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HEARINGS

BEFORE THE

SUBCOMMITTEE ON

IMMIGRATION AND NATURALIZATION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 3074

TO AMEND THE IMMIGRATION AND NATIONALITY ACT,
AND FOR OTHER PURPOSES

MARCH 17, 18, 24, 25, 31; APRIL 1, 7, 8, 1976



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

72-499

AUTHENTICATED
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IMMIGRATION AND NATURALIZATION
HEARINGS
SUBCOMMITTEE ON
COMMITTEE ON THE JUDICIARY

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(II)

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IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

WEDNESDAY, MARCH 17, 1976

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland, Fong, Thurmond, and Scott of Virginia.

Also present: Representative Joshua Eilberg, chairman of the Subcommittee on Immigration, Citizenship, and International Law of the Committee on the Judiciary, House of Representatives.

Also present: Ed Loughran, staff director; Sidney Rawitz, special counsel; and Mark Hazard, professional staff member.

The CHAIRMAN. The committee will come to order.

This is the first day of hearings on the consideration of S. 3074, a bill to amend the Immigration and Nationality Act. The bill seeks to deal with critical problems affecting the enforcement of administration of the immigration laws. The problems are well known, but their resolution may be difficult, even with legislation.

The witnesses today will be the Honorable Lawrence S. Eagleburger, Deputy Under Secretary for Management, Department of State, who will be followed by the Honorable Leonard F. Chapman, Commissioner of Immigration and Naturalization.

Mr. Eagleburger and Mr. Chapman represent the two principal agencies dealing with the immigration and nationality laws. We welcome their appearance before the subcommittee and their helpful advice.

The CHAIRMAN. Senator Fong, do you have a statement?

Senator FONG. Mr. Chairman, I am delighted that you have called these hearings on S. 3074 to amend the Immigration and Nationality Act. I fully agree with the statement you made when you introduced S. 3074 that some of the changes made by the 1965 act have worked well, while some have not.

Now that we are taking stock of what we wrought in 1965, I am today introducing a series of amendments to S. 3074, so as to facilitate family reunions, to enable refugees throughout the world to be treated similarly to immigrants, to eliminate the discriminatory practices and provisions in the Immigration and Nationality Act, and hopefully, to improve the day-to-day operations under the act.

I ask that a copy of my comments made on the Senate floor when I introduced these amendments, including the text of the amendments, be made part of the hearing record at an appropriate place.

[The material referred to is contained in the appendix.]

Mr. Chairman, I am glad to see you and I have both addressed ourselves through the years to some of the same problems under the act which I, therefore, did not cover in my amendments to S. 3074.

One of my principal problems with the act has been the different treatment afforded persons chargeable to the Western Hemisphere and those chargeable to the Eastern Hemisphere. You have taken what I believe to be the first major step to eliminating the differences in treatment of these people.

S. 3074 provides for separate but equal treatment for both hemispheres. Once that becomes fully operational, I believe an easier transition can be made to a worldwide system of allocating visas and a worldwide limitation on the number of immigrants we will admit to the United States.

Until the preference system becomes operational throughout the world, I agree that we need not tackle the overall problem of how many immigrants to permit into the country each year or if any reallocation of percentages available for each preference should be made.

I commend you for your provision for what amounts to an amnesty for aliens physically present in the United States prior to July 1, 1968. In my prior bill the date was 1965, but our goal was the same. These people have already affected our labor market; their lives are undoubtedly intertwined with those of American citizen or permanent resident members of their family. They should be permitted to adjust their status and remain in the United States.

I see we have some distinguished witnesses here today, and I welcome them.

In view of our having a vote scheduled for 11:45 this morning and a joint session immediately thereafter, other than congratulating you on scheduling these hearings, I shall reserve my further comments until we have heard the witnesses and obtained their comments on S. 3074 and their advice on questions affecting the Immigration and Nationality Act.

I welcome the witnesses today, Mr. Chairman.

The CHAIRMAN. Senator Scott, have you got a statement?

Senator SCOTT of Virginia. Mr. Chairman, I do not have prepared statement, but I do have a concern with matters that are not directly connected with the admission of aliens into the country for naturalization purposes, but I think that have to be resolved in order for us to have a reasonable immigration policy. This is the parole authority that the Department of Justice has.

I feel we must put a limitation, and perhaps a strong limitation, upon what they have assumed to be their authority. I think they have gone far beyond what was ever intended by the Congress, and I believe we must address ourselves, as this bill does, to this question of illegal aliens. Whether it is 4 million or 12 million, or somewhere inbetween, there is no need having immigration laws when you permit from 4 to 12 million people to stay in your country illegally, and this is something that I hope, Mr. Chairman, we can get into during the course of these hearings.

Thank you, sir.

The CHAIRMAN. I will place in the record a statement of explanation of the bill.

[The material referred to follows:]

STATEMENT OF EXPLANATION OF S. 3074 BY SENATOR EASTLAND

S. 3074 deals with two major problems affecting our immigration laws.

First, it seeks equalization of treatment between immigrants from the Western Hemisphere and immigrants from the Eastern Hemisphere.

Under the law today immigrants from the Eastern Hemisphere are selected under a system of preferences which were designed to implement well-established immigration policies. Thus, aliens born in the Eastern Hemisphere who have close relatives in the United States who are either citizens or lawful resident aliens are eligible for preferences in the selection process. Likewise, preference may be accorded to aliens born in the Eastern Hemisphere when they qualify as professionals or when they possess vocational skills needed by this country. Finally, the system of preferences applicable to the Eastern Hemisphere allows for a refugee program to operate on a continuous basis, by allotting 10,200 numbers a year for this purpose (or 6% of the Eastern Hemisphere ceiling of 170,000 immigrants annually).

S. 3074 by applying the same system of preferences to the Western Hemisphere will place immigrants all over the world on an equal footing. Citizens or permanent residents of the United States with close relatives in the Western Hemisphere will be in a better position to assist those who wish to immigrate here, Western Hemisphere immigrants with professional qualifications or with needed skills will also be helped. Numbers will be available for a Western Hemisphere refugee program—6% of the annual ceiling of 120,000 (or 7,200).

As the law reads today, no country in the Eastern Hemisphere may be allotted more than 20,000 immigrant visa numbers annually out of the total yearly ceiling of 170,000. This bill will apply the same 20,000 individual country ceiling to the Western Hemisphere within its separate ceiling of 120,000 numbers.

The second major problem concerns illegal aliens. There is no provision in the immigration statutes today to prohibit the employment of aliens who are here illegally or in a status which does not permit employment. The United States, in fact, may be the only industrialized or developed country which does not have such a law on its books. S. 3074 will establish a civil offense directed against employers, agents, and others who *knowingly* hire or arrange employment of illegal aliens. Persons charged with such an offense will be subject to administrative fines of not more than \$500 as to each illegal alien for a first offense, and between \$500 to \$1,000 per alien for any subsequent offense. To insure fairness, the bill provides for full scale administrative hearings and for judicial review of the proceedings.

In addition to these major parts, S. 3074 contains other provisions which will briefly be noted.

The bill amends the present statute as it relates to the importation of temporary workers from abroad (1) by insuring that the Secretary of Labor has a statutory say in respect to whether such foreign workers are needed here in the light of domestic supply and availability, and (2) by establishing a realistic procedure to facilitate the use of alien labor when it is needed.

The bill will make it possible for aliens in the United States who were born in the Western Hemisphere to acquire permanent residence without the needless expense and loss of time involved in having to leave the country. This is accomplished under a procedure known as adjustment of status, for which aliens born in the Eastern Hemisphere have long been eligible. Also made eligible will be alien crewmen who have heretofore been barred from utilizing this procedure. However, any alien who takes unauthorized employment will become ineligible to obtain adjustment of status, unless he is the spouse, child, or parent of a United States citizen.

S. 3074 amends deportation sections of the Immigration and Nationality Act to overcome the effect of judicial and administrative decisions which have made it more difficult to deport aliens who become public charges within five years of their entry.

Aliens who can show that they have resided continuously in the United States since prior to July 1, 1968 and are not members of socially undesirable classes

will be eligible to regularize their immigration status. This updates the present law by 20 years, as the current date from which continuous residence must be established is June 30, 1948.

S. 3074 requires the Secretary of Health, Education, and Welfare to notify the Attorney General of the names and most recent addresses of aliens, other than lawful permanent residents or refugees, who are receiving welfare assistance under various State plans funded by the federal government.

Under another change, it will no longer be necessary to deduct immigrant visa numbers for Cuban refugees who adjust status to permanent residence. The deductions, which were in the vicinity of 25,000 last year, are being taken from the badly backlogged Western Hemisphere ceiling of 120,000.

S. 3074 amends a section of the United States Criminal Code to specifically include alien registration cards and other documents in the prohibition against counterfeiting and forgery.

With respect to naturalization, S. 3074 grants an exemption from the literacy requirements to aliens who will be 60 years of age or older on the date of the bill's enactment. It also gives clerks of courts a more equitable share of the filing fees collected from naturalization applicants by raising the maximum pro-rata share from \$3,000 to \$10,000 per year.

The CHAIRMAN. Mr. Eagleburger, you may proceed. Identify the people who are with you for the record, please.

STATEMENT OF LAWRENCE S. EAGLEBURGER, EXECUTIVE ASSISTANT TO THE SECRETARY OF STATE; ACCOMPANIED BY LEONARD F. WALENTYNOWICZ, ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS; LOREN E. LAWRENCE, DEPUTY ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS; JULIO J. ARIAS, DIRECTOR, VISA OFFICE; CORNELIUS D. SCULLY, CHIEF OF REGULATIONS AND LEGISLATION DIVISION, VISA OFFICE; AND EUGENE L. KRIZEK, DIRECTOR OF CONGRESSIONAL SERVICES

Mr. EAGLEBURGER. Yes, sir, I shall.

On my right is Mr. Leonard Walentynowicz, who is the Administrator at the Bureau of Security and Consular Affairs. On my immediate left is Mr. Loren Lawrence, who is Deputy Administrator of the Bureau. On the far right is Mr. Julio Arias, who is Director of the Visa Office. On my right is Mr. Cornelius Scully, Chief of the Regulations and Legislative Division of the Visa Office.

Mr. Chairman, you and the other members of the subcommittee have before you, I believe, a copy of my formal and rather long opening statement. It is, as I said, very long, and with your permission, and in the interest of time, I will forbear to read it verbatim, and ask simply that it be made a part of the record.

The CHAIRMAN. It will be admitted.

[The prepared statement of Lawrence E. Eagleburger follows:]

STATEMENT OF HON. LAWRENCE S. EAGLEBURGER, DEPUTY UNDER SECRETARY FOR MANAGEMENT, DEPARTMENT OF STATE

Mr. Chairman, members of the Subcommittee, I am most pleased to represent the Department of State on this occasion, which is indeed a most significant one.

The Department has for some time felt that the existing provisions of the Immigration and Nationality Act required reconsideration and review. Time passes, circumstances change, and events as they unfold show us the necessity for change. Your bill, Mr. Chairman, S. 3074, addresses itself to a number of the most im-

mediately pressing issues which confront us in the field of immigration and it is most gratifying to have this occasion to discuss them with you.

With respect to the provisions of the bill itself, I will confine myself to commenting upon those sections in which the Department has a direct interest or in which we feel that we have a perspective which may prove useful. In addition, I will permit myself the liberty of inviting your attention to certain additional proposals for amendment of the Immigration and Nationality Act which do not appear in your bill, but which do appear in the Administration's immigration bill which was submitted to the Senate on September 24, 1975, and which we believe merit your attention as well.

Section 2 of the bill would make several amendments to section 101(a) (15) (H) (ii) of the Act. While the issues raised by the proposed amendments are largely of a domestic nature and, thus, properly matters for comment by the Department of Labor, there is one aspect of this proposal to which I should like to invite your attention. Removal of the requirement that the services to be performed by the alien be temporary in nature would open the way for establishment in the United States of a system of importation of temporary foreign labor not unlike the European "guest worker" systems. In effect, an alien admitted in this status would be tied to his job because his right to remain lawfully in the United States would be conditioned upon his continuing to perform the services specified in the petition approved to accord his temporary worker status. In addition, the limitation on the alien's stay as a temporary worker—one year initially, with up to a maximum of one additional year—could be rendered meaningless by having the alien depart the United States at the end of the second year for a period of days or weeks and then return to begin another period of two years.

Moreover, difficult questions would arise from the natural desire of such a worker to have his or her spouse or children accompany him or her to the United States. Additional children who might be born to such families while in the United States would acquire citizenship at birth and this fact, plus the potential long-term nature of their stay, could give rise to equitable considerations leading to demands for according such families permanent resident status.

Finally, consular officers would be faced with very difficult evaluations in considering visa applications by such temporary workers since the fact that they were coming for what might be indefinite periods would make it very difficult to find that they were aliens who had a residence in a foreign country which they had no intention of abandoning.

For all these reasons, the Department would urge that the experience of European countries with the "guest worker" system and the social implications of its establishment in the United States be carefully studied before final action is taken on this proposal.

Section 3 of the bill would amend section 101(a) (27) (A) of the Act by deleting the existing provision for natives of independent countries of the Western Hemisphere and inserting in its place the definition of what is now called an "immediate relative". We favor this proposal, but we would urge that the added proposal contained in the Administration's immigration bill to accord derivative status to the spouse or child of such an alien be incorporated. There exist cases in which one member of a family group is entitled to this highest of benefits under the immigration law, but that individual's spouse and/or children are not entitled to such status, with the sometimes unfortunate result that there is a separation of the group. According derivative status in this situation would permanently eliminate the possibility of this occurring.

Sections 4 and 5 of the bill are identical with sections 3 and 4 of the Administration's immigration bill and the Department supports both proposals. I should mention that section 4 of the bill would accomplish one of the two legislative goals to which the Department has given highest priority over a number of years—the establishment of equal treatment under the immigration laws for all intending immigrants regardless of country of birth. The existing situation which has endured now for some eleven years and which no one desired or even foresaw requires this change. Equity and reason demand that we treat all intending immigrants on the same basis regardless of place of birth. If an alien born in Europe can benefit by having a close relative who is a citizen or permanent resident, an alien born in South America should be entitled to receive the same benefit. Likewise, if natives of the Eastern Hemisphere receive no benefit from certain relationships, neither should natives of the other hemisphere.

Although we strongly support this proposal, even urge it upon you, I think it only proper to put it in its true perspective. Demand for immigration by natives of the Western Hemisphere is, as you are aware, very heavy and far exceeds the 120,000 annual limitation. Some appear to believe that application of the preference system and foreign state limitations to the Western Hemisphere will magically cause those backlogs of demand to disappear. This is simply not so. The 120,000 limitation will remain unchanged under this proposal and 300,000 applicants simply cannot be accommodated within that limitation. Thus, the proposal here will not eliminate backlogs of demand for immigration. Only an increase in the limitation or a decrease in the demand could do that. We do not favor the former course and we are powerless to affect the latter.

On the other hand, this proposed change is nonetheless one of major significance. We will be taking a large step toward the equalization of our immigration system. We will be providing a system for the Western Hemisphere which is rationally based and which is basically a fair and realistic one, even though not perfect. And these are very important necessary steps in the continuing process of perfecting our immigration system.

Finally, in this connection I should like to comment upon two aspects of the proposals contained in section 5. Under this section, the foreign state limitation (the limitation on immigration from individual countries) would also be established at 20,000 for all independent countries of the Western Hemisphere. At present there is no per country limitation for these countries. A question which has arisen very often is whether a higher limitation should be provided for our continental neighbors, Canada and Mexico. The Administration favored such a provision for a number of years, but more recently we have reviewed this situation and we no longer believe that the considerations in favor of such a provision are of sufficient weight to overcome the violation of the general principle of equality of treatment for immigration purposes which has been the basis of our immigration policy since 1965. We recognize that applying the 20,000 limitation to Mexico will result in a reduction of immigration from that country and that Mexican applicants will face longer waiting periods than at present. On the other hand, looking at the situation realistically, any special provision for Mexico would be at the expense of our other Western Hemisphere neighbors and, more importantly, demand for immigration from Mexico is so heavy that only a major increase in the overall limitations on immigration would have any meaningful impact in this respect. We do not favor such an overall increase.

The other aspect of section 5 relates to the dependent areas. Since 1968 all dependent areas physically separate from the governing country—for example, British islands in the Caribbean—have been limited to 200 immigrants annually. There have grown up large backlogs of demand in some of these areas. The time has come to relieve this situation—within the overall limitations, of course—and we strongly support the proposal to raise the limit from 200 to 600. Also, we favor charging such immigrants directly against the hemispheric ceiling for the hemisphere of location rather than against the 20,000 limit of the governing country.

Section 6 of the bill makes one editorial and one substantive change in section 203 of the Act—the section providing the preference system. The one substantive change would add to section 203(a)(5)—the preference for the sibling of a United States citizen—the requirement that the citizen be at least 21 years of age. Presumably, the reasoning behind this proposal is that, since a citizen must be at least 21 years of age to confer an immigrant benefit upon his parents, there is no reason to permit him to confer an immigration benefit upon his siblings until he attains that age. There is a certain logic in that argument, but the Department believes that there is a more fundamental consideration which deserves our attention in this respect. The Department favors the proposal contained in the Administration's immigration bill to restrict eligibility for fifth preference to unmarried siblings of United States citizens. At issue here is the concept of family reunification. This concept has been a basic one in our immigration law since the beginning and it is one to which we fully subscribe, but we do not believe that offering preferential treatment to the married sibling of a United States citizen truly furthers that principle. When an individual marries and has a family he creates his own family unit. If he immigrates to this country through a benefit conferred upon him by a citizen sibling, the chances are that he will establish himself where employment opportunities take

him, which may or may not be near his citizen sibling. When this occurs, it does not seem to be a reunification of a family. If an immigrant from Europe settles in California where he has located a job while his sibling through whom he qualified to immigrate resides in New York, the family is not really more united than it would be if the immigrant had remained in Europe. On the other hand, if the immigrant is unmarried, it is much more likely that he or she will settle with the citizen sibling here and there is a true element of family reunification in that situation.

Additionally, there are several other changes to the preference system which we would propose to you. First, we would add the parents of resident aliens to the second preference category. Under the existing preference system such aliens receive no benefit. It is alleged that many permanent residents seek naturalization solely for the purpose of conferring a benefit upon their parents and it seems to us that naturalization, which is a privilege, should not be forced upon people willy-nilly simply so that their elderly parents can be reunited with them in this country.

In addition, we propose two quite basic changes in the treatment of professionals. We propose requiring that professionals have pre-arranged employment—as is now the case for skilled and unskilled workers—in order to qualify for immigration and we propose to reorder the preference to place the professionals after all the relative preferences (moving them from third to fifth preference and moving the existing fourth and fifth preference categories up to third and fourth, respectively). Both of these changes are justified not only from the domestic but also from the foreign relations standpoint. In 1965, when the law was amended, it was widely assumed that our economy required professionals simply because they were professionals and that there would virtually automatically be places for them in the job market. Thus, we made very liberal provisions for professionals, allowing them to qualify for immigration merely on the basis of their professional qualifications and without the need to show they were destined to a specific job. Domestically, this situation no longer exists and seems unlikely to return again in the foreseeable future. Moreover, these liberal provisions have resulted in encouraging substantial numbers of professionals from the developing countries to immigrate to the United States, leaving us open to the complaint that we are stripping these countries of their best talent—the brain drain problem. Our proposal would meet both considerations, while at the same time continuing to provide for recruitment abroad of professionals having specific qualifications needed by a particular employer when he could demonstrate his inability to fill his need for the domestic labor force.

Finally, we have several additional amendments of section 203(a) which are related to the Department of Labor's proposal to amend section 212(a) (14) and will serve merely to establish a selection system which will operate smoothly in conjunction with that section in its amended form.

Section 7 of the bill would restore to section 211 of the Act a provision allowing for the admission of an immigrant even though there was a technical defect in his immigrant visa provided he was innocent of any responsibility for or knowledge of the defect. The Department strongly favors restoration of this authority, which existed prior to 1965, and was apparently inadvertently eliminated from the law at that time.

Section 8 of the bill would make an editorial amendment of section 212(a) (14) to conform with other proposals in the bill. Two comments should be made here. The editorial amendment, although apparently nothing more than a conforming amendment, is actually of considerable substantive significance for it would have the effect of eliminating the benefit that now accrues to a Western Hemisphere native from having a child in the United States. This provision, which now gives an immigration benefit to the parent of a minor United States citizen, has become a major inducement to fraudulent entry and has resulted in the immigration to the United States of tens of thousands of aliens whose sole visible qualification for entry was that they had had a child here, often while in illegal status. The Congress had never prior to 1965 given such a benefit to any class of intending immigrants and experience since 1965 amply indicates the wisdom of withdrawing this benefit.

The other comment I would make about section 212(a) (14) is that our colleagues from the Department of Labor will urge upon you when they testify a rather major modification of that section. I will not presume to speak for them in describing the proposal or in advocating it, but I should like the record to show

that this proposal was the subject of careful interagency consideration and consultation before it was formally adopted and that this Department, on the basis of that consideration and consultation, is convinced that the proposal represents a positive step toward a more rational administration of the system while retaining at least the same degree of effective protection for the domestic labor force.

Section 9 would amend section 241(a) of the Act—which sets forth the grounds for deportation of an alien—to modify those grounds of deportability relating to the receipt of public benefits. These provisions in their existing form have been held to apply only in cases in which the alien not only received public assistance, but also had a legal obligation to repay the monies received and had received a demand for repayment. This interpretation has effectively nullified these provisions and the proposed amendment would explicitly reverse the holding. Conceptually, the Department favors the purpose of this proposal, but will defer to the Department of Justice since deportation of aliens is within its jurisdiction and the Department of Health, Education, and Welfare.

Section 10 would amend section 245, the adjustment of status provision, in several ways. The existing prohibition against adjustment of status by natives of the Western Hemisphere would be eliminated, as would the bar against adjustment of status by alien crewmen. There would be substituted a prohibition against adjustment of status by an alien other than an immediate relative (now to be termed special immigrants) who had worked illegally in the United States prior to filing an application for adjustment. In addition, the existing regulatory prohibition against adjustment of status by an alien admitted in transit without a visa would be incorporated into the statute. Also a technical amendment would be made to require availability of a visa number for the applicant at the time of filing of the application rather than at the time of its approval.

