act, in that an employer would be in violation thereof without any knowledge of whether the person employed was unlawfully in the United States.

III. Our next opposition is to the clause of Section 8(a)(6) which provides: "or to hire during a labor dispute as replacements for a person or persons ordinarily employed by such employer any alien lawfully admitted to the United States for permanent residence whose principal, actual dwelling place is in a foreign country contiguous to the United States."

This section involves interpretation of four subjects:

- (1) "labor dispute";
- (2) "lawfully admitted to the United States";
- (3) "permanent residence"; and
- (4) "dwelling place".

It will be noted that this clause is also in conflict with Section 1324 of the Immigration Act because a person can violate this section even though he has no knowledge of the status of such workers.

The term "labor dispute" is so broad that it would involve any employer where:

- (1) The union sought recognition by the employer even though no workers on the farm were union employees or no workers indicated any desire to join a union.
- (2) Even though all employees on the farm were sons and daughters of the owner, supervisory employees, or professional employees.
- (3) If the workers on the farm were members of the Farm Workers Union, but the Teamsters Union wanted to organize them.
- (4) Even if there was no employer-employee relationship between the persons involved in the labor dispute and the farmer.
- (5) The controversy was between unions concerning the association or representation of persons regarding employment.
- (6) Regardless of the reasonableness or arbitrary character of the union demands.

The union, by merely making demand upon a farmer or by placing a picket at the entrance to his farm, could thereby develop a "labor dispute" and bring the effect of this section into operation in any of these situations. Because of the uncertainty, conflict and indefiniteness of the terms of H.R. 12667, the farmer would be unable to determine whether he had or might commit an unlawful labor practice.

The clause "lawfully admitted to the United States" has technical meanings regarding which the average farmer, businessman, or labor representative has very little knowledge. It would be practically impossible for an agricultural employer to be familiar enough with these requirements to know whether the person employed was lawfully in the United States. The burden, however, is not upon the labor representative, but upon the farmer.

A distinction is made between "residence" and "dwelling place". Here again, we have technical definitions. A person may lawfully enter the United States and have the intention of residing in the United States, establish a permanent residence, maintain his tools and equipment at that place, and make only infrequent trips into Mexico for vacation. Under normal interpretations, he would have a permanent residence in the United States.

If at the same time he maintained his old home along the border in Mexico wherein his wife or children lived part of the time, and to which he made an occasional visit, a contention could be made that he maintained an "actual dwelling place" in a foreign country for the purpose of H.R. 12667, Section 8(a), but such fact would not make such person an illegal alien.

The legislative history of the 1952 Immigration Act indicates that the labor exclusion provision—Section 1182(a) (14) applied only to the initial entry of an immigrant. Upon entry, the immigrant is free to come and go without regard to the labor provision and probably beyond the power of the Attorney General to regulate his right of re-entry, although the Attorney General has adopted Regulation 211.1(b) (1) attempting to control employment of such an alien where a labor dispute exists. Such immigrant has had an uninterrupted status of "immigrants lawfully admitted for permanent residence" for over 40 years, and in amending the immigration laws in 1965, Congress reaffirmed this commuter status and left it unchanged.

H.R. 12667 is an unconstitutional interference with an alien's right to work when lawfully in the United States. An alien is entitled to full protection of the due process clause of the Fifth Amendment (equal protection of law). The right to hold specific private employment and to follow a chosen profession free from unreasonable government interference comes within the "liberty" and "property" concepts of the First Amendment. *Yamataya v. Fisher*, 189 U.S. 86; *Greene v. McElroy*, 360 U.S. 474; *Peters v. Hobby*, 349 U.S. 331.

The fundamental guarantees of due process preclude the Federal government imposing arbitrary restrictions on the right of employees to work for an employer involved in a labor dispute. *Galvan v. Press*, 347 U.S. 522. Making it an unlawful practice to employ a person simply because he is a "green card" worker would be unconstitutional.

IV. H.R. 12667 places a burden upon agricultural employers which the laws of California and the Federal government have made it difficult, if not impossible, for him to fulfill. The California Fair Employment Practices Act sets up pre-employment regulations which make it illegal for an employer to inquire concerning a prospective employee's religious denomination; complexion, color of skin, or other questions directly or indirectly indicating race or color; where the person had been previously employed; of what country the person is a citizen or whether applicant or his parents or spouse are naturalized or native born United States citizens; the date when the applicant or parents or spouse acquired United States citizenship; the requirement that applicant produce his naturalization papers; or first papers; applicant's nationality, lineage, ancestry, national origin, descent or parentage, place of birth, date of arrival in the United States or port of entry, or how long he has been a resident or even the language which was commonly used by applicant.

Title 7 of the Civil Rights Act of 1964 does not expressly prohibit pre-employment inquiries. The Equal Employment Opportunity Commission has indicated it regards inquiries into race, color, religion or national origin with extreme disfavor and will use such inquiries against the party who may have been charged with discrimination in employment. The fact that such questions are asked may constitute evidence of discrimination and will weight significantly the Commission's decision as to whether or not Title 7 of the Act has been violated (CCH Sec. 16, 902).

It is obvious, therefore, that this proposed law will place upon the farmers obligations to establish the immigration status of persons within the United States, while State law and Congress have made it illegal for him to make inquiries upon which such determination can be based. If an employer refused to employ an immigrant with a permanent residence in the United States, he would likely violate the terms of the State and Federal Civil Rights Acts.

If the normal practice in the use of "green cards" is prohibited, then the Mexican worker will simply move to the United States, as they have every right to do, in order to avoid further harassment by unions; or because of lack of available labor in the United States, employers will move their operations across the border, as has been done in many cases, and there will be no jobs available to American workers.

The fact that immigrants may influence terms of employment does not justify making hiring of aliens an unlawful labor practice under the National Labor

Relations Act. Practically all major policies of State and Federal government, such as the minimum wage and hour law, safety legislation, public works, regional development expenditures, foreign trade, housing programs, government credit programs, civil rights statutes, employment of minors, workmen's compensation laws, interpretations of the First Amendment to the United States Constitution, unemployment insurance, public and private housing programs, employment of women and minors under state Industrial Welfare Commissions, all affect terms of employment, and it would be just as logical to make a violation of any of those acts an unlawful labor practice under the NLRA.

We close this portion of our presentation by stating that in our opinion, H.R. 12667 would not improve the administration or enforcement of the immigration laws and would not serve the cause of promoting industrial peace. It is highly undesirable that the National Labor Relations Act be used for a purpose completely extraneous to the matter of labor relations.