Finally, an alien to whom adjustment of status was granted would have his date of admission established retroactively as of the date he filed his application. The Department finds this proposal a most puzzling one since we can find no reason for backdating the date of admission in an adjustment of status case when an immigrant visa recipient's date of admission for permanent residence is the date on which he presents himself at the port of entry and is inspected and admitted for permanent residence.

With the exception of the provisions relating to alien crewmen and to the retroactive date of admission, the changes made by section 10 are changes which the Administration supports and the Department favors them. With respect to alien crewmen, the Department will defer on this matter to the Department of Justice since the control of alien crewmen has always been a matter of particular concern to that Department.

Section 11 would amend section 249—the registry provision—to advance the eligibility date from June 30, 1948 to July 1, 1968. This proposal would have substantially the same effect as a proposal which the House Judiciary Committee recently included in the bill H.R. 8713 to grant permanent residence to certain aliens physically present in the United States since prior to July 1, 1968. Both provisions amount to what may be (and has been and will continue to be) characterized as an "amnesty" for aliens illegally in the United States since the cut-off date. The Department recognizes that once an alien has remained in the United States for an extended period of time, even without lawful status, there arise equitable considerations which would argue against his expulsion from the United States. On the other hand, the Department is also quite concerned that the legitimate humanitarian considerations not lead to a provision so liberal as to constitute a basis for the conclusion that the United States has not the will to enforce its immigration laws and, thus, further encourage illegal entry. Upon reflection, we believe that a provision of this sort, using July 1, 1968, as the eligibility date, represents a fair balance between the competing considerations as we see them and we, therefore, support a provision of this sort.

Section 12 would amend section 274 of the Act to add provision for imposing a penalty upon the employer or his agent who knowingly gives employment to an alien not entitled to that employment, as well as upon any person who refers such an alien for employment, including any representative or official of a labor organization who does so. The penalty would be a civil one and would be not more than \$500 per alien for a first offense and not less than \$500 nor more than \$1,000 per alien for any subsequent offense. Provision would be made for the

conduct of hearings to determine whether the penalty was assessable and for a separate court proceeding to collect the penalty assessed if a person against whom the penalty had been assessed refused to pay.

In addition, provision would be made for injunctive action in appropriate cases against employers found to be giving employment to illegal aliens, in order to remove the aliens from the employment expeditiously prior to the commencement of civil fine proceedings.

Also the Attorney General would be directed to prepare and distribute a form to be used by employers, agents and referrers in securing from prospective employees statements as to their citizenship status and entitlement to work. Obtention of this form from a prospective employee would constitute prima facie evidence that the employer, agent or referrer had made a bona fide inquiry into the prospective employee's entitlement to work for the purpose of relieving him of potential liability under the proposed penalty provision.

The Administration generally, and the Department, have for a long time supported, even urged, enactment of a provision to impose a penalty upon those who give employment to illegal aliens or who assist in their obtention of employment. This proposal varies somewhat from others which have been made in their respect in that the initial stage of a simple warning notice to the employer, a feature of many other proposals, is omitted and in that the penalty assessed is civil in nature at all stages of the proceedings rather than criminal in the later stages. The Department will defer in this respect to the Department of Justice, as the agency which will have direct responsibility for the implementation of its provisions.

Section 13 would add a new subsection (e) to section 290 of the Act under which the Secretary of Health, Education and Welfare would be required to report to the Attorney General the name and most recent address of any alien who is not a permanent resident, an alien admitted as a conditional entrant or an alien paroled into the United States. The Department will defer to the Departments of Justice and of Health, Education and Welfare concerning this proposal.

Section 14 of the bill contains a series of technical and editorial amendments required for conformity with other substantive amendments contained in the bill. Section 15 and 16 would make certain amendments to portions of Title III of the Act relating to naturalization and the Department will defer with respect to these proposals to the Department of Justice.

Section 17 of the bill would amend the Act of November 2, 1966, to provide that adjustments of status granted to Cuban refugees pursuant to that act should not be counted against the numerical limitations on immigration. The Department strongly supports this proposal. The necessity of charging such adjustments of status against the 120,000 limitation on immigration by natives of independent countries of the Western Hemisphere has had the doubly unfortunate effect of increasing the waiting period for other Western Hemisphere applicants significantly and of substantially prolonging the waiting period for Cuban refugees themselves.

There is one technical comment which I should like to make. Although the language of this proposal is virtually identical with that contained in the Administration's immigration bill, there is one technical defect therein which has only recently come to our attention. The requirement that the alien be physically present in the United States as of the effective date of the bill could operate to exclude from this benefit Cuban refugees who were temporarily outside the United States on legitimate short-term trips as of that date. We would therefore suggest that the provision be modified technically to apply to any Cuban refugee who had been inspected and admitted or paroled into the United States prior to the effective date of this bill. In that way, a Cuban temporarily absent on that date on a short trip abroad would not be excluded from this provision.

Section 18 would amend 18 U.S.C. 1546. This section makes it a criminal offense to forge, counterfeit, alter or falsely make any of a series of immigrant documents. The enumerated list of documents would be modified to add specifically a border crossing card and an alien registration receipt card. The Department favors this amendment.

Section 19 would repeal section 21(e) of the Act of October 3, 1965. This section currently prescribes the 120,000 limitation on immigration by natives of independent countries of the Western Hemisphere and becomes obsolete because of the proposal contained in section 3 of this bill to incorporate provision for that limitation into the Immigration and Nationality Act itself.

Section 20 provides a general savings clause as well as a specific savings clause preserving the entitlement to immigrant status of aliens registered for immigration under the current Western Hemisphere immigration system. In addition, these Western Hemisphere aliens would be entitled to use their existing priority dates in connection with any preference status to which they might become entitled as a result of the application of the preference system to the Western Hemisphere. The Department, of course, supports this provision and I might take this occasion to mention that the latter feature of it—the retention of an early priority date for preference purposes—first came to our attention when it appeared in a bill introduced by the distinguished senior Senator from Hawaii, a member of this Subcommittee. It may seem a small matter in the overall, but it is a fair and reasonable provision and certainly is in the spirit of affording equitable treatment to aliens in the operation of our immigration system, and we are pleased to have had our attention directed to it by the Senator.

Finally, section 21 provides for a 90 day delay in the effective date of the bill. Such a delay is most desirable in order to allow for orderly implementation of the many changes the bill would bring about.

This concludes my opening statement, Mr. Chairman. I apologize for its length but I am sure you will agree that the record should contain appropriate comment upon all elements of so significant a bill as this one. I am now at your disposal to discuss any specific matters relative to the bill that you or your colleagues may wish to take up.

Mr. EAGLEBURGER. I do have certain summary comments which I will make, and I will concentrate on those aspects of the bill which are of the highest concern to us in the Department of State.

There are two matters of overriding concern treated in this bill: the establishment of a preference system and a system of foreign state limitations for the Western Hemisphere and the establishment of penalties on the employers of illegal aliens.

With respect to the Western Hemisphere, we have had for nearly 8 years a numerical limitation on immigration by natives of independent countries of that hemisphere, but we have not had a full operative selection system. It is true that there are criteria for qualifications for immigration, as there are in the Eastern Hemisphere, even though the criteria are not the same; but there is no preferential treatment among those who qualify on various bases, nor is there any limitation upon immigration by natives of any one country in the Western Hemisphere.

Thus, it is theoretically possible that, in a given year, all immigrants under the 120,000 limitation could be aliens who had qualified on only one of the permissible bases, and were natives of only one or two of the countries of this hemisphere. Needless to say, the statistical probability that this might actually occur is extremely remote, but the mere fact that it could legally occur under the existing legislation points up its deficiencies.

For over 50 years the Congress has provided the selection and preference system for the world other than the Western Hemisphere. The exact details of the selection criteria and the kind of preferential treatment to be accorded have varied as our thinking has evolved, but the principle of giving preferential treatment to certain classes of qualified immigrants over other classes of qualified immigrants has remained, and in our view, it has been a generally successful policy, based, as it is, upon conscious decisions as to which classes of immigrants should be preferred and in what order.

Since 1968, we have had a numerical limitation also on the Western Hemisphere, but we have not had a system that sets forth which kinds of immigrants are to be preferred over others in any particular

order; thus, all who qualified compete in a single long line of applicants, regardless of the relative degree of preferential treatment that different groups among the total might be felt to deserve.

Your bill would apply the preference system to the Western Hemisphere. Also, there is now no system of foreign state limitations for the Western Hemisphere. Your bill will apply the uniform limit of 20,000 to all Western Hemisphere countries.

The question of Mexico immediately arises in this connection. We have recently reviewed our previous position on Mexico and Canada, and we no longer favor providing separate special treatment for those countries. Providing high limitations for Canada and Mexico can only be done at the expense of the rest of the Western Hemisphere unless we are willing to raise the overall ceilings on immigration. We do not favor that course. Moreover, even if we were willing to propose an overall increase in the ceilings for this purpose, there would still remain a principle of equal treatment under the immigration laws.

In 1965, we embarked on the process of equalizing the immigration system and removing the discriminatory features of it. Application to the Western Hemisphere of the same selection criteria and a preferential allocation system, which now exists for the Eastern Hemisphere, is the next step in that process. Providing separate higher limitations for Canada and Mexico would be a step backward, away from equalization, and would be inconsistent with the principle of equality for which we have been working since 1965.

The other issue of highest concern to the Department of State is the question of controlling illegal entry and stay. A fundamental cause of illegal entry and stay is the lure of employment opportunities in this country. While other factors may motivate some illegal aliens, the lure of employment clearly motivates the overwhelming majority. The establishment of a penalty upon the employer of the illegal alien and upon others who participate in the process of placing the illegal alien in jobs in the country will, in our judgment, be a significant disincentive and will, thus, contribute in an important way to the effort to reduce illegal entry and stay.

These are, we believe, the two most significant issues facing us today in the field of immigration, not that there are not others which merit our attention. There most certainly are.

The administration's immigration bill which was transmitted to the Senate last September, and which I have made reference to in my formal statement, addresses itself to a number of those issues. We hope they will receive careful consideration by the subcommittee and by the Congress.

We propose, for example, to accord derivative status to the spouse and children of what we now call immediate relatives, who will become special immigrants.

We also propose a series of amendments to the order and definition of preferences. Perhaps the most significant of these amendments relates to the treatment of professionals for whom we now propose to require prearranged employment and for whom we propose a lower order of preferential treatment than is now afforded to them.

In addition, we propose to restrict the preferential treatment accorded to siblings of U.S. citizens to unmarried siblings only. We recognize the potentially controversial nature of this particular proposal, but we believe that we should address in a forthright manner the question of the limits of the concept of the family. We do not oppose that concept as a concept; we do not feel that its limits are as broad as the law would now make them; we feel that the parents of a permanent resident should be granted preferential treatment under the law. If a resident alien becomes naturalized, his parents would receive the highest degree of immigration benefits our law has to offer, and we feel that it is wrong to urge or even force permanent residents to seek naturalization in order to confer immigration benefits on their parents. To do so tends to cheapen the concept that U.S. citizenship is a privilege, not an obligation.

Also, in our bill is a proposal for amendment of section 212(a) (14) of the act, the labor certification provision. As I have said in my formal statement, we will leave it to our colleagues from the Department of Labor to explain and advocate this proposal. Let me only say here that the Department of State fully supports this proposal, not only because it is an improvement from the administrative standpoint, but also because it is an effective method of protecting the domestic labor force from possible adverse effects of the immigration of foreign workers.

Mr. Chairman, that is the extent of my remarks, and I would be glad to answer whatever questions I can, sir.

The CHAIRMAN. You commented on the European "guestworker" system. What is your assessment of this system? What has been the European experience with the system? What has been the U.S. experience with the BWI program?

Mr. EAGLEBURGER. Mr. Chairman, if I can, I would like to refer that question to Mr. Scully.

Mr. SCULLY. Yes, Mr. Chairman, the European "guest worker" system, as we understand it, is a system under which, sometimes by prearrangement between companies and sometimes without it, workers are brought temporarily or in a temporary status, in a nonpermanent resident status, from one country to another, as, for example, perhaps, from Italy to Switzerland.

There have been workers in France from Algeria and from other North African countries, from Portugal and Spain, and these workers are not granted full status as permanent residents; they are there in a temporary capacity so long as they occupy certain kinds of jobs.

We do not have complete details on this. I understand that the Department of Labor is in the process of making a study of this system, but there are indications that there have been serious problems of a social nature, in that these workers tend to travel without their families and because of that they tend to live in barracks-style accommodations; they tend to have jobs at the lower end of the economic scale. There have been, in my understanding, what you might even term racial problems in France, for example, since most of the workers tend to be Moslems from North Africa. The social conditions under which these people live apparently have been very, very bad in many cases, and now it appears that since the economic situation has changed

in some of the Western European countries, they no longer have as great a need for these people. They are now in the process of simply telling them to go home, and this, itself, has created problems because many of the workers have been there for very long periods of time, and they apparently have come to think of themselves as being permanent parts of that community, even though, legally, they are not. And I gather that there are difficulties with the countries from which they came receiving them back, because those countries themselves experience economic difficulties.

It is this sort of consideration that I think needs to be very carefully looked at before the United States should enter into a program of that kind.

The CHAIRMAN. What about the BWI program?

Mr. SCULLY. That situation, sir, is a very unique one. There have been in the U.S. Virgin Islands a number of workers from the adjacent surrounding islands, the British West Indies Islands. They have been there for many years, and they have been there under circumstances that are analogous to this sort of system. My understanding is that there have been difficulties there of an analogous sort, perhaps not as extreme as may have occurred in some of the European countries, but that there have been difficulties with housing accommodations at various times; there have been tensions that have arisen in the local communities between the residents and the workers. There have been, as I understand it, difficulties of analogous kind.

Mr. EAGLEBURGER. Mr. Walentynowicz knows a little more about this, Mr. Chairman.

Mr. WALENTYNOWICZ. I think the problem we are facing Mr. Chairman, is the definition of the word "temporary."

The CHAIRMAN. But the other gentleman was speaking of people coming in from the Virgin Islands.

Mr. WALENTYNOWICZ. That is right. I am talking about what happened in the BWI and in the American Virgin Islands. Reference to it has been made in the report of the House subcommittee, which indicates that these workers were brought in initially with the idea that they were to be there temporarily, but they remained indefinitely, and they have created cultural ties with the island. In other words, they brought in their families and, as a result, from the point of view of their background and so forth, a good case can be made that their cultural ties are such that they should be given some sort of consideration in the island.

The CHAIRMAN. Well, what about the British West Indies, people that come from there to this country to work; what is the experience with that program?

Mr. WALENTYNOWICZ. That is the one that I am talking about. What happened is that during the period of time when the American Virgin Islands were developing some years ago, it was decided that there was need for this type of labor. It was originally assumed that these people would come in on a temporary basis. However, the people remained on the island, and through a number of factors they brought their families. Their children were in school there, and as a result, a good number of them are staying there indefinitely.

Mr. EAGLEBURGER. Mr. Chairman, I think you said the British West Indies. That is right. We are talking about the wrong thing, Mr. Scully.

Mr. SCULLY. Mr. Chairman, it may be that—are you talking about the agricultural workers that come to the mainland?

The CHAIRMAN. From Florida up the east coast.

Mr. SCULLY. Those, Mr. Chairman, as I understand it, are actually true temporary workers in the sense that they come in for a temporary period of time; they do their work in the agricultural field in various areas as the crops need to be harvested, and then they return. Perhaps the Immigration Service might be in better position to talk about that in detail.

My understanding is that those workers do not remain in the United States indefinitely. They do not settle here physically. They come, they do their work, and they return home, so that they are in a temporary or seasonal capacity under the existing law.

The CHAIRMAN. They bring their families with them, their children?

Mr. SCULLY. It is my understanding that they do not, Mr. Chairman, although I think that the Immigration Service probably would be able to speak more authoritatively on that.

The CHAIRMAN. What has been your experience with that labor program?

Mr. SCULLY. So far as we in the Department of State know, it has operated successfully. Again, I think that we would rather defer to the Immigration Service and the Department of Labor on that in terms of the actual experience of the people while they have been here, in satisfying needs for workers, and the experiences the workers themselves have had.

The CHAIRMAN. Now, we do not permit Mexicans to come in on that type approach.

Mr. EAGLEBURGER. That is correct, sir.

Mr. SCULLY. If I may, Mr. Chairman.

The CHAIRMAN. Why do we not permit them to come in?

Mr. SCULLY. I think that the Department of State would have to defer to the Department of Labor on that, Mr. Chairman. It is my understanding, and, again, I am not speaking authoritatively here, it is my understanding that the reason workers have not been brought in along the Southwest border under similar circumstances relates principally to the question of whether there is domestic labor available to do that work and, therefore, to the question of whether the Mexican workers would be needed for that employment.

This is, again, not an authoritative statement, but it is our understanding of the issue that has arisen in that connection, and I think we would have to defer to the Department of Labor for an authoritative discussion of that and to the Immigration Service, as well.

The CHAIRMAN. Senator Fong.

Senator FONG. Mr. Eagleburger, I will be introducing this morning 16 amendments to this bill, and I would ask that you give your opinion on each of the amendments that I will send to you. Some of them will deal with matters under the jurisdiction of the Labor Department—I would also like to ask them to make comments on these. These

amendments deal with the reuniting of families. For example, a father and mother love their son or daughter even though he or she be married, and make some recommendations for the reuniting of these families. Then, there is the question of refugees coming in here on a parole system; whether they could be brought in without being on parole because we have got to go through the subsequent act of passing a bill to see that they become permanent residents here, and they are in a state of quandary during that period.

And another question deals with waivers for fraud; whether sons and daughters over 21 could also come in through such waivers.

These types of amendments are the ones on which I am asking that you make comments.

Now, as to the question of the Western Hemisphere, what real problems do you find now without this preferential quota system that we have for the Eastern Hemisphere, not being applied to the Western Hemisphere? What real problems do you have in that situation?

Mr. EAGLEBURGER. Let me ask Mr. Scully, who has had a good deal of experience with this, to answer you, sir.

Mr. SCULLY. Sir, the situation that we have in the Western Hemisphere is this. Now, one thing you have to start off with in dealing with the Western Hemisphere, you have to recognize that demand for immigration from the Western Hemisphere currently exceeds the numerical limitation, so what we have is a very, very long waiting list. There are a variety of bases under which people qualify to get on that waiting list: through specified relationships, through labor certification for their proposed employment. Once a person qualifies, however he may qualify, whether it is through a relationship or through the labor certification, his name is simply entered on a single long waiting list and then he simply sits and waits for 2½ years, 2½ years being the current approximate waiting period.

Now, in the Eastern Hemisphere, we have the preference system. Percentages of the numerical limitation are allocated to each of the different preferential classes, that is to say, to each of the subgroups of people who qualify to immigrate. What this does is to insure that, through this preferential system, the people that we wished to gain the highest degree of preference do actually receive it through the establishment of the preferences and the allocations. Furthermore, it seems to me that it also tends to insure that in each of the preferred classes, at least some people will be permitted to immigrate annually because there is a reserved percentage for each class.

Now, it seems to us that this is a reasonable, rational, equitable way of allocating the ability to immigrate, to give every group, every subgroup that we wish to permit to immigrate at least some opportunity. As it stands now, we have in the Western Hemisphere just a simple long line of people, and there is no rational allocation in terms of preferring this particular immigrant over that particular immigrant, such as we have in the Eastern Hemisphere. So, as Mr. Eagleburger pointed out, it is theoretically possible that the overwhelming majority, or even the totality, of the immigration from the Western Hemisphere in any given year could be people who qualified on only one of the permissible bases.

Admittedly, as he also pointed out, the statistical probability that that would occur is remote, but the problem is that the system leaves entirely to chance, and we do not find that that is fair, rational, or equitable, either to the people here, who are the relatives or prospective employers of the immigrants, or the immigrants themselves, and this, it seems to us, is a matter of major concern, in addition to the theoretical proposition that we should have an equitable even-handed system that is equally applicable, equally beneficial or nonbeneficial, irrespective of country of birth.

Senator FONG. So, in carrying out the immigration law as far as the Western Hemisphere is concerned, we get away from the principle of reuniting families, do we not?

Mr. WALENTYNOWICZ. We do under the present law. Under the present law, we have a situation where the immigration quota is much more uneven than it is under the Eastern Hemisphere system. Under the Eastern Hemisphere system, with the preference categories, we insure more regularity so that in the case of family reunification parents get preferential treatment over the other members of a family, and after that, gradually, the family is reunited in a definite order of priority.

Under the present system in the Western Hemisphere, this does not occur. A person with a labor certification can get preference over a child if his date on the list is earlier than the parents; and this is what we want to overcome and rectify with the proposed amendments.

Senator FONG. How long are families waiting now to be reunited?

Mr. WALENTYNOWICZ. It varies. There is no one way to say a specific number. It varies from time to time, but it is more than what it should be, we feel.

Mr. EAGLEBURGER. Two to 2½ years minimum now.

Senator FONG. As we will have a vote at 11:45, I will not ask any further questions. I want to thank you, Mr. Eagleburger and your staff here, for a very fine statement.

Mr. EAGLEBURGER. Thank you, Mr. Senator. We will get the comments on the amendment for you.

The CHAIRMAN. Senator Scott.

Senator SCOTT of Virginia. Thank you, Mr. Chairman. I, too, am pleased with the statement made by Mr. Eagleburger, and I want to compliment him on it. Once again, my concern relates to a large extent on the illegal aliens and the parole authority of the Attorney General, and I realize that this is not entirely within the State Department's jurisdiction, but you mentioned, Mr. Eagleburger, or one of your staff did, that illegal aliens coming in here seek employment because our standard of living is higher than the countries from which they come, and a great number of them are coming from Mexico. I wondered to what extent Mexico has cooperated or can be expected to cooperate in the future in keeping illegal aliens out of this country. Will they cooperate? Have they cooperated in the past? Is there any way to get them to cooperate that you might suggest?

Mr. EAGLEBURGER. Mr. Lawrence.

Mr. LAWRENCE. Senator, at the moment, the President's Domestic Council on Illegal Immigration is working. A portion of that Council is the Interagency Committee addressing the problem of the Mexican

entry into the United States. That group met with representatives of the Mexican Government in the first week of December and, is slated to meet here in Washington with that group in the middle of April. The purpose of these meetings is to bring these two governments together in an area of good will, recognizing that we have a major problem, both of Mexican population losing manpower resources—although that, perhaps, is not so critical to them—as well as ourselves having this rather large number of Mexican illegals.

At this point in our negotiations and our working on the government-to-government basis, it does appear that we are working with a good level of cooperation. We are not totally sanguine as to how long that will go. We are right in the middle of that type of a problem now, sir.

Senator SCOTT of Virginia. Are you just expressing hope that they will cooperate in the future, rather than telling us what has happened in the past?

Mr. LAWRENCE. The President of Mexico has stated that it is a serious internal problem for Mexico, a problem that they have to find a solution to. They are hoping to be able to work with us to find a solution, and I think it is a little more than hope.

Senator SCOTT of Virginia. Now, someone told me that some years ago that there were some towers up along the border that were thought might be offensive to the people of Mexico, that dogs along the border might be considered offensive, and other efforts to police the border in such a way that would keep the illegal aliens out, that there might—and I know I am talking to State Department officials, and to me this is within your jurisdiction and your line of expertise—would it be reasonable to say that if you would prefer not to have towers up, not to have dogs along the border, and not to have barbed wire or something like that, there is a need to have cooperation on both sides of the border. Could you comment on that?

Mr. LAWRENCE. I think what we have seen thus far in Mexico begins to suggest the development of an enlightened understanding that there is a problem on the Mexican side, that we cannot tolerate this vast number of people flowing over the border on a continuing basis, and I think they are prepared to sincerely address the problem.

I, frankly, do not know at this point what the solution will be or whether there is a capability to solve it. I have read the writings of some persons in the academic community here in the United States who have studied this problem in a great deal of depth, who seriously wonder whether there is a solution. It is an 1,800-mile-long border. It is going to be a very difficult thing to enforce. In that aspect, I would have to defer to the immigration authorities also.

Senator SCOTT of Virginia. Well, would it be reasonable, recognizing that this is entirely a matter for the Federal Government, to seek the assistance of the State governments through Federal law so that they could back up the Federal immigration officials because it must have an adverse effect on the States, and I realize they do not have the authority without authorization from the Congress. Would this be a desirable or undesirable feature to consider?

Mr. LAWRENCE. I believe it would be both desirable and reasonable, and I believe that such cooperative ventures are in existence now in the

State. Again, I cannot speak authoritatively to that. I would have to ask comment from the Immigration Service.

Senator SCOTT of Virginia. On this parole authority—and, again, I realize that that exists within the Attorney General, and yet when the Commissioner of Immigration was up here representing the Attorney General, he had an Assistant Secretary of State with him, so apparently the State Department is involved in parole matters—I just wonder what your thinking might be. I understand that this parole authority was originally intended to meet the situation where there was an emergency, a sickness in the family, or something of this nature. It was thought of as something that would be handled on an individual basis. Yet, we got 40,000 to 50,000 Hungarians that came in; 400,000 to 500,000 Cubans; 150,000 or so Vietnamese and Cambodians, and some Chileans, I believe, and the Department of Justice went ahead and brought them in without committee approval. I do not see how we can have any effective immigration laws if we bring such large numbers in.

Congress is put in the position of sort of being compelled to do something about these people who are already in here. It would be much simpler in my judgment not to let them in in the first place unless we intend for them to remain here permanently, than it would, once they are in the country, to say, well, you have visited here and now you must find some place else in the world to live. I just wonder—and I do have an amendment to offer in this respect—if you might comment, Mr. Eagleburger, or some member that is with you.

Mr. WALENTYNOWICZ. Senator Scott, the problem is a perplexing one, and it has caused a lot of people a lot of concern over the last few years. What has happened is that these emergency situations, which have precipitated the invocation of the parole authority in its broadest concept, have occurred quite frequently, particularly in the last year or two.

I think it is important to realize that with America's role as a world power, some allowance should be made—

Senator SCOTT of Virginia. Where did America get its role as a world power? Was there an act of Congress that said we are a world power, and, because we are a world power we must take care of the needs of all of the people of the world?

This is a phrase that I do not like to hear used, and, to justify doing things against the best interests of this country, I think all American citizens should be interested in what is best for America, not what is best for the world.

As far as I am concerned, I do not agree with that.

I would like to just simply respond to the question about the parole authority.

What has happened is that people have attempted to create within the existing mechanisms a way in which these problems, the fact that there are refugees of various types created in the world, be brought to the attention of the executive department and to the legislative department through the consultative process and a decision, a consensus, reached as to what America should do to these particular refugee problems.

Senator SCOTT (Virginia). Well, let me say that it is not a question of consensus, because we find in article I, section 8 that the

Congress shall have power to make uniform laws regarding naturalization.

If we look in the Annotated Constitution, page 294, "the power of Congress to exclude aliens from the United States and prescribe the terms and conditions on which they come in is absolute, being an attribute of the United States, as a sovereign nation, that the Government of the United States, through the action of the Legislative Department, can exclude aliens from its territory is a proposition which we do not think open to controversy.

"Jurisdiction over its own territory, to that extent is an incident of sovereignty of every independent nation. It is a part of its independence.

"If it could not exclude aliens, it would be to that extent, be subject to the control of another power."

That is the Supreme Court that said this. I do not think there is any doubt this is a legislative function, not something to be done in cooperation, even though the legislature might, as a matter of propriety cooperate with the executive branch. We are all one Government.

But I feel very strongly, Mr. Chairman, that the legislature has been derelict in letting the executive branch make decisions such as this.

Mr. Chairman, perhaps I spoke too strongly, but I have strong feelings on this matter, and, saying that we have to do something because we are a world power—if we are a world power, we should have the authority to do what is best for our own country.

I do not like the idea that if another nation of the world gets into trouble that the United States is the haven for refugees from all over the world.

We have other nations of the world. We are one of the family of nations. Other nations of the world have obligations, too, and yet practically all the Vietnamese refugees came to this country.

I do not know the percentage of Hungarian refugees that came here and went elsewhere, but my guess is most of them came to this country—went to Austria, and then came on over here. Certainly, the Cubans came over here.

I am not saying that we should not do some of this, but I think it is a decision to be made by the Congress. I have spoken strongly, but if you have contrary views or something that you might want to add, I hope you will. That is the purpose of the hearing today.

Mr. EAGLEBURGER. Senator, just let me say that I think it is—I totally take your point. I understand.

I would simply have to say that it is my understanding that our use of the parole authority to let Vietnamese refugees, for example, into this country was taken after consultation with the appropriate committees of the Congress.

And I think, quite frankly, we must simply say that, from the view of the administration, there is a difference of view from the view you have expressed here.

Senator SCOTT of Virginia. How would it be different?

Mr. EAGLEBURGER. In a sense, whether we are a world power or not, that is really not the issue.

The issue is one of the administration's judgment, in consultation with Congress, on the appropriateness of the United States accepting some of these refugees.

Now, I also take your point that other countries have every responsibility to do, in fact, more than they have done.

It is a fact that, in the Vietnamese case, for example, the United States put substantial pressures on a number of our allies for them to take refugees.

I do not, personally, happen to think they took as many as they should or as their own responsibilities should have required, but there was a substantial effort made to get other countries to take refugees.

Senator SCOTT of Virginia. Do you know how many other countries of the world combined did take, in comparison with the number that came into this country?

Mr. EAGLEBURGER. I do not have the exact figures, but I would be glad to provide them for you for the record.

Senator SCOTT of Virginia. Mr. Chairman, I do not believe I need to pursue this further.

The CHAIRMAN. It has been suggested a change be made to exclude married brothers and sisters of U.S. citizens from preference benefit. What about the seventh preference?

Mr. SCULLY. I am sorry, Mr. Chairman.

The CHAIRMAN. The definition of the refugee is awkward and may be obsolete. Do you desire to propose another definition for the refugee class?

Mr. SCULLY. The definition of a refugee—Mr. Chairman, we agree that the existing definition is probably outmoded.

Precisely how we would change it—there are a lot of competing considerations there. We are a signatory to the U.N. protocol which has a definition in it, the U.N. protocol on refugees.

In that document, there is a much broader definition of refugee than occurs in the immigration law at the present time.

We are in the process of trying to evaluate precisely how we should modify the definition, as to whether we should adopt that definition pointblank, or whether there may be problems there.

It seems to us that there are a variety of competing considerations.

One of the things you have to take into account, when you are attempting to evaluate precisely that issue, is that, if you broaden the definition, clearly you are going to increase the number of people who will be eligible to compete for whatever provision in terms of numbers we choose to make for refugees.

So it is not necessarily a simple process of saying the definition should be a broader definition because, if you make the definition broader, you are immediately going to greatly expand the number of eligible persons, and that immediately raises the question of how to accommodate that much broader potential pool of people?

Should you increase the numbers? Is that in the national interest? If so, how much should you increase the numbers? Where does this fit into the overall world responsibility for refugees, assuming, essentially, the kinds of considerations that Senator Scott was talking about. It seems to me that would have to enter in there. What does the United States have to do in this case? Should we possibly have a fair-share

concept? There are a variety of factors here, and, at this point I do not know that we are in a position to make a definitive statement on that subject.

The CHAIRMAN. Senator Thurmond.

Senator THURMOND. Mr. Chairman, I have three committees going on, and I have to leave in just 1 minute to go to another committee.

I just have a brief statement which I would like to read.

Mr. Chairman, I am pleased that you, as Chairman of the Subcommittee on Immigration and Naturalization, have introduced S. 3074, a bill to comprehensively revise the Immigration and Nationality Act.

It is my understanding that the administration has also recommended legislation in this important area.

I hope the subcommittee will thoroughly consider all such proposals, in light of the forthcoming testimony, and promptly draft a reasonable, effective bill.

Much has been said in recent years about the need to limit the rising tide of illegal aliens who, attracted by the many advantages of living and working in the United States, flood across our borders and take jobs from American workers. In many cases, these illegal entrants and their families soon become a welfare burden on our society, supported in one way or another by American taxpayers.

Now, Mr. Chairman, the members of this subcommittee well know that America is, in reality, still a land of opportunity and the most generous Nation in the world. However, our wealth is not boundless, and the current, unacceptably high level of domestic unemployment clearly shows that we do not have a general excess of available jobs. The thousands of illegal aliens are a heavy burden on our country, and it is time that we faced this problem squarely and dealt with it effectively. It is also widely recognized that this problem can only be effectively coped with by making it unlawful for employers to knowingly hire illegal aliens.

Unfortunately, Mr. Chairman, the solution to this serious problem will not be as simple as it may appear. It is going to require well-drafted legislation, which balances the needs of American employers with those of American workers. There is no sense in writing a law with which employers cannot possibly comply, the kind of undesirable law that results in a maze of confusing, burdensome regulations. We have too many laws of this sort already.

In this respect, I note that S. 3074 attempts to carefully spell out what an employer must do to provide an affirmative defense against a possible charge of hiring an illegal alien. I particularly like this part of the bill, and I hope the subcommittee will thoroughly explore the question of what can be fairly required of employers, particularly in the agricultural area.

We must also recognize that there are some areas of employment, such as in the hand-harvesting of fresh fruits and vegetables, where the services of some aliens will continue to be needed for the foreseeable future. I hope the subcommittee will not take any action that would further burden the American farmer and hamper his productivity. With these objectives in mind, I look forward to the testimony which I shall read later and am sure it will be most informative and helpful to the subcommittee.

I wish to thank you, Mr. Chairman, for allowing me to make that statement because I think this is a very important question.

Frankly, I do not know what some of the farmers would do if they did not have some aliens to help them in the harvesting of their crops.

In our State, we have peaches, and we have vegetables, and other things, and it is very difficult to get the local people to do this harvesting work.

On the other hand, I realize that we have a problem here in bringing in these people who would go on to be a welfare burden on this country.

I would say that I think Leonard Chapman has done a splendid job as Commissioner of Immigration and Naturalization.

I have to leave to go to another committee.

I have one question here that I would like for you to present him when he testifies, and I would appreciate it.

The CHAIRMAN. Any further questions?

Senator THURMOND. No, sir.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. EAGLEBURGER. Thank you, sir.

The CHAIRMAN. General Chapman, identify yourself for the record, please.

STATEMENT OF LEONARD F. CHAPMAN, JR., COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

General CHAPMAN. Good morning, Mr. Chairman. On my left is Mr. Sam Bernsen, who is General Counsel of Immigration. On my right is Mr. Sol Isenstein, who is our Assistant Commissioner, Adjudications.

The CHAIRMAN. Now, on page 7—this was Senator Thurmond's question—you state that the requirement of a bona fide inquiry and signed statement as an affirmative defense should be deleted. One of the better features of this bill is that it is designed to ease the burden on an employer. The bona fide inquiry and evidence of a signed statement are designed to accomplish that purpose. In light of the troubles experienced by employers in determining an alien's status, should not this requirement be retained?

General CHAPMAN. Mr. Chairman, was that page 7 of my statement? I am afraid I did not track that precisely.

I propose to touch on that point, sir, in my summary remarks. Might I do so in that way?

The CHAIRMAN. Yes, sir.

General CHAPMAN. Shall I proceed, sir?

The CHAIRMAN. Yes, sir.

General CHAPMAN. Good morning, sir, I certainly appreciate this opportunity. The Attorney General particularly asked me to express his appreciation, and that I speak for him and the Department on this occasion.

I have, as Mr. Eagleburger did, prepared a somewhat lengthy and partly technical statement which, with your permission, I will submit for the record and then we will, again, with your permission, summarize the high points.

The CHAIRMAN. It will be admitted into the record.

[The prepared statement of General Chapman follows:]

STATEMENT OF LEONARD F. CHAPMAN, JR., COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman, members of the Subcommittee, it is a pleasure to appear before you. I am accompanied by Mr. Sam Bernsen, General Counsel, and Mr. Solomon Isenstein, Assistant Commissioner, Adjudications.

The invitation to the Attorney General to appear before you to present the views of the Department of Justice on S. 3074 is appreciated. The Attorney General has asked me to present the Department's views.

It would be difficult to improve upon the excellent section by section analysis of S. 3074 contained in the *Congressional Record* for March 4, 1976. Rather than repeat this analysis in detail, I will list the major provisions of the bill.

Section 2 makes certain substantive and procedural changes in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act relating to temporary nonimmigrant workers. Authority to issue labor certifications in the cases of such workers would be conferred on the Secretary of Labor and he would have to take action within prescribed time limits.

Section 3 amends section 101(a)(27) of the Immigration and Nationality Act so that immediate relatives and certain other immigrants exempt from the numerical limitations will be designated "special immigrants."

Section 4 amends section 201 of the Immigration and Nationality Act to incorporate into that Act the 120,000 limitation on Western Hemisphere immigrants established by the Act of October 3, 1965, and also to apply the 20,000 individual country ceiling of section 202 and the system of preferences in section 203 to Western Hemisphere natives. In addition, natives of dependent areas now chargeable to the mother country will hereafter be charged to the hemisphere in which located.

Section 5 amends section 202 of the Immigration and Nationality Act in order to increase yearly immigration from dependent areas from the present 200 to 600, and to extend alternate foreign state chargeability to a spouse or child following to join a principal alien.

Section 6 amends section 203 of the Immigration and Nationality Act to make the preference categories presently applicable only to the Eastern Hemisphere applicable to the Western Hemisphere as well. The preferences are left intact with the exception of fifth preference which is amended to require that a U.S. citizen be 21 years of age before he can petition for his brother or sister.

Section 7 amends section 211 of the Immigration and Nationality Act to restore to the Attorney General discretionary authority to waive technical defects in immigrant visas presented by aliens who are innocent of wrongdoing.

Section 8 amends section 212(a)(14) of the Immigration and Nationality Act to equalize the labor certification requirements and exemptions for Eastern and Western Hemisphere aliens.

Section 9 amends section 241(a)(3) and (8) of the Immigration and Nationality Act, dealing with the deportation of aliens who become public charges, in order to overcome certain restrictive administrative and judicial interpretations.

Section 10 amends section 245 of the Immigration and Nationality Act to allow natives of the Western Hemisphere to apply for adjustment of status. In addition to several technical changes, this amendment would also make crewmen eligible to apply for adjustment, and would make aliens who have accepted unauthorized employment ineligible for adjustment, except for special immigrants defined in proposed section 101(a)(27)(A) who are close relatives of U.S. citizens. This amendment would also codify the present regulations making transits without visas ineligible for adjustment. This regulation was upheld in *Fook Hong Mak v. INS*, 435 F.2d 728 (2 Cir. 1970).

Section 11 amends section 249 of the Immigration and Nationality Act to establish a new cutoff date for creation of a record of admission for lawful permanent residence. Continuous residence in the United States since prior to July 1, 1968 would make a qualified alien eligible.

Section 12 amends section 274 of the Immigration and Nationality Act to make it unlawful knowingly to employ any alien not lawfully admitted for permanent residence, unless the employment of such alien is authorized by the Attorney General. This amendment provides for administrative, but not

criminal, penalties, upon employers, employment agencies and labor unions that refer workers to jobs. A second violation will increase the penalty from a maximum of \$500 to a maximum of \$1000.

Section 13 amends section 290 of the Immigration and Nationality Act to require the Secretary of Health, Education and Welfare to notify the Attorney General of the names and addresses of aliens, other than lawful residents and refugees, who are receiving welfare and medical assistance under various provisions of the Social Security Act.

Section 14 makes a series of editorial amendments to various sections of the Immigration and Nationality Act required for conformity with substantive changes made by other sections of the bill.

Section 15 amends section 312 of the Immigration and Nationality Act to exempt from the literacy requirement for naturalization aliens who are at least 60 years of age with 20 years residence in the United States.

Section 16 amends section 344(c) of the Immigration and Nationality Act to allow clerks of naturalization courts to retain up to \$10,000 of the fees they collect in order to cover the costs of services they provide to the Immigration and Naturalization Service.

Section 17 amends the Act of November 2, 1966 to provide that numbers need not be deducted from the Western Hemisphere ceiling when Cuban refugees are granted adjustment under that Act.

Section 18 amends the criminal provisions of 18 U.S.C. 1546, relating to counterfeit immigration documents, to overcome the restrictive reading of this statute announced in *United States v. Campos-Serrano*, 404 U.S. 293 (1971).

Section 19 repeals section 21(e) of the Act of October 3, 1965, as S. 3074 would incorporate the Western Hemisphere numerical ceiling of 120,000 per year into the Immigration and Nationality Act.

Section 20 is a general savings clause.

Section 21 provides that the Act will become effective on the first day of the first month after expiration of 90 days following the date of its enactment.

The Department favors many of the provisions of S. 3074 most of which are similar to provisions of the Administration's immigration bill submitted to the Senate on September 24, 1975. We believe that those provisions contained in the Administration's bill but not included in S. 3074 warrant consideration as well. We understand that the Departments of State and Labor will elaborate on the nature of those proposals.

As a result of the changes called for by sections 3 and 4 of the bill designating immigrants exempt from the numerical limitations as "special immigrants" and discontinuing the classification "immediate relative", we believe that the Subcommittee may wish to make conforming amendments of the visa petition procedure contained in section 204 of the Immigration and Nationality Act.

With respect to the temporary worker amendment in section 2, we defer to the Department of Labor.

The Department does not favor removal of the bar to section 245 relief for crewmen contained in section 10 of the proposed bill. Crewmen have always presented especially difficult enforcement problems for the Immigration and Naturalization Service. Desertions of alien crewmen in the United States have increased from 8,476 in 1972, to 10,738 in 1973, to 12,208 in 1974. The Department believes that making crewmen eligible for section 245 relief would add another incentive to desert.

It is noted that section 10 provides that upon approval of an application for adjustment the Attorney General shall record the alien's lawful admission for permanent residence as of the date the application was filed. Section 245 of the Immigration and Nationality Act presently makes the alien's lawful admission effective on the date the application is approved. The Department believes that the present principle of granting lawful permanent resident status on the date of approval should be retained because it is more consistent with sections 244 and 249 of the Immigration and Nationality Act, which both make the grant of lawful permanent resident status effective upon approval rather than on the date of filing of the application. The Department also feels that the grant of permanent resident status upon approval of the application is in step with the consular visa process, under which lawful permanent resident status is not conferred until the date of the alien's actual inspection and admission into the United States.

The Department also believes that since section 10 eliminates the bar to adjustment of status for all aliens from the Western Hemisphere, the suspension of deportation provisions of the Immigration and Nationality Act should be amended to eliminate the bar for natives of contiguous countries and adjacent islands contained in section 244(f) (3). This would be consistent with the overall aim of equalizing treatment of Eastern and Western Hemisphere natives. The Department has consistently supported legislation to equalize treatment of Eastern and Western Hemisphere immigrants in order to remedy the present inequities in the law.

The Department has strongly favored sanctions against employers who knowingly employ aliens not authorized to work. The time is especially opportune for federal legislation in this area, since the U.S. Supreme Court recently held in *DeCanas v. Bica* that States could regulate the employment of aliens who are not authorized to work by the Federal Government. The Department believes that the Federal Government should take the lead in prohibiting unauthorized employment of aliens, rather than deferring entirely to a variety of state acts that would lack nationwide uniformity and would vary in effectiveness depending upon the enforcement capabilities of each state.

With regard to Section 11, the Department of Justice has historically supported such a provision and has no objection to its inclusion in the bill.

In the past the Department has supported criminal sanctions and the issuance of citations against employers of illegal aliens. We have no objection to section 12 of the proposed bill which would impose civil penalties and would not require the issuance of citations.

Section 12 states that an employer, agent or referrer shall not be deemed to be in violation of the section if he makes a bona fide inquiry whether a person hereafter employed or deferred is a citizen or an alien, and if an alien whether he is lawfully admitted to the United States for permanent residence or is authorized by the Attorney General to accept employment. Section 12 further provides that evidence that the employer, agent or referrer obtained a written statement from the person employed or referred will be deemed prima facie proof of such good faith inquiry. In addition, the Attorney General is directed to prepare forms on which the written statements may be obtained.

It is the view of the Department that it is sufficient for the bill to declare that the knowing employment or referral of aliens not authorized to work is unlawful. We believe that it is neither necessary or desirable to provide a statutory defense. The essence of the violation and the charge against the employer or referrer would be that he acted with guilty knowledge. An opportunity would be accorded to defend against the charge in a full hearing in accordance with the Administrative Procedures Act (5 U.S.C. 554) before a Special Inquiry Officer. We therefore believe that the provisos in section 12 relating to a bona fide inquiry and a signed statement should be deleted.

It is also noted that section 12 refers to an employer who "continues to employ" an alien not authorized to work. The Department is of the opinion that this provision should have a cut-off date so that it will not reach back indefinitely into the past. Since section 11 provides that aliens who have entered the United States prior to July 1, 1968 would be eligible for registry, we believe that the Subcommittee may wish to consider amending section 12 so that the "continue to employ" language relates solely to aliens hired after that date.

The requirement of proposed section 274(b) (3) that the civil penalty proceedings be "conducted before an immigration officer designated by the Attorney General," and the exclusive reference to section 554 of Title 5, U.S. Code, make it clear to the Department that formal Administrative Procedure Act hearings under proposed section 274 can be conducted by special inquiry officers. Nevertheless, to avoid any possible ambiguity it is urged that "immigration officer" be changed to "special inquiry officer."

With regard to Section 13 of S. 3074, it appears to be unnecessary in view of Section 290 of the Immigration and Nationality Act; however, we respectfully urge that the Department of Health, Education, and Welfare be consulted on this provision.

With regard to section 17, which relates to Cuban refugees, we certainly agree that they should be exempt from the numerical limitation on immigration. However, the question has been raised whether Cuban refugees are subject to that limitation under current law. The Department's Office of Legal Counsel is examining the question and there are some tentative indications that the current

practice of charging Cubans against the numerical limitation may be contrary to existing law and should be reversed. I will be glad to advise you of the final decision.

However, if legislation is found to be necessary to exempt the Cubans from the numerical limitation, the Department suggests that the new section 5 which would be added to the Act of November 2, 1966 be changed to read:

"Sec. 5. The approval of an application for adjustment of status to that of a lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall be subject to the numerical limitations of section 201 of the Immigration and Nationality Act, as amended."

This would make it clear that an alien qualifying for adjustment under section 1 of the Act of November 2, 1966 would not be chargeable against a numerical limitation even if he were temporarily out of the United States on the effective date of the amendment. Also, the suggested language would be consistent with section 201 which exempts certain aliens from the numerical limitations without referring to the Secretary of State.

The Department also suggests that section 21 of the proposed bill be amended to make provision exempting Cuban refugees from the numerical limitations effective immediately upon enactment of this bill. We believe that the benefit of this provision should not be deferred as no preparatory period is necessary for implementation.

I would like at this point to emphasize two matters; the overwhelming need for a uniform world-wide preference system and for a law against employment of illegal aliens.

I am sure you will agree that one of the most persistent criticisms of the immigration law is that it authorizes preferences in visa issuance for the Eastern Hemisphere but not for the Western. As a result, a United States citizen may petition for a preference classification for his unmarried daughter born in Germany, but not for his unmarried daughter born in Argentina. I believe that the American concept of fairness calls for remedial action.

Mr. Chairman, the section of this bill pertaining to employment of illegal aliens warrants special mention. I believe this section will have two benefits if it becomes law. One, it will immediately open up for unemployed citizens and legal aliens many jobs which are now held by illegal aliens. And, two, over the long run it will sharply reduce the incentive for illegal aliens to enter the United States.

For the future, it is especially important . . . absolutely essential . . . that we reduce the incentive for illegal aliens to come to this country. Population growth in Mexico and Latin America is so rapid that there is no question but what people from these nations will look increasingly to the United States for employment.

Mexico's population is doubling every 18 years, and by the year 2025 it will be equal to that of the United States. Similar growth is occurring in other Central, South American and Caribbean countries, which are the source of most illegal aliens.

It is simply impractical to build an immigration force large enough to seal off our borders, to screen closely every one of the tourists and students entering the country or to search through our population of more than 210 million seeking illegal aliens. The present law simply won't solve the illegal alien problem.

We believe there are about 8 million persons illegally in the country now. This figure is often questioned, and we concede it is an estimate, although a reasonable one. However, there is no questioning the more than 1.5 million persons our officers apprehended over the past two years. And it is obvious that we were only finding a relatively small percentage of those here.

Those we do find are not only Mexican, as many people believe. This past December in Dallas, Texas, just a few hundred miles from the Southern border, we found illegal aliens working from 59 different countries. The fact is, of the 6-8 million tourists and foreign students who enter our country each year, several hundred thousand neglect to depart, and instead find a job and remain. So the illegals not only flow over the borders surreptitiously, but also through the ports legally, or with fraudulent documents, and remain.

Many persons believe that illegal aliens take only jobs that U.S. citizens will not accept. Undoubtedly there is some basis for this belief. On the other hand, the Alabama State Employment Service just this month issued a report on jobs held by aliens in that State who came as foreign students. Their survey found

that 85 percent of the jobs sought by alien students many of whom engaged in employment in violation of law, were in the engineering field and engineers make up Alabama's most critical surplus of unemployed citizens, according to the report. The report also stated that 85 out of 100 foreign students remain in jobs that are closed to United States workers for months or years. Many of whom work illegally. Unfortunately, we do not know the extent to which illegals do in fact take jobs that U.S. citizens or lawful resident aliens will not accept. This important question is being studied by the Domestic Council Committee on Illegal Aliens established by the President in July 1975.

From Alaska to Florida, it appears that illegal aliens are holding many good jobs, and may be underpaying taxes, using public services and sending substantial sums of money out of the country . . . money that is lost to the U.S. economy. This matter is also under study by the Domestic Council Committee on Illegal Aliens.

Huge increases in manpower for a law enforcement effort are not the answer. The answer, I am convinced, is legislation that will make it more difficult for illegal aliens to obtain employment. If they cannot find a job, they will not undergo the risks and hardships that are necessary to enter illegally.

The nation will benefit in the long run by maintaining better control over immigration to our shores. And with a change in the law prohibiting employment of illegal aliens, we estimate that at least one million jobs will become available for unemployed Americans and legal aliens.

Thank you, Mr. Chairman.

General CHAPMAN. Let me say to start with, on behalf of myself and the Justice Department, I strongly support the bill S. 3074 with some rather minor exceptions that are detailed in my formal statement, the most important of which I would like to now discuss very briefly.

First—and this is the point of the question by Senator Thurmond—the Justice Department would prefer that the matter of the form to be signed by the employees and job applicants be left to the discretion of the employer and not provided for by law. That is the preference of the Justice Department in this regard.

The second point is that we do not favor removal of the bar to adjustment status of deserting crewmen. Crewmen come here with ease. They have a responsibility to their ship, and we fear that if adjustment of the status of crewmen is enacted into law, it will encourage many more desertions. As a matter of fact, the number of desertions has been increasing year by year even under present law. In 1972 it was about 8,500; in 1973 it was near 11,000; in 1974 it was over 12,000. The numbers are going up. We think that if adjustment of status of crewmen is permitted, the numbers will go up even higher.

Third, we believe that upon approval of an applicant for adjustment status, his lawful admission should be as of the date of the approval, rather than rolling back to the date that he applied.

The procedure of adjusting his status as of the date of the decision is consistent with the other provisions of the law and is the case in almost all other aspects of the law, including naturalization, and we think that consistency should be continued in this regard.

Those are the three principal suggestions we have with regard to the bill as drafted, and there are some minor ones contained in my statement. Aside from that, however, I say, again, we strongly support the bill, and I would like to now just touch briefly on the two most important features of that bill.

First, of course, is the point in the concept of the policy that Mr. Eagleburger addressed most ably, that of applying to the West-

ern Hemisphere the same numerical country-by-country limitations and the same preference system, subject to some changes in the administration bill, that now exists for the Eastern Hemisphere. We think in the interest of fairness and equitability that the Western Hemisphere should have that same system, and we are very much in favor of it.

The second major subject is the illegal alien situation which your bill, Mr. Chairman, deals with. As I have learned in my 2 years with the Immigration Service, there is a significant problem in this regard, and in my view it is a national problem. The number of illegal aliens in the United States today is large. No one knows exactly how many.

Our latest estimate is about 6 million. We have got some outside estimates as high as 8 million, and I have heard other guesses as high as 12 million. My own view is it is on the order of $5\frac{1}{2}$ or 6 million.

The CHAIRMAN. How many of them are Mexicans?

General CHAPMAN. Probably about three-fifths, one-half or three-fifths. The aliens come illegally, or they are here illegally in one of three ways: surreptitiously over the border, the southern border, some over the northern border, often under the auspices of a smuggler who is making good money out of smuggling aliens—trafficking in human flesh is what he is doing.

They come through the ports with fraudulent and fake and imposture documents of all kinds and as imposters. We just recently did an in-depth survey at several of the land border ports and the international airports, and we have come to the conclusion that the number entering that way with fraudulent documents is some 10 or 12 times as many as we have habitually been detecting. We have actually been turning away about 800,000 people a year from the ports of entry, many of whom had fraudulent documents, to the extent of some 50,000 or 60,000 a year. We think that the number entering now that we have made this in-depth survey with fraudulent and fake documents is on the order of half a million a year. That is the second way they get in.

The third way is the obvious one of entering legally as a tourist or as a student or a businessman temporarily and then just neglecting to leave, staying here and getting a job.

We think that there are at least 1 million illegal aliens working in this country today. As a matter of fact, the latest estimate from my district directors around the country, which we just got here 2 or 3 days ago, is that the number may be as high as 3 or 4 million. I think that figure is high, but I am certain that there are at least 1 million.

Now, why do they come? Mr. Eagleburger touched on one aspect, and it is, obviously, job opportunities in the United States. It is quite clear that the overwhelming majority come to get a job, so it is the job attraction which is the magnet that draws them here. That is the pull effect. The second thing is the push effect of the difficult situations in their home countries where they cannot get a job, or they can get one but it is very poor by our standards.

Then I would like to emphasize that the problem is a great deal more than just Mexicans. Ten or fifteen years ago—I was not connected with it then, but I understand from my experts—that the numbers were small. We apprehended 12 or 14 years ago something like 25,000 a

year. Last year we apprehended 800,000, 1½ million over the last 2 years. So 10 or 15 years ago the numbers were very small. They were practically all Mexican, and they were practically all on the South-west border States, working in agriculture.

Today the situation is far different. Today in the cities those we apprehend and know are there are not in agriculture. They are in good jobs in industry and in construction and services, and they are not Mexican. The total here is probably about three-fifths Mexican, but those in the cities that are in good jobs are predominantly not Mexican. And then I would like to emphasize that they occupy more than poor jobs or jobs that Americans will not take. It is true, I think, that there are some—and we do not know the number—there are some that are, in fact, in jobs that Americans will not take under the current wage and working conditions for that job. That does not necessarily mean, however, that there are not any Americans to take the job if they were paid properly under the present conditions.

As an example of the point that they are in many good jobs. I can say this. In calendar year 1975 in the 10 largest cities in this country, we apprehended some 88,000 illegal aliens, about 55,000 of whom were working; and of the 55,000 that were working, two-thirds were in industry, more than half earned more than \$2.50 an hour; and in Chicago, for example, three-quarters earned \$2.50 to \$4.50 an hour, of the ones we apprehended there.

I might give you an example that there is more than just Mexicans. In the month of December in Dallas, Tex., of all places, we apprehended illegal aliens working from 59 different countries of the world, and since there are only 130-some countries total in this world, although there are a few more every year, that is just about half the countries in the world who were represented in Dallas, Tex., illegally working.

I might summarize this way, sir, that in my view we have a serious problem, a national problem, which is out of control. I think we are acting as the haven for many of the unemployed in the world that come here to get a job, and I think it is necessary that we do something to stop it, or at least slow it down. I really do not see but two likely solutions; one, of course, would be a massive Immigration Service that would physically deal with the millions of people. I do not advocate that. I just do not think it is a good idea.

The other solution is to turn off the magnet that draws them here, and that is the job opportunity. That is why they come in to get a job. I might say that all of these problems are under active and current study by the President's Domestic Council Committee on Illegal Aliens, which is chaired by the Attorney General. I might also point out that the Congress approved for us this year \$1 million to conduct what you might call a census of the number of illegal aliens in the country, what kind of work they are doing, their characteristics, how they got here, and what the impacts are, and that sort of thing. We are embarked on that.

The port study of fraudulent document I described was one part of that study. I would say this, that if we had the benefit of the illegal hiring provisions of your bill, I think we could quickly open up at least 1 million jobs for unemployed Americans. Perhaps more

important, I think it would deter the millions who are thinking of coming to this country and have not yet done so to date, because I believe the future prospect portends to be even more serious than the perhaps 6 million that are here now.

That is a summary, sir, of my formal statement. I hope we will be able, with my experts, to answer any of your questions.

The CHAIRMAN. The Domestic Council on Illegal Aliens, we understand, was established in January 1975. Now, who are the members of that Council?

General CHAPMAN. The Attorney General is the chairman. Several of the Secretaries of the Departments are members—HEW, Labor, Commerce, State—there are representatives from OMB and from the White House, from the Domestic Council in the White House.

The CHAIRMAN. How often does it meet, and where does it meet?

General CHAPMAN. It met rarely in 1975, but beginning the first of this year, it was invigorated by the Attorney General. There have been several meetings. Task forces have been assigned, each with a particular piece of the subject matter.

I am the chairman of one of the task forces. The Deputy Commissioner is the chairman of another. There is a permanent staff that has been assembled.

The task forces are working hard with full-time people to complete their studies and drafting their reports.

The CHAIRMAN. How many meetings has the Council had this year?

General CHAPMAN. I believe it is three. The task forces have had several meetings.

The CHAIRMAN. How many meetings last year, in 1975?

General CHAPMAN. Sir, I do not know. It was two or three, but I do not know precisely. I can furnish that for the record.

The CHAIRMAN. When will the first report be available?

General CHAPMAN. The task forces have a deadline of June. With respect to those I am concerned with, I am sure we will make it before that date.

The CHAIRMAN. Your statement proposes that the Federal Government take the lead in prohibiting unauthorized employment of aliens rather than defer to a variety of State actions.

Are you suggesting that the Federal Government preempt the field?

General CHAPMAN. In a word, yes.

We believe the Congress should preempt in this regard and establish a uniform law that will apply to all 50 States, rather than having each State, which they now apparently are entitled to do.

The CHAIRMAN. How would you go about it? Preempting?

Mr. BERNSEN. I believe that if Congress enacted a law which controlled the employment of illegal aliens, it would clearly show that Congress was taking over in this field. In addition, the legislative history could acknowledge that the Congress had considered the Supreme Court decision, which talked about congressional intent to preempt, and indicate that the Federal Government was preempting this field.

The CHAIRMAN. You would take it away from the States—is that what you mean?

Mr. BERNSEN. Yes, sir.

The CHAIRMAN. With respect to an adverse decision following a hearing, will the employer be given an opportunity for an administrative appeal before the Board of Immigration Appeals?

Mr. BERNSEN. Yes, sir. The employer would be given an opportunity to appeal.

The CHAIRMAN. Do you have any comment with respect to including as a culpable party a union official who knowingly refers an illegal alien for employment?

General CHAPMAN. We favor and support that provision in the bill, sir.

The CHAIRMAN. Now, under section 245, adjustment of status, with respect to alien crewmen, do you have any evidence to show crewmen violate status with any greater frequency than B-2 visitors from certain Latin American countries?

Mr. ISENSTEIN. There has been a rise in the number of desertions from ships every single year. We also feel that, with respect to crewmen, the situation is different from that of visitors.

A visitor brings himself to the United States, whereas a crewman brings a ship. And there have been crewmen-deserted ships. There would be no way for that ship to get back and leave our shores. So we feel that also we have a special obligation to a friendly ship that comes here, to make sure that their crewmen do not desert. We feel that we should not encourage crewmen to desert, by granting them adjustment of status.

The CHAIRMAN. Have you considered that that a crewman would be subject to the same disability as other section 245 applicants: that is, if he accepts gainful employment, he will be ineligible to file?

Mr. ISENSTEIN. Yes, sir, of course.

The CHAIRMAN. You object to recording the alien's lawful admission for permanent residence as of the date of the filing of his application.

Your objection might have sustenance if you were able to process his application with any reasonable degree of promptness. Our information is that section 245 applicants wait over a year in many places before they get a decision.

Is it fair to penalize the alien for service inaction and delays which are not of his own creation?

General CHAPMAN. That penalty, if it be such, is true in other kinds of applications as well. I might also point out it is true with regard to naturalization, where we have very long waiting lists—6, 9 months, a year.

I think the solution to the problem is resources for us. The fact is we just do not have enough horses to pull this overloaded wagon.

The CHAIRMAN. Senator Fong.

Senator FONG. In this bill here, we say that a person in the United States before 1968 would be able to have an adjustment of his status.

If that provision of the bill was enacted, how many of these illegal aliens would you say, percentagewise, would be affected and enabled to change their status?

General CHAPMAN. We conducted a survey of our regional districts on that question not long ago, and the total came up to something over a quarter of a million, about 265,000, that we believe are in this

country, have been here continuously since before that date in 1968, have good records, have never been in trouble. They probably have families here, children born here, and would be entitled to adjustment under that provision.

Senator FONG. That would be what percentage of the total amount that you estimated be here illegally?

General CHAPMAN. It would be about a quarter of a million, out of 6 million.

Senator FONG. So, approximately $5\frac{3}{4}$ million have come here within the last 8 years.

General CHAPMAN. Yes, sir, we think so.

Senator FONG. Now, in this bill, we have provided for a form in which the employee swears to this right to work. He will be subject to perjury if he swore to something which was not the truth, but this would absolve the employer.

Now, if the employee makes such a sworn statement, and the employer knows about it, would there not be some conspiracy for the employer not to reveal the presence of this employee, so that he could take advantage of him. An employee would be in the position where he would not be able to squawk, because he would be afraid that he would be thrown in jail.

General CHAPMAN. Well, I think that is true, and particularly so with a flagrant violator, with 50, 75, or 100 more employees under those circumstances. I might also point out that the present law says that it is a crime, a felony, to falsely claim, U.S. citizenship. So the employee would be liable.

Senator FONG. Well, under those circumstances, we would have a situation in which the employee would be willing to work for very small wages.

General CHAPMAN. That is a frequent occurrence today.

Senator FONG. Can you conceive of a situation in which, in the issuance of social security numbers, we can put a stamp on it. A person would not be able to get a social security number if he were not a citizen or permanent resident or if we provided for an alternative type of card for a noncitizen. Would that work?

General CHAPMAN. Well, sir, in point of fact, Congress enacted a statute 2 years ago that specified, for the first time that an applicant for a social security number must prove that he is a citizen, or a legal alien entitled to work. That law has been in effect, or rather was implemented about a year ago by the Social Security Administration.

Now, with respect to the alien's card, as you know, sir, the law requires a permanent resident to carry an identification card, one that has been required for about 30 years now. And we are about to replace that card, which is now widely counterfeited, with a new counterfeit-proof card, which we are going to start issuing in just a couple of months.

Senator FONG. I see. So, with a law which is presently on the statute books, an illegal alien will not be issued a card—is that the law?

General CHAPMAN. That is right, sir. That is what the law says.

Senator FONG. Would that not eliminate prospective, illegal aliens? What you have, those already here, have cards which do not show whether they are citizens or permanent residents, or not, but from

now on, since the enactment of that law, is there not a prohibition against issuing a social security card when he is not—

General CHAPMAN. That is right. That is in effect now. But it was not in effect for about the first 35 years of social security, during which time they issued something approaching 200 million cards. And further, it is a very difficult thing to enforce. And also it is very easy to counterfeit a social security card. The card itself has no security—there is no picture, no fingerprint, no identity. It is just a piece of paper.

Senator FONG. Now, if we were to say that every social security card carried a picture of the individual, would that not deter a lot of these?

General CHAPMAN. If the social security card were a counterfeit-proof, imposter-proof, machine-readable sort of thing, such as we are about to issue for the legal alien—that is close to a national identity card, which I cannot advocate.

Senator FONG. You could not advocate such a card?

General CHAPMAN. I do not advocate a national identity card. I think there are a lot of difficulties with that.

Senator FONG. For the sake of discussion. What is wrong with putting the picture on the social security card, show that he is the person on the card?

General CHAPMAN. I think it would be very difficult for most Americans to accept the concept of a national identity card in this country. It has been proposed a number of times. I personally do not advocate it.

Senator FONG. Then, you said you could make a social security card which is counterfeit proof. Did you say that?

General CHAPMAN. Oh, it could be done. Yes, sir. We have designed such a card for aliens. We have put in 2 years developing it, and it is counterfeit proof.

Senator FONG. If you could have such a card even without the picture, you would have very few illegal aliens that would be taking advantage of employment, because he would not have a social security card.

General CHAPMAN. Well, I would have to say that is a way of getting at it. But I think the simpler or more straightforward and effective way is the way that is proposed in S. 3074, namely to make it illegal for an employer to hire an alien not authorized to work.

Senator FONG. Why not use such counterfeit-proof social security cards as an added protection?

General CHAPMAN. It could be done. It would take a massive effort to verify the identity of and to issue a counterfeit-proof, imposter-proof, machine-readable card to every citizen in this country. It would be a huge undertaking.

Senator FONG. If a card was counterfeited, would the Social Security Administration not know that this is a counterfeited card, because money will be coming from two employers?

General CHAPMAN. Yes, sir, or it may be a fake number. That is the usual method.

Senator FONG. Well, if it is a fake number, then the Social Security would know, would it not?

General CHAPMAN. The employer does not know.

Senator FONG. I am saying the Social Security Administration would be able to find out, if it is a fake number.

General CHAPMAN. Well, that is true today. But their computer is pretty badly backlogged. It is many months before the computer generates a form letter that says there was something wrong with that number. And that report then goes to the employer.

Senator FONG. Assuming something should be done along that line—

General CHAPMAN. Oh, it is possible. Yes; it would be a huge undertaking.

Senator FONG. Could you work out something for us along that line?

General CHAPMAN. Yes, sir, we can describe—

Senator FONG. And see how much work it would take to have such a system and what it would cost.

General CHAPMAN. I think Social Security would be better able to do so. But I think we can give a general idea. Yes, we can extrapolate from our experience with the card we are about to issue to legal aliens.

[The information referred to follows:]

DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION

TRANSFERABILITY OF THE ADIT SYSTEM TO OTHER AGENCIES

The Alien Documentation, Identification and Telecommunication (ADIT) System is directed toward effective inspection of travel documents, positive alien identification and prevention of identification document fraud. A machine readable alien identification card is an integral part of the system. The card contains several levels of anti-fraud features, e.g., photo, fingerprint, signature, coded personal and biographical data, incorporated into the card in a manner which is suitable for both manual and semi-automatic inspection procedures. The combination of these features yields an identification card that combats the three principle types of document fraud: alteration, use by imposters and counterfeiting.

The technical knowledge acquired through the development of the ADIT System by the Immigration and Naturalization Service is available to other interested government agencies. Direct application of the concepts or implementation of the system by another agency is dependent on the functional requirements of a particular agency. Several considerations must be addressed before transferability can be decided in terms of: How much work will be involved? How much will it cost to implement the system?

In order to assess the amount of effort required by another agency to adopt our system, it must first be determined how closely the ADIT System design meets that agency's needs. Therefore, the interested agency must perform a requirements analysis and a systems study which, in combination, will identify the amount of system adaptation and/or new development required. These findings will provide a basis for estimating the level of effort required for implementation of the modified system.

Estimated costs for use of the ADIT system by another government agency are, of course, related to the level of effort previously cited. System costs will also be influenced by four other areas of consideration: ID card specifications, automated card readers, computers and manpower. First, the ID card cost will vary depending on materials used, card content (security features), card production techniques and quantity produced. The difference in volume of cards produced by I&NS vs. another agency may vary to the extent that a break-even analysis justifies the use of a different set of system alternatives. Second, the cost of card readers must be based on the agency's determination of the number of readers required as well as where (under what conditions) and how (for what purpose) they will be used. Third, computer costs will be highly dependent

on the extent to which the agency's existing computer facility can absorb the new processing requirements for maintaining data files and for controlling access to them. The fourth major cost consideration is the additional manpower needed for replacing existing cards. If the number of replacement cards is very high, a massive effort may be required to locate and recall existing cards as well as verify the identity of the bearer. The alternative of not replacing existing cards will result in delayed systems effectiveness.

In summary, development of the ADIT System has contributed advances to the state of ID card technology oriented toward alien identification. The technology is transferable to another agency but the system specifications must be tailored to meet the needs of that agency.

Senator FONG. Now, the two-fifths of the illegal aliens that are here, not Mexicans, are they mostly from the Western Hemisphere?

General CHAPMAN. Mostly from the Western Hemisphere and the Caribbean, but by no means all. They actually come from a great many countries. As I pointed out, from the example in Dallas, Tex., they were there from half the countries of the world in 1 month.

Senator FONG. Of the remaining two-fifths, which excludes the Mexicans, what proportion of that two-fifths are from the Western Hemisphere? What portion of that two-fifths would be from the Western Hemisphere?

General CHAPMAN. I think I had better get a better number to supply for the record. But I think it would be 60 or 70 percent. It would be more than half of the two-fifths that are from the other countries in Latin America and the Caribbean, noting that the way they get here is as tourists and students.

In other words, they enter legally and overstay, or with fraudulent documents.

Senator FONG. You proposed that sailors not be given this privilege of adjustment status—ship jumpers?

General CHAPMAN. We do not believe that they should be given this.

Senator FONG. Even though they have been here prior to 1968?

Mr. BERNSEN. Under the bill, those crewmen who have been residing here continuously since prior to July 1, 1968, would be eligible. Yes, sir.

Senator FONG. Would be eligible?

Mr. BERNSEN. Yes, sir.

The CHAIRMAN. Gentlemen, could you be here at 10:30 tomorrow morning?

General CHAPMAN. Yes, sir.

The CHAIRMAN. We are going to have a vote in the Senate in 7 minutes. We will recess now until 10:30 tomorrow morning.

General CHAPMAN. I will be here, sir.

[Whereupon, at 11:37 a.m., the subcommittee recessed, to reconvene at 10:30 a.m. the next day.]

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

THURSDAY, MARCH 18, 1976

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:40 a.m. in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland, Fong, and Scott of Virginia.

Also present: Ed Loughran, staff director; Sidney Rawitz, special counsel; and Mark Hazard, professional staff member.

The CHAIRMAN. The committee will come to order.

For the second day of the hearings to consider S. 3074 we are scheduled to hear from the Honorable Ben Burdetsky, Deputy Assistant Secretary of Labor; and the Honorable Stanley Mailman, president of the Association of Immigration and Nationality Lawyers.

We welcome these gentlemen here today and appreciate the assistance they will provide this subcommittee.

Before proceeding with today's witnesses, we will resume our questioning of the Commissioner of Immigration and Naturalization, Gen. Leonard Chapman, which was not completed yesterday.

The subcommittee thanks the Commissioner and his staff for returning this morning.

STATEMENT OF HON. LEONARD F. CHAPMAN, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY SAM BERNSEN, GENERAL COUNSEL, AND SOLOMON ISENSTEIN, ASSISTANT COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE—Resumed

The CHAIRMAN. In your statement, General, you say that section 13 appears to be unnecessary. By this do you mean you have been getting this information all along from HEW?

Commissioner CHAPMAN. We have not been getting the information, Mr. Chairman.

The CHAIRMAN. You say you have not been getting it?

Commissioner CHAPMAN. We have not.

The CHAIRMAN. Then why are you against section 13?

Mr. BERNSEN. We are not opposed to section 13, Mr. Chairman. We feel that since section 13 imposes a responsibility on another Department of the Government, HEW, that they should be consulted with regard to that section.

The CHAIRMAN. Will you describe, please, the present program involving agricultural workers from Jamaica and other Caribbean islands?

Commissioner CHAPMAN. Would I describe it?

The CHAIRMAN. Yes; how well does it work?

Commissioner CHAPMAN. It is called the BWI program. It has been in effect for a number of years. It works very well. It is an arrangement by which growers associations in the Southeast, Florida, and other places on the east coast apply each year for labor certification. It is granted by the Department of Labor. The arrangement is then worked out between the growers association and labor contractors in Jamaica and other Caribbean islands to furnish the workers as specified in the labor certification.

We then admit them. We have an arrangement with the grower that he is required to indemnify us to the tune of, I think, \$200 now for each one who absconds. The number who abscond, however, has in recent years been very small, just a few percent.

The CHAIRMAN. About how many now?

Commissioner CHAPMAN. The number runs 11,000 or 12,000 a year in the last few years.

Mr. Isenstein is an expert on this subject, Mr. Chairman. He can elaborate on it.

Mr. ISENSTEIN. The number of agricultural workers that come into the United States is about 11,000, and that figure has been constant for the past several years. The number of those who abscond is about 4.6 percent, an extremely low figure.

The CHAIRMAN. They go back each year when they finish their contract with the grower, don't they?

Mr. ISENSTEIN. Yes.

The CHAIRMAN. Do they bring their wives and children with them?

Mr. ISENSTEIN. Ordinarily not. The families stay behind.

The CHAIRMAN. When did you learn that you might be doing something illegal in deducting numbers from the Western Hemisphere ceiling for this adjustment?

Mr. BERNSEN. We had questioned the requirement for charging Cubans to the Western Hemisphere some time back, but a decision was made administratively that the Cuban refugees who adjust should be charged against the Western Hemisphere limitation, and recently the question about the legality of charging the Cubans has again been revived, and as a result, it is being studied again.

The CHAIRMAN. Don't you think it is a little late to wake up to this development?

Mr. BERNSEN. We recognized the problem early, but as I say, it has been raised again, sir.

Mr. ISENSTEIN. Actually, Mr. Chairman, there was a court case which motivated us to look into the matter again.

Commissioner CHAPMAN. As I said in my formal statement which was submitted for the record, Mr. Chairman, the matter is under study by the Office of Legal Counsel. We have no objection to the provision in your bill but point out that there may be an administrative decision that would obviate the need for it, and as I said, we pledge to keep the committee informed.

Senator SCOTT. Mr. Chairman, could we ask what the court case was?

The CHAIRMAN. Yes.

Senator SCOTT. What was the court case you are referring to?

Mr. BERNSEN. I don't have the name of the case. An action was brought in Chicago, I believe it was by a Mexican alien who contended that it was wrong for us to charge Cubans against the Western Hemisphere limitation because as a result of that, less numbers were available to—

Senator SCOTT. Could you furnish us with the citation so we would know what you are talking about?

[The case referred to is *Salvador Munoz, Jr., et al. v. Attorney General, et al.*, U.S.D.C., N.D. Illinois (filed 6/30/75, No. 75-C-2127).]

Mr. BERNSEN. Yes, sir.

Senator SCOTT. Thank you.

Commissioner CHAPMAN. It is an ongoing case. There has been no decision.

Senator SCOTT. It is a pending case?

Commissioner CHAPMAN. Yes, sir.

The CHAIRMAN. In your statement yesterday, you said that if this bill were passed it would open up 1 million jobs for unemployed in this country. Is that correct?

Commissioner CHAPMAN. I said at least 1 million. We are confident of at least 1 million with the benefit of the bill, and with some additional resources that we will have to implement and enforce it.

Actually, the latest estimate that we have from all of our districts is that there are up to 4 million employed. As I said yesterday, I think that is a little—that may be a little high, but we are confident there are at least 1 million, perhaps 2 million or 3 million.

I might suggest a million for the record. The results of our latest survey in this regard show by district and by State the number we estimate to be here, and that totals up to about 6 million, and the number we estimate are working.

[The information referred to follows:]

ESTIMATED TOTAL NUMBER OF ILLEGAL ALIENS AND EMPLOYED ILLEGAL ALIENS BY I & NS DISTRICT

District	Estimate of illegal aliens			
	Employed		Total	
EASTERN REGION				
Baltimore.....	22, 000—	23, 000	60, 000—	70, 000
Boston.....	11, 000—	12, 000	10, 000—	15, 000
Buffalo.....	4, 000—	5, 000	10, 000—	15, 000
Hartford.....	5, 000—	6, 000	7, 000—	8, 000
Newark.....	200, 000—	210, 000	275, 000—	300, 000
New York.....	840, 000—	850, 000	1, 350, 000—	1, 500, 000
Philadelphia.....	60, 000—	65, 000	80, 000—	90, 000
Portland, Maine.....	2, 000—	3, 000	3, 000—	4, 000
San Juan.....	9, 000—	10, 000	10, 000—	15, 000
St. Albans.....	200—	300	500—	600
Washington, D.C.....	25, 000—	35, 000	50, 000—	60, 000
Total, region.....	1, 178, 200—1, 219, 300		1, 855, 500—2, 077, 600	
WESTERN REGION				
Honolulu.....	1, 000—	1, 500	1, 500—	1, 600
Los Angeles.....	900, 000—	1, 000, 000	1, 350, 000—	1, 500, 000
Phoenix.....	30, 000—	35, 000	50, 000—	55, 000
San Francisco.....	150, 000—	160, 000	220, 000—	240, 000
Total, region.....	1, 081, 000—1, 196, 500		1, 621, 500—1, 796, 600	
SOUTHERN REGION				
Atlanta.....	60, 000—	65, 000	75, 000—	80, 000
El Paso.....	45, 000—	50, 000	75, 000—	80, 000
Houston.....	440, 000—	450, 000	525, 000—	550, 000
Miami.....	240, 000—	250, 000	360, 000—	380, 000
New Orleans.....	10, 000—	11, 000	40, 000—	50, 000
San Antonio.....	220, 000—	230, 000	310, 000—	330, 000
Total, region.....	1, 015, 000—1, 056, 000		1, 385, 000—1, 470, 000	

ESTIMATED TOTAL NUMBER OF ILLEGAL ALIENS AND EMPLOYED ILLEGAL ALIENS BY I & NS DISTRICT

District	Estimate of illegal aliens			
	Employed		Total	
NORTHERN REGION				
Anchorage	500-	600	600-	700
Chicago	270,000-	280,000	375,000-	400,000
Cleveland	40,000-	45,000	75,000-	80,000
Denver	20,000-	25,000	30,000-	35,000
Detroit	40,000-	45,000	50,000-	60,000
Helena	2,000-	3,000	2,000-	3,000
Kansas City	5,000-	6,000	10,000-	12,000
Omaha	5,000-	6,000	6,000-	7,000
Portland, Oreg.	20,000-	25,000	25,000-	30,000
St. Paul	5,000-	6,000	6,000-	7,000
Seattle	7,000-	8,000	10,000-	12,000
Total region	414,500-	449,600	589,600-	646,700
Estimated total illegal aliens	3,688,700-	3,921,700	5,451,600-	5,990,900

Estimated total number of illegal aliens by State—March 17, 1976

		<i>Estimate of total illegal aliens</i>	
Eastern region :			
Connecticut	-----	7,000-	8,000
Delaware	-----	12,000-	15,000
Maine	-----	3,000-	4,000
Maryland	-----	60,000-	70,000
Massachusetts	-----	7,000-	10,000
New Hampshire	-----	1,500-	2,500
New Jersey	-----	275,000-	300,000
New York	-----	1,360,000-	1,515,000
Pennsylvania	-----	65,000-	70,000
Puerto Rico	-----	8,000-	12,000
Rhode Island	-----	1,500-	2,500
Vermont	-----	500-	600
Virgin Islands	-----	2,000-	3,000
Virginia	-----	40,000-	45,000
Washington, D.C.	-----	10,000-	15,000
West Virginia	-----	3,000-	5,000
Total region		1,855,500-2,077,600	
Western region :			
Arizona	-----	50,000-	55,000
California	-----	1,560,000-	1,728,000
Hawaii	-----	1,500-	1,600
Nevada	-----	10,000-	12,000
Total region		1,621,500-1,796,600	
Southern region :			
Alabama	-----	20,000-	21,000
Arkansas	-----	4,000-	6,000
Florida	-----	360,000-	380,000
Georgia	-----	33,000-	35,000
Kentucky	-----	6,000-	8,000
Louisiana	-----	15,000-	18,000
Mississippi	-----	9,000-	10,000
New Mexico	-----	20,000-	25,000
North Carolina	-----	14,000-	15,000
Oklahoma	-----	50,000-	60,000
South Carolina	-----	8,000-	9,000
Tennessee	-----	6,000-	8,000
Texas	-----	840,000-	875,000
Total region		1,385,000-1,470,000	

Estimated total number of illegal aliens by State—March 17, 1976—Continued

Northern region :	<i>Estimate of total illegal aliens</i>	
Alaska -----	600-	700
Colorado -----	15, 000-	17, 000
Idaho -----	1, 800-	2, 500
Illinois -----	260, 000-	270, 000
Indiana -----	70, 000-	80, 000
Iowa -----	3, 500-	4, 000
Kansas -----	4, 000-	5, 000
Michigan -----	50, 000-	60, 000
Minnesota -----	2, 400-	2, 800
Missouri -----	6, 000-	7, 000
Montana -----	200-	500
Nebraska -----	2, 500-	3, 000
North Dakota -----	2, 200-	2, 600
Ohio -----	75, 000-	80, 000
Oregon -----	25, 000-	30, 000
South Dakota -----	1, 400-	1, 600
Utah -----	10, 000-	11, 000
Washington -----	10, 000-	12, 000
Wisconsin -----	45, 000-	50, 000
Wyoming -----	5, 000-	7, 000
Total region -----	589, 600-	646, 700
Estimated total illegal aliens -----	5, 451, 600-	5, 990, 900

The CHAIRMAN. Assuming you are correct about the million figure, and that the effect of the bill would be as you say, what are you going to do with the people who will vacate their jobs?

Commissioner CHAPMAN. Well, they would be here illegally and they are subject to deportation unless they meet one of the other provisions of the law, the suspension provision that is now in the law, or the registry date provision that is in your proposed bill, or have some compelling humanitarian circumstances in which we would exercise discretion.

The CHAIRMAN. Well, what do you do now when they vacate their jobs?

Commissioner CHAPMAN. Well, we have a standard practice of immediately notifying the local or the state employment agency of the fact that a job is now available, that it has been vacated by virtue of our apprehending an illegal alien in the job.

The CHAIRMAN. That would now increase, now, if it were not reported, that would increase welfare, wouldn't it?

Commissioner CHAPMAN. I believe it would decrease welfare. One of the aspects of this whole situation is that the illegal alien displaces an American worker and the American worker then goes on welfare.

The CHAIRMAN. Well, the alien would go on welfare, too.

Commissioner CHAPMAN. He is entitled to welfare, yes, but if the employer reported him to us, and if we had the resources to handle it, we would apprehend him and remove him or deport him.

I might say that we have had some recent experience in this regard in San Diego where the new U.S. attorney there has launched a program of seeking the voluntary cooperation of employers in San Diego, and here are some figures. Under the auspices of the U.S. attorney we have surveyed 18 employer locations in the city of San Diego. Before our agents arrived, 271 illegal aliens terminated their employment and disappeared, 29 stuck it out and we apprehended them. That is a total of 300. More than 250 of those 300 positions were

filled by local residents of San Diego, and 75 to 80 percent of the 250 were U.S. permanent residents that were Spanish speaking.

[The information referred to follows:]

San Diego employer cooperation program

(As of Mar. 15, 1976)

Employer locations surveyed (18) :

Illegal aliens terminated before INS officers arrived.....	271
Illegal aliens apprehended.....	29

Total positions made available.....	300
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In excess of 250 of these positions have been filled by local residents of San Diego.

The personnel offices of the employers involved in the program estimate that 75-80% of these residents are Spanish speaking. This would mean that 188 to 200 Spanish speaking citizens or legal resident aliens have obtained employment as a result of this program in San Diego.

The CHAIRMAN. Well, you don't have the capability of removing them and deporting them speedily, do you, within a few months period?

Commissioner CHAPMAN. No, sir, we are currently not so capable. We have to have some more capabilities to do so in those numbers.

I think again—based on some past experience—many would return home voluntarily and without our knowledge.

The CHAIRMAN. Do you have the administrative and fiscal resources to handle 1 million or even a half or a third of that number on top of what you handle at this time?

Commissioner CHAPMAN. No, sir, we do not.

The CHAIRMAN. Since one of your objections to using the date of filing as the date of lawful admission in section 245 cases is that this would be a variance with what is done to the other types of cases, how about our amending the law for the other types of cases so that, for example, the registry and naturalization case will be granted as the date of filing, and in this way, applicants will not be prejudiced by Service backlogs?

Mr. BERNSEN. I think that if the date of permanent residence were applied uniformly in the various types of applications that may be presented under the law, that would not be unreasonable, and we might even think about that in connection with the suspension of deportation cases. An alien applies for suspension of deportation and his case has to pend in Congress for a couple of sessions, and the present law requires that he be given permanent residence when Congress finishes reviewing the case.

Commissioner CHAPMAN. As a matter of national policy, though, Mr. Chairman, I would be of the opinion that the traditional and proper date of conferring the benefit is the date when the decision is made. That has been historically true, and I think it is reasonable and proper.

Senator FONG. General Chapman, I understand your agency is in accord with section 13 of this bill in which the Secretary of HEW shall disclose to you the names of illegal aliens?

Commissioner CHAPMAN. We have said that we have no objection but we prefer to defer to representatives from HEW.

Senator FONG. Now, referring to that section, under the present law the Attorney General has the right if, within 5 years after the admission on an alien, the alien should become a public charge because of circumstances which did not develop since the time that he entered, to institute deportation proceedings. What has been done when a person who has a sponsor assuring that he will not become a public charge, does become a public charge? What has the Immigration Service done in those cases?

Mr. ISENSTEIN. With respect to the sponsorships by individuals, indicating that a person would not become a public charge, there are court decisions which hold that those are not enforceable, that it is merely a moral obligation and not a legal obligation.

Senator FONG. What about the alien who has become a public charge? The laws say the Attorney General can ask for his deportation if he becomes a public charge, do they not?

What has the service done in that respect?

Mr. ISENSTEIN. To the extent that the resources are available, those persons are put under deportation proceedings and are deportable.

Senator FONG. I know they are deportable, but has the Service done anything in that respect?

Mr. ISENSTEIN. The question would be whether or not this has a high priority, and I would assume this does not have that high a priority.

Senator FONG. Is it true nothing has been done in that respect?

Mr. BERNSEN. I'd like to respond to that.

The present law concerning deportation on public charge grounds has been interpreted to require that there must be an obligation by the alien to repay the governmental unit that furnished him assistance.

There are very few such requirements to repay, and as a result, the public charge aspect of the law with regard to deportation has become ineffective. We rarely are able to deport anybody on public charge grounds because of the court interpretations of that provision.

Senator FONG. So, that provision in the law might as well be deleted. Once an alien comes into the country, regardless of what his economic situation is, he is not deportable and he can stay on welfare, is that correct?

Mr. BERNSEN. For all practical purposes, sir. The bill, however, that is before the committee now would remedy that problem.

Senator FONG. How would it remedy it?

Mr. BERNSEN. It would remedy it by providing that regardless of whether there was an obligation to repay, an alien who becomes a public charge within 5 years after entry for causes that arose prior to entry would be deportable.

Senator FONG. So you are putting teeth into that section now?

Mr. BERNSEN. Yes, sir.

Senator FONG. If an alien comes into the country and gets on welfare right away and refuses to work, you could deport him within 5 years?

Mr. BERNSEN. Yes, sir.

Senator FONG. Is it the intent of the agency to proceed with alacrity in that regard?

Mr. BERNSEN. It would be our intention to carry out the law within our capabilities to do so.

Senator FONG. Now, as I understand it—the Social Security Administration does send to the agency a list of applicants for social security numbers who, when asked to provide evidence of citizenship, do not provide it and run away.

Could you comment on that, what have you done in that respect, and how many of those names have been submitted to you?

Commissioner CHAPMAN. It is correct that such lists are furnished us. We search our central records and in a small percent of the cases, we are able to determine that the individual is in fact a legal alien-resident of the United States. We make that report to Social Security, but we are incapable of doing anything further with regard to those whom we cannot identify in our central records.

Senator FONG. This list is sent to you and you go over the list, is that correct?

Commissioner CHAPMAN. Yes, sir.

Senator FONG. And when you notify the Social Security office of the names appearing on the list that they are here legally, that they are citizens or legal residents?

Commissioner CHAPMAN. Well, not citizens, in that we have no records on native-born citizens. We have no authority with regard to citizens, but with regard to legal aliens, yes.

Senator FONG. You will be able to tell from that list whether they are legal permanent residents or not?

Commissioner CHAPMAN. Yes.

Senator FONG. You will not be able to tell whether they are citizens or not, and not knowing whether they are citizens, you will not be able necessarily to say whether or not they are illegal aliens.

Commissioner CHAPMAN. If they were naturalized or derivative citizens, we would have a record, but for a native-born U.S. citizen, we have no record.

Senator FONG. If a person's name is on the list and he is an illegal alien, you would have no way of telling?

Commissioner CHAPMAN. Would you say that again?

Senator FONG. If a person is on that social security list as one who came in for a social security number and then he vanished because that question was asked him, you would not be able to say definitely whether he is an alien or a citizen, is that correct?

Commissioner CHAPMAN. That is generally correct, sir. We obviously don't have lists of illegal aliens, with the one exception that we do know which tourists have entered the country and failed to depart, so we might have his name in that connection as having entered as a tourist, but we wouldn't have any idea of where he was.

Senator FONG. So, the furnishing of that list is almost useless to you.

Commissioner CHAPMAN. I would say as a practical matter that is correct, except to the extent that we can identify a few as being here illegally.

Senator FONG. When an alien comes in you have no record of him coming in and then you wouldn't know whether he was a citizen or an alien.

Commissioner CHAPMAN. That's right.

Senator FONG. So under those circumstances, there is no use sending that list to you.

Commissioner CHAPMAN. I will have to verify this for the record, sir, but I think the fact is—

The CHAIRMAN. We will recess now. There is a rollcall vote. We will recess until the end of the vote and then come back.

[A brief recess was taken.]

Senator FONG [presiding]. The hearing will please come to order.

General Chapman, with the present law which states that the Social Security Administration should only give social security numbers to resident aliens and to citizens, how would that affect illegal aliens from now on?

Commissioner CHAPMAN. To carry on a moment from your previous question, sir, I should point out that of those names on the social security list we were unable to determine who were here legally, those persons did not get social security cards.

Senator FONG. Yes; I know that.

Commissioner CHAPMAN. But the program has largely been dropped, that referral of names from Social Security to us, because it was largely ineffective.

We did send some investigators out from time to time to check some of the names that we could not verify, and habitually there were erroneous addresses or a fake address, also there were some Privacy Act implications. For these reasons Social Security has stopped sending the list.

So I would say in answer to your question a moment ago that the program is largely ineffective.

Senator FONG. With the Social Security Administration refusing to issue a social security number to a person who is an illegal alien, how would that affect the influx of illegal aliens from now on?

Commissioner CHAPMAN. It is true now and has been for some time, ever since Congress passed the law, but I would say it has had very little effect in that the social security card itself is not a secure document, and it is very easy just to dream up nine digits and enter them onto the W-4 form, and it is quite a while before there is any response from the central computer system that that is a fake number or an erroneous number. It may be a sufficient period of time for the alien to earn as much money as he desired to make.

Senator FONG. Have you ascertained as to how long it will take for the Social Security Administration to find out that a card is a fake?

Commissioner CHAPMAN. I believe you should ask them that question, Senator, but it is months. It is many months.

Senator FONG. Now, without a social security card would a person find employment easily?

Commissioner CHAPMAN. Oh, yes, sir. He doesn't need a card. All he needs is nine digits.

Senator FONG. Yes; but without a social security number would he be able to find employment?

Commissioner CHAPMAN. He merely needs to enter nine digits on his W-4 form when he becomes employed.

Senator FONG. He doesn't even have to show his social security card to the employer, is that correct?

Commissioner CHAPMAN. In most cases he does not, but even where he did, the card itself is not a secure document. It is easy to counterfeit. It doesn't have a photograph or a fingerperint or any other security feature. It is just a little card with some numbers on it.

Senator FONG. Would it be against your thinking to have a photograph of an alien on a social security card?

Commissioner CHAPMAN. Well, for the permanent resident alien I don't believe it would be necessary because the law now requires a permanent resident to carry an identity card which we issue to him.

Senator FONG. He already has an identity card?

Commissioner CHAPMAN. He does, and as I mentioned yesterday, we are right on the verge of beginning to issue our new card which is counterfeit-proof and impostor-proof and so forth.

Senator FONG. So now, the alien, the legal alien with an identity card, and with a social security number, he has no trouble finding employment, is that correct?

Commissioner CHAPMAN. That's correct.

Senator FONG. But an illegal alien without such a card would find it very difficult.

Is that correct?

Commissioner CHAPMAN. Well, personally I don't think it is difficult. As I said, we think there are at least 1 million and perhaps 2 million or 3 million working now that have found jobs, and obviously the purpose of the bill before the committee is to make it illegal for the employer to hire those people.

Senator FONG. As I understand it, you are against a Government issued form for use by the employer.

How is the employer to find out whether a potential employee is a citizen or whether he isn't a citizen, or if he is a permanent resident alien or if he is not a permanent resident alien?

Commissioner CHAPMAN. The employer would be able to use his initiative. If he wished to design a form, he could do so and require the employees to sign it, and in any case in which he has any doubt, he would only need to call us and we would do the verifying for him with respect to aliens.

Of course, we have no authority or concern whatever with citizens.

Senator FONG. Would it be a violation of any civil rights if he asked the employee to prove his citizenship?

Mr. BERNSEN. We do not believe it is a violation of civil rights for the employer to ask that question.

Senator FONG. So you think an employer, before hiring an individual, could ask him for proof of citizenship, is that correct?

Mr. BERNSEN. Yes.

Senator FONG. So if he isn't a citizen, he could ask him, if he is an alien, to give his identity card.

Commissioner CHAPMAN. Yes, sir, if he is a permanent resident alien he is required to carry it on his person at all times.

Senator FONG. So if the employer took that kind of precaution then you will be able to do what you really want, to keep the illegal alien from getting employment.

Mr. BERNSEN. Yes, sir.

Senator FONG. Now, how would you go about educating the employer in that respect?

Commissioner CHAPMAN. We would propose, if the bill comes before the committee, and we have suggested some changes, if they were to become law, there is a 90-day grace period provided in here in the bill, and we, during that 90-day grace period would undertake a rather comprehensive advertising campaign to all the employers in this country. We would do it through public service spots on the television and the radio.

We would have our district directors write letters to the many employers they know are employing illegal aliens. We would find other ways during that grace period to try to assure that every employer now understood that it is national policy, as enacted by the Congress, to hire only citizens and legal aliens.

Senator FONG. If an employer were overcautious and he says I'm going to hire only citizens then, according to the *California* case, the Supreme Court says that is constitutional.

Mr. BERNSEN. Yes; there is a Supreme Court decision which say that an employer can, if he wishes, hire only U.S. citizens, so long as he does not discriminate on the basis of race, religion, or national origin.

Senator FONG. In that case, if an employer wants to be overcautious, he will probably only hire citizens, and that will put the legal resident alien at a disadvantage.

How do we overcome that to insure that the legal resident alien has a fair shake at employment?

Commissioner CHAPMAN. In the advertising campaign I spoke of, another device we would use would be to furnish employers with a booklet that we have which describes the permanent resident alien and the cards, the identity card that he uses, and we would assure the employer that it is perfectly proper and legal to hire a permanent resident of the United States.

Senator FONG. As to the citizen, to prove his citizenship, he would have to carry something, would he not?

Mr. BERNSEN. The bill does not require—

Senator FONG. No; I understand that. If we were to word it so that you would have to prove your citizenship, then you would have to carry with you something to prove your citizenship.

Mr. BERNSEN. Well, the employer violates the law only if he knowingly hires an alien who is not authorized to work.

Now, if the employer makes an inquiry and he is satisfied that the person is a citizen, for example, and the Government has to prove a knowing violation, I think it would be pretty hard for the Government to establish a violation where the employer in good faith accepted the response of the job applicant.

Senator FONG. It would be sufficient then if the employer asked the question and the answer was in the affirmative that he was a citizen, and if the employer has no reason to believe that he is not a citizen, so the employer would not be in trouble.

Mr. BERNSEN. If it is established that that is what occurred, I would say there would be no violation in that situation.

Senator FONG. You have received an appropriation of \$1 million to study this problem of illegal aliens. What do you expect to find out from that study?

Commissioner CHAPMAN. I could submit for the record a detailed description of the study and just summarize it now in this way.

It is a comprehensive study that breaks down into seven parts. Two or three of the parts have to do with trying to determine the flow of illegal aliens into the country. The other major portion is to determine how many are here now and what their impacts are.

With respect to the first category, we are running comprehensive surveys to determine how many are entering fraudulently, and I spoke yesterday on that point, that we have already finished that part of the study and determined that there are some 10 to 12 times as many as we had previously thought, up to something like half a million a year.

Another portion deals with trying to get a fix on how many are entering surreptitiously over the borders. We know how many we apprehend, but we don't know how many we miss exactly, although we think it is about 1 out of 3.

There are other parts to that.

Then the second major portion, which we intend to contract out, and we are on the verge of doing so, will attempt through residential surveys, through industrial surveys and through other kinds of surveys, to determine how many are here now, how many are working, what kinds of jobs they have, what their impacts are, both social and economic. It is a rather comprehensive thing, but we think it is a good design, and we are embarking on it.

Senator FONG. Then, with the results of that study, you will be able to decide what you really can do and what steps should be taken with regard to the illegal alien problem.

Commissioner CHAPMAN. It will give us, if it meets our expectations—it will give us some firm figures rather than estimates, although I must say I have no doubt that the number here is in the millions. I don't know exactly how many million. It may be six, seven, or eight. I don't think there is any question that the number is in the millions.

Senator FONG. How do you arrive at that figure?

Commissioner CHAPMAN. Well, sir, several ways. One I just mentioned. We have now determined that there are about half a million a year entering fraudulently. Second, we know that of the 6 to 8 million tourists that enter this country each year, up to 10 percent don't leave. We can determine that by our check-in and checkout system. That is on the order of half a million or more a year. We know that about something like 1 out of 3 that come through surreptitiously over the border, are not apprehended. We know we are getting only about two-thirds of the sensor signals with our force.

Then we have the estimates of our district directors. We have 32 districts and district directors in this country, each of which has a portion of the country under his purview, and they have rather good knowledge, good estimates, as to how many are there. Those estimates are based on their apprehension figures and on the thousands and thousands of leads and tips we get each year from citizens and permanent residents reporting some person that they have reason to believe is an illegal alien.

And then finally, there are apprehension figures. We are apprehending—we have apprehended about $1\frac{1}{2}$ million in the last 2 years, or about three-quarters of a million a year. Most of them on or near the southern border—600,000 to 650,000 there. In the cities we are appre-

hending to our maximum capability, which is about 150,000 a year; and for 1 year now or a little over 1 year now, we have followed the policy of only following leads and tips or aliens working. We are doing nothing about the many that we know reside in the various kinds of residential areas.

Senator FONG. Because of lack of staff?

Commissioner CHAPMAN. That's right, sir.

We are just doing the maximum we are capable of, and we think we are doing the best thing in that every time we apprehend an illegal alien in a good job, we open it up to an unemployed American.

Senator FONG. When do you expect to have the survey finished?

Mr. CHAPMAN. There are seven parts, and we will complete the parts consecutively. One part is already finished. The second is underway, and we expect to have the final total report in about a year from now.

Senator FONG. With 120,000 numbers for the Western Hemisphere and with over 300,000 applicants a year, by giving to the Western Hemisphere the same preference listings as we have for the Eastern Hemisphere, do you think that this will do anything to help cut down the number of aliens legal and illegal.

Mr. ISENSTEIN. It will change the complexion and nature of the aliens coming to the United States. We will get more close relatives and we will get more skilled people, so the ordinary, unskilled laborers who compose the vast number of aliens from the Western Hemisphere will be changed to a different type to whom we think preference should be given.

Senator FONG. Yes; I know. The preference will be given to those who have relatives here, but would that cut down the number of illegal aliens that would be coming in?

Mr. ISENSTEIN. I suppose that illegal aliens will still want to come to the United States, as long as there is a lure of jobs here.

Senator FONG. The changing of the preference quota would not affect the number of illegal aliens, would it?

Mr. ISENSTEIN. Not the number of illegal aliens coming in now.

Commissioner CHAPMAN. The question was asked yesterday, and I didn't at that time have an exact answer, and I can furnish one now as to—let me go back a moment. We estimate there are about 6 million here now, 60 percent are Mexican and two-fifths are not, and the question was asked, of the two-fifths what percentage are from the rest of the Western Hemisphere, and I can now say we think about 53 percent, 53 percent of the two-fifths are from the rest of Latin America and the Caribbean, and the other 47 percent come from all the rest of the world.

Senator FONG. They enter by means of jumping ship to tourist visas?

Commissioner CHAPMAN. Foreign students, businessmen, all the people who entered the country with nonimmigrant or temporary visas.

Senator FONG. General Chapman, I introduced an amendment yesterday giving the processing of refugees to the State Department consular office. We have consular offices throughout the world. I think you only have seven refugee centers, is that correct?

Commissioner CHAPMAN. Yes, sir. I think that is right. We process refugee applications in seven countries and in Hong Kong.

Senator FONG. And you have to have special agents out there to manage these refugee centers.

Commissioner CHAPMAN. Well, we have offices. We don't run centers. The centers are run by voluntary agencies.

Senator FONG. Wouldn't it be better to let the consul handle the refugee problem?

What is your comment on that?

Mr. ISENSTEIN. Well, we have been considering whether or not it might not be appropriate for the consular offices to handle the seventh preference since they handle all the others, and this is a matter which we are now studying because it obviously does have some merit, a great deal of merit, particularly if we give the seventh preference and all the other preferences to the Western Hemisphere. That would mean we would have to have people all over the world, and we don't have them; the State Department does.

So it might be a good idea to do that. This is a matter of study.

Senator FONG. Could you give us an idea and provide for the record where these present facilities are? How much is the cost of maintaining these facilities, and what is your caseload in this regard?

Commissioner CHAPMAN. We will furnish that for the record, sir. [The information referred to follows:]

COST OF MAINTAINING OVERSEAS OFFICES, FISCAL YEAR 1976, ACTUAL AND PROJECTED

Location	Out-of-pocket cost	American salaries	Total cost
Athens.....	\$62,638	\$44,485	\$107,123
Frankfurt.....	206,113	114,275	320,388
Hong Kong.....	217,921	123,176	341,097
Manila.....	66,400	84,808	151,208
Naples.....	46,183	52,635	98,818
Palermo.....	24,025	62,398	86,423
Rome.....	177,958	155,228	333,186
Tokyo.....	89,825	45,555	135,380
Vienna.....	243,509	65,834	309,343

TOTAL CASELOAD—OVERSEAS OFFICES, FISCAL YEAR 1976 ACTUAL AND ESTIMATED

Location	Adjudications completed		Investigations completed
	Refugees	All other	
Athens.....	825	2,753	591
Frankfurt.....	1,886	7,640	309
Hong Kong.....	4,141	2,413	1,096
Manila.....		7,791	674
Naples.....		1,146	217
Palermo.....		1,390	321
Rome.....		2,332	456
Tokyo.....	6,216	2,401	902
Vienna.....	1,375	9,818	463

Senator FONG. You have indicated your problems in understaffing. What is the situation today, and will it be improved under the 1977 budget request?

Commissioner CHAPMAN. Well, sir, it is true that we are largely overwhelmed in all our functions—naturalization, adjudication, inspection. Congress provided for us in this current fiscal year some substantial increases that are helping considerably, not only an additional

750 billets but also some money items such as the \$1 million for the census and the several million dollars for the new counterfeitproof card. So we have considerably improved our capability this fiscal year which we are now implementing.

Nevertheless, we have lengthy backlogs in adjudications and naturalizations, in response to queries for information of which we get a great many, and in trying to protect the borders and the ports of entry from illegal entry, and in attempting to find within the cities and the industrial areas as well as on the farms and ranches the millions of illegals that are there now. It is just beyond our capability.

Senator FONG. How much did you ask from OMB?

Commissioner CHAPMAN. Well, let me go on to say that with respect to the 1977 budget, the President's budget for us, which, of course, I support, there are some considerable increases in funding for alien detention and removal, which will have the excellent effect of enabling us to detain and remove from the cities all that we are capable of apprehending, which we are not now able to do.

We will apprehend about the same number, and we will be able to detain and remove them all. Now we are only detaining and removing a portion of those that we were able to apprehend in the cities.

The other changes in the budget involve some reductions in inspections which will lengthen the waiting periods at the international airports, and some reductions in adjudications and some reductions in investigators. Despite the reduction in investigators, we will nevertheless continue the apprehension level, and we will reduce the casework, the individual casework.

Senator FONG. Now, what was your budget approval from OMB?

Commissioner CHAPMAN. Well, sir, we requested some substantial increases in our submission to the Justice Department, which were scaled down and then forwarded to OMB. I don't have those figures with me, but I can provide that for the record.

[The material referred to follows:]

FISCAL YEAR 1977 BUDGET PROGRESSION

[Dollar amounts in thousands]

	Total amount	Program Inc/ (December)
Request to:		
Department of Justice:		
Positions.....	11,432	2,600
Amount.....	\$304,352	\$95,369
Office of Management and Budget:		
Positions.....	9,346	514
Amount.....	\$243,441	\$29,939
Congress:		
Positions.....	8,721	(111)
Amount.....	\$221,581	\$7,394

Senator FONG. Would you provide for the record what the budget request finally was?

Commissioner CHAPMAN. Well, the net for fiscal year 1977 overall is a reduction of some 100 and some positions in the Service.

Senator FONG. One final word. If you apprehended an illegal alien and he applies for adjustment of status, will he be allowed to work under this new law during that period?

Commissioner CHAPMAN. If he qualifies for the registry date, or if there are compelling humanitarian factors, or if he qualifies for suspension, yes; we would authorize him to work.

Senator FONG. He would have to become a public charge, wouldn't he, if he didn't?

Commissioner CHAPMAN. Well, he would go on welfare I suppose, and be unemployed.

Senator FONG. So, it would be better to let him work.

Commissioner CHAPMAN. Yes, sir, we would authorize him to work.

Senator FONG. Thank you very much.

Senator Scott?

Senator SCOTT of Virginia. Thank you, Mr. Chairman.

General, let me add my welcome to you. I enjoyed listening to you yesterday and the comments you have made today and your general support of this bill.

As you may have heard when we had the officials of the State Department before us yesterday, I have been primarily concerned with the number of illegal aliens, and I think you share this concern, but also with the parole authority that apparently has been used in a manner that it was not intended to be used when the law was passed. I know we have had these emergency situations, the Hungarians, the Cubans, the Vietnamese, and Cambodians and I believe some people from Chile recently have wanted to come in and there was a difference of opinion, as I understand it, between the committee's recommendation and what the Department actually did.

Now, you correct me anywhere along the line. I believe with regard to the Vietnamese and Cambodians, that the Department wants more people to come in than the chairmen of the House and Senate committees have agreed to.

Now, my thinking is that we need to change this to give you some limited leeway with regard to parole authority, but we need to put a ceiling on the parole authority if the Congress is to fulfill its function as having control. Article 1, section 8 of the Constitution does give to the Congress, as I understand it, plenary authority, and the Supreme Court has used this word "plenary" over the immigration process although Congress has the right to delegate it to the executive branch.

Now, I have an amendment and I would like to insert it in the record at this point, Mr. Chairman, that would say you could parole in not more than 1,000 refugee aliens in 1 calendar year without coming to the Congress and getting specific authorization, and 500 could be paroled in under the hardship provision, a death in the family, something of this nature.

Now, what would your response be to a measure such as this?

Commissioner CHAPMAN. Well, sir, those are very substantial changes in the current law, proposed changes, and I would have to say that we could have to study your amendment and coordinate with the other departments and submit formal comments.

Senator SCOTT of Virginia. Well, I hope you will but I wonder if these are substantial changes in the law or simply substantial changes in the practice that has been followed.

As I understand the law, you are not given any specific limitation at all in the number that can be paroled, but it was the intention when

the law was first passed that this would be used on an individual basis, that it was passed before the Hungarian refugees came in. My concern is, if we get many hundreds of thousands of people coming into the country that even though they are here without any right to be naturalized, the pressure will be on the Congress to pass some special legislation under which they could become permanent residents, and they could ultimately become citizens. I am advised that that was done with regard to the Hungarian refugees, perhaps to the Cubans, and we might anticipate something of a similar nature sometime in the future with regard to the Vietnamese and the Cambodians.

And frankly, I think that that is unfair to the Congress and I don't believe the majority of the Congress would like to be put in a box like that.

Now, is my comment a reasonable comment, or would you have some feeling that you would like to express contrary to it?

Commissioner CHAPMAN. I certainly don't think it is unreasonable. It is definitely worthy of study.

I might point out that the parole is issued on an individual basis, even though there is a large number of people. Each one is issued on an individual basis.

Senator SCOTT of Virginia. Now, before the Vietnamese came in here, are you saying that you took each one aside somewhere before they got on the ship and examined them to see if they were the kind of person that you would want in the United States? Or did you feel, now, these are people whose lives may be in jeopardy and therefore we are going to let these people remain. I know you had sort of a holding position somewhere in the southeast Pacific area, but weren't they actually a group even though you may have somewhere along the line made some specific inquiry? You didn't have any people from England over there, or any people from South Africa or anything like that. You had Cambodians and Vietnamese, and the people from that general area of the eastern Pacific. So in a sense they were a group paroled into the country.

I am not disagreeing with your thought that you did talk with them and attempt to screen them, but it was a group that came in.

Is that unfair to make that observation?

Commissioner CHAPMAN. No, sir. It was clearly a group or class, but I do want to say that we did examine each one in detail, including run security checks on every adult.

Now, we did that in two ways. Those that came in in the emergency evacuations from Vietnam and Cambodia—it was done after they arrived, and then we permitted their parole as refugees into the United States—

Senator SCOTT. After they came to the United States this was done?

Commissioner CHAPMAN. Yes; they arrived on U.S. soil, their inspection was deferred and then we did all the detailed checks. A few of them we ended up excluding from the United States.

Senator SCOTT. After they came in you sent them back?

Commissioner CHAPMAN. Well, we haven't sent them back yet but we have not paroled them.

Senator SCOTT. What is the difference in paroling them than being here?

How did they get here if they were not paroled?

Commissioner CHAPMAN. Under the parole concept the individual is still legally at the water's edge. He is not legally in the country as a parolee.

Senator SCOTT. Well, that is a fiction.

Commissioner CHAPMAN. It is a fiction, but that is the meaning of the parole authority. He is actually here on a paroled status.

Now, I want to go on to say that those that came out in the emergency circumstances were examined here, but the many that were allowed to come later were actually checked in Southeast Asia before they were permitted to come here.

Senator SCOTT. Now, the word "parole" as used in this context, just what does that mean? Physically bringing them here without giving them any specific status?

How would you define the word "parole"?

Mr. BERNSEN. Well, parole, as has been pointed out, is a legal fiction. It means that although an alien may be physically within the United States, he has been detained at the boundary so that we may at a later time make a decision as to whether or not we should allow him to remain in the United States permanently or for some other purpose.

Senator SCOTT. Now, the Commissioner indicated, General Chapman just a moment ago indicated that some of them had been paroled but some of them were here that had not been paroled.

What was he talking about? What is that difference?

Mr. BERNSEN. I think the distinction there, sir, involves the purpose of the parole—most have been paroled as refugees. That meant we paroled them after we had screened them as to their admissibility and as to whether they met the refugee criteria that we set up. When we paroled those that we found to be eligible, we paroled them as refugees, which meant we give them permission to work and to remain indefinitely.

Those whom we found were not admissible, or were not within the criteria we set up, we paroled pending completion of their exclusion hearings because they were still here, but we did not parole them as refugees. We did not give them permission to work. Those people we are trying to remove from the United States, and they are under exclusion proceedings, which are presently under appeal to the Board of Immigration appeals.

Senator SCOTT of Virginia. You are attempting to remove them from the United States.

Now, why do you have difficulty removing them from the United States?

Mr. BERNSEN. Well, there are certain procedures that have to be followed. We held hearings, and in those hearings those who did not meet the criteria were ordered excluded. The excluded aliens have a right to an appeal from the exclusion decision to the Board of Immigration Appeals in Washington.

Senator SCOTT of Virginia. Now, why do they have this right of appeal? Is it because Congress has put it into the law?

Mr. BERNSEN. No; the right to appeal is an administrative device.

Senator SCOTT of Virginia. It is something that has been coined by the Immigration Service? You could eliminate that if you saw fit?

Mr. BERNSEN. Yes, sir. It has been in existence for many, many years, sir.

Senator SCOTT of Virginia. Well, I don't believe in the concept that just because you have been doing something it is correct. I am reminded of the story of the railroad worker who hit the wheel of the car and the president of the line being on the train, and he said, you know, we really like you oldtimers; how long have you been with the company. Well, he had been with them 40 years. He says, tell me, why did you hit the wheel? And he says, well, I was told when I came here 40 years ago to hit the wheel, and I have been hitting it ever since.

And he didn't know why he was hitting the wheel. So I am saying there ought to be a reason for whatever you do, rather than it is just something that has grown up in practice.

Now, I know, Mr. Chairman, I digressed there a moment, but to me this parole authority is a very important matter because we say that we cannot have more than 290,000 people as legal immigrants in any given year, and yet if we can parole several hundred thousand into the country, we are really making a farce out of our immigration laws as I see it, because I believe that you are in effect putting pressure on the Congress, and I would submit that somewhere along the line that you are going to make a recommendation to the Congress with regard to these Vietnamese, and if we are going to have immigration laws and going to limit the number that come in, then I think that we have to get a handle, and I believe it is an obligation of the Congress to get a handle on this parole because regardless of who is Attorney General or who is the Commissioner of Immigration—I am not talking about personalities at all, we are talking about one man making a decision, an unelected official, the Attorney General of the United States, that makes a decision affecting several hundred thousand people, not citizens of this country, in lieu of the Congress of the United States, elected by the people.

I think that is wrong and very basically wrong, and again, I have the highest respect for General Chapman here. He happens to be a Virginian, too, so I am not going to say anything critical of him as an individual, but I think that the procedure is wrong, and I think that Congress has to deal with it, and I was asking for your views.

General, would you care to comment any further on this?

Commissioner CHAPMAN. I might point out my grandfather was one of Lee's soldiers.

Senator SCOTT of Virginia. Fine man.

I just happen to have in my den at home two of the pens that the President used in signing the bill to restore the citizenship of General Lee, together with an original of the bill signed by the President.

So we are on the same wavelength here, but how about this parole?

The CHAIRMAN [presiding]. My grandfather was a Virginian, too.

Senator SCOTT of Virginia. Well, you know, the Governor of Virginia now has billboards all over the State saying "come home to Virginia, the Mother State." So you are welcome any time, Mr. Chairman.

Commissioner CHAPMAN. I certainly think that is a reasonable proposal, and will be happy to study it and make administrative comments on it.

Senator SCOTT of Virginia. Well, we would appreciate it, and even though I put specific numbers, 1,000 on one section and 500 on another

section in addition to the 6 percent that you have under the general legislation, this is just something that we wanted to use as a starting point, and I don't know whether it is too much or too little, but I feel that we must get a handle on it.

But turning to another point, Mr. Chairman, if you will indulge me, I understood that there are instances where there is no recourse but to pay welfare to some of the aliens that are here, and some of them receive welfare that may even be here illegally. Is that correct?

Commissioner CHAPMAN. That is correct, sir.

There are State court decisions that the illegal alien is entitled to welfare unless he has been ordered deported.

Senator SCOTT of Virginia. Well, as I understand that—and I would ask that you correct me if I am wrong—that is because the Congress has not preempted the field. It is something that the State has done, and the courts apparently would not disturb an act of Congress if the Congress itself passed a law saying that the aliens were not entitled to welfare, that the Congress has the authority not only over the admission or exclusions, but to place conditions upon the admission and exclusion.

Is this your understanding, General?

Commissioner CHAPMAN. Yes; I think that is right, sir. It is worthy of note that there are only four or five Federal laws that say anything about citizenship or illegal status as a precondition to benefits or use of the law.

Senator SCOTT. Would you have any recommendations, or would you care to study this and make any recommendations to the Congress as to what we might do?

And I am sure the committee would appreciate any recommendations that you might see fit to give to us on this score.

Commissioner CHAPMAN. Yes, sir, I would be happy to do that through the administration, but I would go on to say that in the whole body of Federal law there is employment in the civil service, that requires citizenship, enlistment in the Armed Forces requires either citizenship or permanent residence, some of the licensing laws, aviation licensing, communication licensing, there is the social security law just 2 years ago, but not for the first 40 years of social security. And that is about it. Nowhere else in the entire body of Federal law is there any specification of citizenship or legal alien status to benefit; not in welfare, not in aid to education, not in any of the rest of the Federal law.

Senator SCOTT. Now, one further question and then I will quit, Mr. Chairman.

We used to have quotas based upon the national origin of the citizens in the United States, I think, as of 1920, and the States of national origin, where they came from, and that was changed. There has been some thought that perhaps consideration ought to be given to reestablishing this concept of national origin.

Would you have any comments on this as to the feasibility or desirability of this? Perhaps updating the date from 1920 to some other time?

Commissioner CHAPMAN. Again I think I would have to study it, but my immediate reaction is that I would not favor or desire it. The

present system is an equitable and fair system for all the countries of the world, regardless of the circumstances, and the national origin system, I would hesitate to endorse.

Senator SCOTT. Well, I received a letter from a constituent that lives in Arlington and actually I sent it over to your office and you gave us a very detailed response, but this gentleman—I have no brief for the arguments that he made, but he said he was in a shopping center in Arlington and it seemed like that he was the foreigner and that he didn't see anybody that looked like him in that shopping center, and he was concerned about it, and actually, he was just raising hell in his letter. And I sent it over and you gave us a very fine response.

But I doubt that that gentleman is by himself in this feeling. There may be a thought that the people in the States would not want the makeup of the future to be different from the general makeup today.

If you could give us some comments in writing, I would appreciate it so we would know your thoughts.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, gentlemen. You have been very helpful.

Commissioner CHAPMAN. Could I make just one comment?

I would like to submit for the record, Mr. Chairman, some figures on the population situation in one country as an example of the push effect. I think you will find them very interesting.

The CHAIRMAN. They will be admitted.

[The information referred to follows:]

THE POPULATION PUSH FROM MEXICO

There is strong evidence that Mexico is encountering severe population pressure, which it gives little indication of being able to handle internally. Its annual rate of population growth is 3.5 percent—one of the highest rates in the world. In comparison, the annual growth rate of the United States population is only .5 percent. At the same time Mexico's population is becoming increasingly youthful. In 1930, persons under 15 years of age comprised 39.2 percent of the population, by 1970 this proportion had risen to 46.2 percent. With the extremely rapid rate of growth, this trend will be accelerated even further. This is further confirmed by the 20 year doubling time of the Mexican population. Although the United States population is currently about four times that of Mexico, by the year 2020 the populations will be relatively equal. Even if a good family planning program were instituted in Mexico, the doubling time would remain high and, since the future parents are already born, a significant reduction in the rate of population growth would be a slow process.

The Mexican economy does not appear to be able to absorb this rapid population growth. Only about one-fourth of the population is economically active, hence, there is a heavy burden of dependency. Chronic unemployment and underemployment in rural areas has been responsible for a high rate of rural-urban migration, while at the same time employment opportunities in the cities have not expanded rapidly enough to absorb more than one-third of the persons entering the labor force each year. The problem is further complicated by the fact that most of the migrants lack the education and industrial skills needed for productive employment in most urban areas. Moreover, the per capita income in the United States is about five times that of Mexico, creating an economic magnet for the growing Mexican labor force which is increasingly underemployed or unemployed.

The large percentage of the Mexican population that is under 15 years of age, and the economic and labor problems cited above are only a few of the factors which serve to suggest that the large wave of illegal immigration from Mexico is yet to come.

Commissioner CHAPMAN. Then I would like to conclude with one point that seems to be a source of some worry, and it is this, that

there is in this country today some millions of people illegally who are in hiding and they exist, and they are able to remain here through hiding, through deceit, and through lying, and I think we are creating or allowing to be created a subculture from which we are going to reap a whirlwind one of these days, and therefore I am most strongly in support of your bill which would go a long way to remedying a serious national problem.

The CHAIRMAN. Well, thank you.

Now, the Democratic Caucus begins at 12:30, and so we will go until 2:30 and take the association of immigration and nationality lawyers, and then we will take the Department of Labor.

Thank you.

[Whereupon, at 12:07 o'clock p.m., the committee recessed, to reconvene at 2:30 o'clock p.m., the same day.]

DEPARTMENT OF JUSTICE,
Washington, D.C., May 13, 1976.

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, Subcommittee on Immigration and Naturalization, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is submitted in response to requests for specific information by various Subcommittee members of Commissioner Chapman during his testimony before your Subcommittee on S. 3074 on March 18, 1976.

The Subcommittee is informed that the refugee question raised by Senator Scott is under study by the Immigration and Naturalization Service and the State Department and that the result of the study will be furnished upon completion and approval by the responsible Departments. In addition, the Subcommittee should be advised that the questions raised by Senator Scott with regard to feasibility of a Federal law governing welfare benefits for illegal aliens and the desirability of a return to the national origins quota system are under study by the Domestic Council Committee on Illegal Aliens and that upon completion and approval of the study, the Subcommittee will be furnished copies.

Sincerely,

MICHAEL M. UHLMANN,
Assistant Attorney General.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

WEDNESDAY, MARCH 24, 1976

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland and Fong.

Also present: Ed Loughran, staff director; Sidney Rawitz, special counsel; and Mark Hazard, professional staff member.

The CHAIRMAN. The committee will come to order.

Will the gentleman identify himself.

STATEMENT OF BEN BURDETSKY, DEPUTY ASSISTANT SECRETARY
FOR EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR;
ACCOMPANIED BY KENNETH BELL, U.S. EMPLOYMENT SERVICE,
OFFICE OF TECHNICAL SUPPORT, AND JOHN J. SHEERAN, U.S.
EMPLOYMENT, DIRECTOR OF THE DIVISION OF IMMIGRATION
AND REHABILITATION CERTIFICATION

Mr. BURDETSKY. Pardon me, Senator?

The CHAIRMAN. Identify yourself for the record and each of the gentlemen with you.

Mr. BURDETSKY. I am Ben Burdetsky, the Deputy Assistant Secretary of Labor for Employment and Training. On my right is Mr. John J. Sheeran, who heads our Division of Immigration. On my left is Mr. Kenneth Bell, who is actively involved in related programs.

The CHAIRMAN. You may proceed.

Mr. BURDETSKY. With your permission, I would like to read my prepared statement.

Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to testify before you on S. 3074, the proposed Immigration and Nationality Act Amendments of 1976, introduced by the chairman on March 4. This bill is broad in scope, proposing changes not only with respect to immigration policy, but also admission of nonimmigrant alien labor, amnesty for certain illegal aliens, and sanctions against employers of illegal aliens.

In a number of respects, the bill under consideration is similar to the administration's proposal which was transmitted to the Congress

on September 24, 1975. Like S. 3074, its major thrust is to equalize the basis for admission of immigrant aliens by extending the preference system, which has been in effect for natives of Eastern Hemisphere, to immigrant aliens coming to the United States from countries in the Western Hemisphere. However, from the perspective of the Department of Labor, the changes made by the administration proposal in the labor certification provision and other provisions of the law that deal with the admission of aliens for permanent employment are of substantial significance. S. 3074 essentially would retain the present system, with the labor certification requirement for the Western Hemisphere being made comparable to the Eastern Hemisphere.

First, I would like to discuss why we think a revision in the labor certification provisions is needed at this time and what our specific proposal is.

As you are aware, under the Immigration and Nationality Act, the Department of Labor has the responsibility, within a very limited scope, of protecting the American work force against certain adverse effects of immigrants entering this country for employment. The authority for the Department to do this appears in section 212(a) (14) of the act and is called the labor certification provision.

The existing labor certification provision requires a certification by the Secretary of Labor for admission of only a very small percentage of the total number of immigrants admitted each year. The provision states that where the Secretary finds that there are not sufficient workers in the United States who are able, willing, qualified and available at the place to which the alien is destined to perform the work, and that there will be no adverse effect on the wages and working conditions of the workers in the United States similarly employed, such aliens may enter this country. It requires an individual determination for each alien to enter for employment.

Based on nearly 10 years of experience in administering this provision of the law, the findings of three research projects and the recent GAO report,¹ we are convinced that substantial changes are needed in the labor certification provision.

Briefly, our proposal is to replace the present individual certification procedures with a system which would make determinations by the Secretary more reflective of labor market conditions as indicated by data and information.

An overview of the U.S. immigration policy will serve to clarify our basic reasons for concern over the present DOL role in admission of aliens for employment:

Each year approximately 400,000 immigrants are admitted (290,000 under the quotas and 110,000 as parents, spouses and children of citizens who are not subject to the quotas). Ninety percent of the immigrants enter on the basis of a family relationship. Less than 10 percent are subject to labor certification.

A research study funded by DOL "Immigrants and the Labor Market," found that 57 percent of the immigrants with labor certification changed occupations—not just jobs—within two years after arrival.

¹ B125051, "Assessment of the Administration and Impact of the Alien Labor Certification Program."

In effect then, less than 5 percent of the immigrants are meaningfully screened for their labor market impact. Yet, the same study confirmed that the majority of all 400,000 immigrants enter the labor market. For immigrants of working age, approximately 65 percent enter the labor market.

Implementation of the present law has resulted in determinations on a case-by-case basis for some 60,000 to 70,000 applications for alien employment each year. Each certification denial must demonstrate that there are sufficient workers in the United States who are able, willing, qualified, and available to do the work specified by an individual employer for a predesignated alien. Efforts by the Department to administer such criteria have been frustrating to us, the employers and aliens alike.

Various court decisions have introduced the concept that the DOL is required to refer qualified U.S. workers to each employer seeking an alien or to certify the alien. Even a major expansion of the public employment service or other measures which could be reasonably undertaken, would not adequately meet this availability test.

There has been a significant increase in the number of aliens who are in the United States and applying for adjustment of status. In 1968, 1 in every 10 aliens applying for certification was already in the United States. By 1972, this proportion had increased to 4 in 10. Many of these already held the job for which certification was requested. It is virtually an impossible task to successfully place a qualified U.S. worker when an alien is already occupying the position.

The post-1965 labor certification process has not changed the occupational distribution of immigrants entering for employment into the United States. The occupational distribution in the 1970's was about the same as prior to 1965.

It is clear that the present labor certification procedures are a costly, aggravating process which affect a very small percentage of the immigrants who enter the labor force. In terms of either population or work force, the numbers entering for employment purposes are not significant. The only way that such numbers could adversely affect U.S. workers would be if they were entering in concentrations in a particular occupation or in a single employing establishment in a given area over a relatively short period of time.

Our proposal essentially would admit aliens as immigrants for employment within prescribed quotas and without individual labor certifications unless the Secretary of Labor acts to stop them. Such determinations would be initiated by the Department of Labor itself based on its monitoring of the supply-demand of occupational classifications by geographic area. They would also be initiated in response to information from any public or private source reasonably documenting that an adverse situation may result from the admission of aliens in an occupation and labor market area. A statutory alert mechanism would go into effect automatically if a single employing establishment petitions for more than 25 aliens within 1 year. In the latter two instances, the Department would make a preliminary finding, using its national, regional and State employment service resources. In all cases, a preliminary notice would be published in the

Federal Register permitting interested parties to present their views prior to the issuance of a certification of exclusion. Removal of the exclusion would occur under similar triggers, investigation and notice for public comment.

In order to implement this process and these controls, the Department of Labor proposes certain other modifications to section 212(a) (14) and related sections:

First, to prevent the adverse impact that may occur from large numbers of aliens entering the labor market, we are proposing that an employer file a petition to accord a preference for professionals, scientists and artists as well as for skilled and unskilled workers. This recommendation is necessary to our proposal that the Attorney General notify the Secretary of Labor whenever more than 25 aliens are destined to a single employing establishment. This change is also desirable in view of the labor market conditions which now affect the professions, sciences, and arts. These aliens can no longer be assured of finding employment in their occupations.

Second, we also propose to exclude those aliens of exceptional merit and ability from the provisions of section 212(a) (14). This exclusion will be particularly significant to institutions of higher learning, specialized research establishments, and other types of employment.

We believe that our proposal provides for meeting the supplemental needs of the American labor force in a more efficient and less costly way, while still providing essential safeguards to American workers.

Mr. Chairman, that concludes our comments concerning the Department's proposals for revisions to section 212(a) (14). We would now like to turn to S. 3074.

DEPARTMENT OF LABOR COMMENTS ON S. 3074

First, the Department of Labor strongly endorses the extension of the preference system to the Western Hemisphere. However, we defer to the Departments of Justice and State on the appropriate application of that system. Our views with respect to the other proposed changes contained in S. 3074 that are of particular interest to the Department of Labor are as follows:

NONIMMIGRANT ALIEN WORKERS (H-2'S)

Section 101(a) (15) (H) (ii) would be amended to:

(1) Delete the language that restricts H-2 workers to employment in jobs or services that are "temporary";

(2) Require the Secretary of Labor to act on an employer's request for certification within 60 days of filing (reduced to 20 days in the case of farmworkers), and when the Secretary denies a certification, based on a finding that qualified domestic workers are available requires the Secretary to refer the domestic workers to the employer at the place of employment; and

(3) As it may be construed, require that the availability of unemployed persons, who are capable of filling the jobs in question, be determined with reference to the locality in which the work is to be performed.

The Department of Labor is strongly opposed to these provisions for the following reasons:

(1) The indentured nature of temporary employment of nonimmigrant alien workers compels the alien to remain with the petitioning employer. This type of employer-employee relationship tends to undermine a free enterprise system where labor, wages, and working conditions are determined largely through the forces of demand and supply, collective bargaining, and the uninhibited movement of workers. At present, temporary alien workers are admitted in relatively few temporary or seasonal jobs, usually for very short periods or employment. The proposed expansion would permit the employment of temporary alien workers in literally hundreds of jobs which traditionally have been available exclusively to U.S. workers and to immigrant workers who wished to become permanent members of the resident labor force. We recommend retention of the existing provision which limits employment of nonimmigrant aliens temporarily in temporary jobs. If it is demonstrated that the annual quota for immigrants is insufficient to fill the permanent jobs of U.S. employers, amending legislation should be considered for the entry of additional immigrant workers.

(2) Under this proposal, the Secretary of Labor's authority to protect the U.S. work force would be limited to determinations of availability of workers at the time and place of employment. This language is similar to that in section 212(a) (14). We construe the language in section 212(a) (14) as requiring that U.S. workers are available regardless of present location if they were willing to relocate to the place of employment. However, the section-by-section analysis accompanying S. 3074 indicates that availability is to be determined with reference to the locality in which the work is to be performed. This construction would preclude consideration of the mobility of labor. This would seriously impact on college graduates, professionals in all occupations, construction workers, migrant and seasonal farmworkers, and others. The law must continue to afford maximum protection by providing that U.S. workers have the first opportunity for available jobs regardless of location.

(3) The bill would permit an alien initially to be certified for a period of up to 1 year, and then extended for a period or periods not exceeding 1 year in aggregate. Although the bill would apparently limit an alien's stay to 2 years, it would not preclude the same alien from reentering for the same job or to work in a different job for the same or a different employer. Further, there are no quota limits concerning the number of aliens which may be admitted temporarily for employment. Such conditions could lead to a situation where there was a de facto permanent resident population without the benefits or responsibilities of immigrant status. Spouses and children could accompany the alien workers; children would be born here, property could be acquired and roots established. This in turn would lead to demands for according families permanent status. We have only to look at the present situation in the U.S. Virgin Islands to see that the possibility is very real.

(4) We have serious reservations about the provision requiring the Secretary of Labor to act on an employer's request for certification, in

the case of farmworkers, within 20 days of filing. The Department of Labor is fully aware of, and sympathetic to, the need to permit workers to supplement the domestic labor force when temporary workers are not available for bona fide job openings after the employers have made extensive, reasonable, and objective efforts to recruit U.S. workers. However, we do not believe that the time constraints proposed would allow sufficient opportunity for U.S. workers to be identified and considered for the openings for which the aliens are sought. In fact, the 20-day limitation for agricultural workers is apt to result in an automatic certification of the aliens even though resident workers were qualified and available for employment at the prevailing wages and working conditions. This is because 20 calendar days—or 14 to 15 workdays—is not sufficient time to adequately test the labor market, which requires early planning, reasonable estimations of harvesting periods, adequate pay, housing and working conditions, and extensive recruitment with the assistance of State employment service offices. We have been expanding our efforts to more effectively serve U.S. migrant and seasonal farmworkers, by increasing the exposure of this segment of the U.S. labor force to all job offers before foreign labor can be approved.

(5) To require the Secretary of Labor to refer domestic workers to the employer at the place of employment if a certification for alien workers is not granted, would be inconsistent with the concept that the employer has the responsibility for recruiting workers. Employers traditionally have recognized this responsibility. The role of the Department of Labor and its affiliated State employment services is to assist the employers. S. 3074 would have the Government assume this responsibility. We feel that such a requirement does not recognize the traditional way by which workers find jobs and employers find workers and does not recognize the mobility of U.S. workers—particularly those in temporary employment. The State employment service is only one of the many channels used. Other channels include hiring halls or seniority lists for entertainers and construction workers; employer and employee associations with employment services for professionals, scientists, artists, and some athletes; media advertising for occupations at all levels; and private employment agencies, including some that specialize in temporary help. In agricultural occupations, workers follow a well-defined route timed to the crops (the migrant stream) and crew leaders schedule crews and make future commitments to employers on that basis.

SANCTIONS AGAINST EMPLOYERS AND RECRUITERS OF ILLEGAL ALIENS

Section 274 would be amended to make it illegal for an employer, his agent or a referrer of workers for employment, to knowingly employ or refer for employment any illegal alien.

The Department of Labor strongly supports legislation that would effectively discourage or make it economically unfeasible for employers to hire illegal aliens.

EXEMPTION OF CUBAN REFUGEES FROM QUOTAS

Section 17 of S. 3074 would permit Cuban refugees to adjust to immigrant status without reducing the Western Hemisphere quota.

The Department of Labor supports this proposal.

Mr. Chairman, that concludes our remarks and I will be glad to answer whatever questions you and the members of the subcommittee may have.

The CHAIRMAN. Yes, we want to ask you some questions.

Senator Buckley is here. Would you step aside, please?

Senator Buckley.

STATEMENT OF HON. JAMES L. BUCKLEY, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator BUCKLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Proceed.

Senator BUCKLEY. Mr. Chairman, in the interest of time, I shall omit portions of my prepared statement, but I would appreciate it if they could be printed in the record.

The CHAIRMAN. The statement will be printed in the record.

[The prepared statement of Senator James L. Buckley in full follows:]

SENATOR JAMES L. BUCKLEY, TESTIMONY ON IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

Thank you, Mr. Chairman, for this opportunity to present my views on S. 3074, the Immigration and Nationality Act amendments of 1976. We are all so conscious of the significant role that past waves of immigrants have contributed to America's past development, that we tend to forget that immigration is a continuing process. And although we seem to be living in an age where finding fault with the United States has become a major national preoccupation, we forget that for millions around the globe, America continues to be the land of liberty, of opportunity, of hope. And many of these millions shall seek entry to our country, even if they must break the laws to do it.

While the laws governing immigration have been reformed periodically, new problems are bound to arise. The Immigration and Nationality Act amendments of 1976 responds admirably, it seems to me, to some of the major questions that emerged in the 1970's.

As you, Mr. Chairman, pointed out when he introduced S. 3074, two immigration problems overshadow all others: immigration from the western hemisphere and the presence here of growing numbers of illegal aliens. Although S. 3074 is a two part reform of the Immigration and Nationality Act, I would like to focus my remarks on the problems relating to illegal aliens, which in a number of respects is similar in purpose and approach to a bill I introduced last October, the alien employment act (S. 2531).

Illegal immigration has become a major problem for our country. Every year thousands of aliens unlawfully enter the United States and either join the work force or are consigned to the public assistance rolls. In the first instance they displace American workers, and in the second they become unfair burdens on our taxpayers. In either case, this is a problem that can no longer be tolerated.

My own state of New York has been particularly affected by this problem. I receive daily correspondence from constituents who feel that their job opportunities are threatened, their neighborhoods downgraded by the overcrowded rooming houses that frequently house illegal aliens, and their taxes increased by the large numbers of illegal aliens who are receiving public assistance and overburdening municipal services.

The New York Times has called the problem of illegal aliens the "Silent Invasion of New York and Northern New Jersey." Official estimates—according to the Times—have ranged as high as one million illegal aliens in the New York metropolitan area alone, "and they now seem to outnumber legal resident aliens" in the area. The fact that New York City's unemployment rate for January exceeded 12 percent is proof that Congress must take effective and immediate action to stem the flow of illegal aliens into the United States.

Before discussing the specific provisions of S. 3074, I would like to emphasize that America's traditional commitment to immigration is not contradicted or undermined by efforts to prevent or penalize unlawful entry. To the contrary, the most frustrated victims of the problems caused by illegal immigration are often the legally admitted "Huddled masses" themselves. Recent arrivals, many of whom have patiently waited for years to gain lawful entry into the United States find that the avalanche of illegal immigration has crippled their opportunities to make their own way in their adopted nation. This is not a debate between those who wish immigrants and their families to benefit and those who do not. Rather, it is an effort to see to it that immigrants who have been lawfully admitted to this country, as well as the offspring of immigrants, do not have their opportunities for advancement threatened or destroyed by the problems connected with illegal aliens.

It is extremely difficult to come up with statistical evidence that accurately illustrates the scope of the problem. However, I would like to present a few facts that make it possible to gain an understanding of how acute the problem really is. In 1975 the immigration and naturalization service apprehended approximately 766,000 illegal aliens. However, this apprehension figure represents only a fraction of the number of aliens who unlawfully enter the United States every year. According to I.N.S., there were approximately 8 million illegal aliens in the United States in 1975.

The economic impact of illegal immigration is high. I.N.S. estimates that illegal aliens cost the American taxpayers as much as \$16 million each year. I.N.S. also points out that many illegal aliens send large portions of their paychecks to their homelands to support the families they have left behind.

Various regional figures show a relation between high unemployment rates and areas where apprehension of illegal aliens is highest. The subcommittee on immigration and naturalization concluded, after hearings held during the 92nd Congress, that "the illegal alien is responsible for a substantial displacement of American labor. His presence contributes significantly to both chronic unemployment problems and the current nation wide problem."

It is widely believed that in addition to diluting the job market, illegal aliens are becoming increasing burdens on public assistance programs. The New York State Department of Labor has estimated that it identifies between 15 to 20 illegal aliens a week who are receiving home relief or aid to dependent children benefits. Both New York City and Los Angeles have estimated that 60,000 children of illegal aliens attend their schools, and that the cost of providing this service exceeds \$100 million. It must also be pointed out that illegal aliens make extensive use of other municipal services. These include highways, parks, public transportation, and police and fire protection. When all of this is added together, we can be sure that the total cost of maintaining the illegal alien population in the United States reaches astounding and unconscionable heights.

Perhaps the most visible aspect of the problem of illegal aliens relates to aliens who are unlawfully entering the American working force. United States citizens are justifiably frustrated when they see that their job opportunities have been eroded by the influx of illegal aliens. The high unemployment rate that currently confronts the United States requires that Congress act promptly to take effective steps to reduce the number of illegal aliens who are working in this country.

The problem of illegal aliens working in the United States goes beyond that of displacing American workers. Many illegal aliens and their employers are frequently able to avoid paying Federal, State, and local income taxes. Also, social security contributions are not always withheld from the wages of illegal workers. Although it is impossible to determine exactly how much tax revenue is actually lost, I.N.S. has estimated that tax evasion costs approximately \$115 million a year. I am sure that it is painfully obvious to every member of this committee that our country can ill afford this loss of revenue.

But there is another cost that we must also take into consideration, and that is the human cost born by the illegal aliens themselves. They are subject to every form of exploitation—in terms of pay, working conditions, and housing. To allow large numbers of them to enter or remain in this country is to countenance their exploitation.

The question before the committee now is: How do we best deal with a problem that is being increasingly seen as one of major importance to working men and women throughout New York and the other States of the Union? How do

we solve a problem which many perceive as one that threatens their own plans for fulfillment and advancement as symbolized by the American dream?

S. 3074 incorporates several approaches to the problem of illegal aliens. Section 12 attacks the problem of aliens who unlawfully enter the American work force by making it unlawful to knowingly employ or refer for employment any illegal alien. It would impose civil penalties against any employer, agent for an employer, or member of an employment agency who violates this act. The first offense would elicit a fine of not more than \$500 for each alien involved in the violation, while the penalty for subsequent offenses would be more than \$500 but less than \$1,000 for each illegal alien involved.

I support the concept of civil penalties for those employers who knowingly hire illegal aliens. My bill, S. 2531, however, would also permit imprisonment for persons who have been found in violation a third time. I feel that this extra penalty is necessary as civil penalties alone may not prove to be sufficiently effective deterrents against the willful hiring of illegal aliens. Illegal aliens are frequently willing to work for far lower wages and benefits than American citizens or aliens legally certified for employment would be entitled to receive. Although no one would welcome the prospect of paying a \$500 or \$1,000 fine, the fine alone might not offset the perceived economic advantage of hiring illegal aliens.

Therefore, I strongly recommend that the committee adopt this feature of my bill. I believe it should be emphasized section 12 is designed to penalize only those who knowingly employ illegal aliens. Employers, agents, or referrers who unwittingly employ illegal aliens would not be subject to any fines or penalties. This is as it should be. It provides that the prospective employee's signature will be accepted as prima facie proof that the employer made a bona fide inquiry as to the individual's status. This section also directs the Attorney General to develop a form that would be used by an employer to obtain this statement from his prospective employee. My bill seeks the same goal by directing the Attorney General and the Secretary of the Treasury to cooperate in formulating a form which would combine the employee's statement of citizenship, legal residency, or work authorization with the information required for withholding Federal income taxes. This would avoid requiring that an employer have to make out and file still one more form with the Federal Government.

I believe the provisions of section 12 will lessen the incentive for aliens to illegally enter the United States in the anticipation of finding a job. By making it harder for an illegal alien to locate a job, he will not be as encouraged to come to this country. I believe that this section will be an effective weapon in the fight to reduce the flow of illegal aliens into the United States.

Mr. Chairman, I would also like to endorse section 2 of S. 3074, which will regularize the procedures whereby the Secretary of Labor responds to the requests of employers to import foreign workers. I know that agricultural employers in my State have been frustrated by the extensive amount of time it presently takes for the Department of Labor to act on their requests for alien employment. Since their livelihood is frequently dependent on seasonal factors that cannot be controlled, any delay in their ability to hire the necessary work force—when local work is not available—can be potentially ruinous. S. 3074's requirement that the Secretary of Labor act on an employer's request for certification within 60 days of filing and, in the case of agricultural workers, within 20 days of filing, is both reasonable and appropriate. I know many New York apple growers who will applaud its enactment.

S. 3074 also addresses itself to the problem of illegal aliens who become dependent on public assistance. I have already pointed out that the New York State Department of Labor has estimated that it identifies from 15 to 20 illegal aliens a week who are receiving some form of public assistance. Under any circumstances this would be deplorable. However, when we consider the size of the welfare budgets of New York City and many other hard pressed cities throughout the United States, this situation becomes intolerable. Our already beleaguered taxpayers should not have to shoulder the burden of supporting illegal aliens.

Section 13 responds to this problem by directing the Secretary of Health, Education and Welfare to notify the Attorney General of the names and addresses of aliens, other than lawful residents or refugees, who are receiving welfare or medical assistance under the provisions of the Social Security Act. This section will enable the Attorney General to use the list submitted by the Secretary of

HEW as a basis for filing deportation charges against those who are illegally residing in the United States.

I support this measure as a practical approach to removing burgeoning welfare rolls. I suggest the committee may also wish to consider a provision in my bill which would prohibit Federal funding for any public or private program which provides either direct or indirect aid or assistance to any individual unless as a condition of eligibility for receiving such aid or assistance the applicant is required to show proof of United States citizenship or legal alien residency. This section is designed to encourage increase efficiency on the part of any State, local, or other assistance program in their efforts to insure that only qualified individuals receive public aid. I believe that this provision would cause welfare officials to become more zealous in their efforts to enforce legitimate eligibility requirements and will eventually reduce the number of illegal aliens who are receiving welfare benefits at the expense of the American taxpayers.

Concurrent with the problem of illegal aliens who receive public assistance is the problem of legally-admitted aliens who become dependent on public funds shortly after they enter the United States. I believe Section 9 of S. 3074 provides for the deportation of aliens who within five years of their entry become public charges or are institutionalized at public expense. I am glad that this provision does not apply to aliens who can show that their dependency was due to causes or conditions arriving after entry. In other words, if as a result of a job-related injury that occurred while an alien was lawfully working in the United States, as an alien became eligible for some form of public assistance, I believe he would not have to face deportation. However, if the conditions that caused his public dependency existed prior to entry into the United States, deportation could occur. This section is necessary to discourage people from entering the United States for the purpose of receiving government aid that might not be available in their homelands. I believe, however, that it should not be allowed to penalize bona fide immigrants who want to become contributing citizens.

Finally, I fully endorse Section 18, which broadens the scope of criminal penalties to include the falsification of any documents used to enter the United States or as evidence of authorized stay in the United States. This provision, which is very similar to Section 2 of my bill, will facilitate successful prosecutions against counterfeiters and users of false documents. It should greatly help law enforcement officials in their efforts to prosecute and convict individuals who are encouraging and promoting illegal immigration.

It is ironic, Mr. Chairman, that during a time when some citizens of the United States are losing faith in American institutions, there are so many from other lands who are willing to take almost any risk in order to come here. While we cannot but admire the ingenuity and determination many of these aliens have shown in smuggling themselves into this country, unfortunately the hard facts remain that they simply cannot all be accommodated and they pose a threat to those who are lawfully here. I believe this legislation represents an effective approach to a major problem that is threatening the welfare of countless citizens and communities. I am confident that the Senate will agree that the problem of illegal immigration is of paramount importance and will give its full support to any reasonable response to this problem.

Senator BUCKLEY. I thank you for this opportunity to present my views on S. 3074. We are all so conscious of the significant role that past waves of immigrants have contributed to America's development, that we tend to forget that immigration is a continuing process. And although we seem to be living in an age where finding fault with the United States has become a major national preoccupation, we forget that for millions around the globe, America continues to be the land of liberty, of opportunity, of hope. And many of these millions shall seek entry to our country, even if they must break the laws to do it.

As you, Mr. Chairman, pointed out when you introduced S. 3074, two immigration problems overshadow all others: Immigration from the Western Hemisphere and the presence here of growing numbers of illegal aliens. Although S. 3074 is a two-part reform of the Im-

migration and Nationality Act, I would like to focus my remarks on how the bill responds to the problems relating to illegal aliens, which in a number of respects is similar in purpose and approach to a bill I introduced last October, the Alien Employment Act, S. 2531.

Illegal immigration has become a major problem for our country. Every year thousands of aliens unlawfully enter the United States and either join the work force or are consigned to the public assistance roles. In the first instance, they displace American workers, and in the second they become unfair burdens on our taxpayers. In either case, this is a problem that can no longer be tolerated.

My own State of New York has been particularly affected by this problem. I receive daily correspondence from constituents who feel that their job opportunities are threatened, their neighborhoods downgraded by the overcrowded rooming houses that frequently house illegal aliens, and their taxes increased by the large number of illegal aliens who are receiving public assistance and are overburdening municipal services.

The New York Times has called the problem of illegal aliens the "Silent Invasion of New York and Northern New Jersey." Official estimates—according to the Times—have ranged as high as 1 million illegal aliens in the New York metropolitan area alone, "and they now seem to outnumber legal resident aliens in the area." The fact that New York City's unemployment rate for January exceeded 12 percent is proof that Congress must take effective and immediate action to stem the flow of illegal aliens into the United States.

It is extremely difficult to come up with statistical evidence that accurately illustrates the scope of the problem. However, I would like to present a few facts that make it possible to gain an understanding of how acute the problem really is. In 1975, the Immigration and Naturalization Service apprehended approximately 766,000 illegal aliens. However, this apprehension figure represents only a fraction of the number of aliens who unlawfully enter the United States every year. According to INS, there were approximately 8 million illegal aliens in the United States in 1975.

The economic impact of illegal immigration is high. INS estimates that illegal aliens cost the American taxpayers as much as \$16 billion each year. INS also points out that many illegal aliens send large portions of their paychecks to their homelands to support the families they have left behind.

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Therefore, I strongly recommend that the committee adopt this feature of my bill. I believe it should be emphasized that section 12 is designed to penalize only those who knowingly employ illegal aliens. Employers, agents, or referrers who unwittingly employ illegal aliens would not be subject to any fines or penalties. This is as it should be. It provides that the prospective employee's signature will be accepted as *prima facie* proof that the employer made a bona fide inquiry as to the individual's status. This section also directs the Attorney General to develop a form that would be used by an employer to obtain this statement from his prospective employee. My bill seeks the same goal by directing that the Attorney General and the Secretary of the Treasury cooperate in formulating a form which would combine the employee's statement of citizenship, legal residency, or work authorization with the information required for withholding Federal income taxes. In other words, what I am proposing is that we avoid requiring an employer to make out and file still another form with the Federal Government, but rather utilize a form that is already in existence when someone is placed on a payroll.

Mr. Chairman, I would also like to endorse section 2 of S. 3074, which will regularize the procedures whereby the Secretary of Labor

responds to the requests of employers to import foreign workers. I know that agricultural employers in my State have been frustrated by the extensive amount of time it presently takes for the Department of Labor to act on their requests for alien employment. Since their livelihood is frequently dependent on seasonal factors that cannot be controlled, any delay in their ability to hire the necessary work force—when local work is not available—can be potentially ruinous. S. 3074's requirement that the Secretary of Labor act on an employer's request for certification within 60 days of filing and, in the case of agricultural workers, within 20 days of filing, is both reasonable and appropriate. I know many New York applegrowers who will applaud its enactment.

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I support this measure as a practical approach to removing burgeoning welfare rolls. I suggest the committee may also wish to consider a provision of my bill which would prohibit Federal funding for any public or private program which provides either direct or indirect aid or assistance to any individual unless as a condition of eligibility for receiving such aid or assistance the applicant is required to show proof of U.S. citizenship or legal alien residency. This section is designed to encourage increased efficiency on the part of any State, local, or other assistance program in their efforts to insure that only qualified individuals receive public aid. I believe that this provision would cause welfare officials to become more zealous in their efforts to enforce legitimate eligibility requirements and will eventually reduce the number of illegal aliens who are receiving welfare benefits at the expense of the American taxpayers.

Concurrent with the problem of illegal aliens who receive public assistance is the problem of legally admitted aliens who become dependent on public funds shortly after they enter the United States. Section 9 of S. 3074 provides for the deportation of aliens who, within 5 years of their entry, become public charges or are institutionalized at public expense. I would like to point out that this provision does not apply to aliens who can show that their dependency was due to causes or conditions arriving after entry. In other words, if as a result of a job-related injury that occurred while an alien was lawfully working in the United States, an alien became eligible for some form of public assistance, he would not have to face deportation. However, if the

conditions that caused his public dependency existed prior to entry into the United States, deportation could occur.

This section is necessary to discourage people from entering the United States for the purpose of receiving Government assistance that might not be available in their homelands. I believe, however, that it should not be allowed to penalize bona fide immigrants who want to become contributing citizens.

Finally, I fully endorse section 18, which broadens the scope of criminal penalties to include the falsification of any documents used to enter the United States or as evidence of authorized stay in the United States. This provision, which is very similar to section 2 of my bill, will facilitate successful prosecutions against counterfeiters and users of false documents.

It is ironical, Mr. Chairman, that during a time when some citizens of the United States are losing faith in American institutions, there are so many from other lands who are willing to take almost any risk in order to come here. While we cannot but admire the ingenuity and determination many of these aliens have shown in smuggling themselves into this country, the hard facts remain that they simply cannot all be accommodated and they pose a threat to those who are lawfully here. I believe this legislation represents an effective approach to a major problem that is threatening the welfare of countless citizens and communities. I am confident that the Senate will agree that the problem of illegal immigration is of paramount importance and will give its full support to any reasonable response to this problem.

The CHAIRMAN. Senator Fong?

Senator FONG. I have no questions, Mr. Chairman. I would like to thank the distinguished Senator from New York for giving us a very, very excellent statement on the whole problem. Many of the suggested improvements on the provisions of the bill are well taken. We will study them.

Senator BUCKLEY. I thank you, Senator.

The CHAIRMAN. Your testimony has been of help to this committee. You made an outstanding statement, Senator Buckley.

Next, Senator Javits.

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Thank you very much, Mr. Chairman and Senator Fong.

Mr. Chairman, I have represented my State for 20 years in the Senate, and I have acted in hundreds—actually, according to my office's summary, 1,200 immigration cases per year. That is a record of about 25,000 immigration cases. We are, in the real sense, "ombudsmen"—"we" meaning Senators. So I have had a good deal of personal experience in this area.

Some cases were particularly worthy and poignant cases; some simply sought undeserved special treatment. Sometimes the subject was world famous; most often they were rank-and-file people. But in every case, the human factor was foremost in the consideration given by myself and my office to the case. The world famous symphony conductor from Western Europe and the young domestic worker from

Costa Rica had the same desire as that which motivated all of our ancestors—including my own, who came here in the 1880's—to want to be Americans. And so it is always a very difficult task to decide who should be helped and who should not. And this has occupied me not only for the 20 years of the Senate experience, but for the 8 years I spent in the House of Representatives. I have always represented areas where this was a very big problem.

In addition, I had the pleasure and honor of serving under the chairman of this committee in 1965, when the last major revision of the immigration laws took place. And while I strongly opposed some provisions of the present law—to wit: the imposition of limitations on Western Hemisphere migration—it was, in general, a great improvement over the previous system and represented a far more equitable and human approach.

Since 1965, some of the deficiencies of that act have become apparent to me, and I am most pleased to note they have also become apparent to the chairman of this committee, who has now introduced a bill to correct many of them.

I don't agree with everything in the bill, but on the whole, it is refreshing, useful and helpful that we are again going to make a revision, especially directed toward those issues which have indicated deficiency, weakness, or inadequacy since we enacted this 11 years ago.

I think the most significant improvement is going to be the establishment of priorities and preferences for Western Hemisphere immigration. I have seen many of those cases in my own office, showing the unworkability of the present system in which all the countries of the Hemisphere are lumped together with a single numerical limitation and no provision to grant preferences even to family members or to highly skilled workers or to professionals.

Another difficulty with the present law which became apparent almost immediately, was the effect on the overall quota of the large number of Cuban refugees who were admitted. In some years, this one category of immigrant used up more than one-third of the total visas available to the entire Western Hemisphere. In 1969, Senator Philip Hart and I introduced legislation which would have put these political refugees in a separate category not chargeable to the overall quota. Our bill was never enacted, but I am pleased that a similar provision is included in S. 3074. I call attention to the fact that years ago we passed the Refugee Act in which the United States took "its fair share" of the European DP's. I was one of the members of the investigating committee of the House—almost 30 years ago—who looked into that question. And it turned out to be an extremely helpful law. I believe the chairman is to be complimented for including it in this revision.

Also, in terms of the numbers, a relatively minor problem is alleviated by the proposed bill; that is, the difficulty faced by older immigrants whose facility with the English language is not sufficient to enable them to pass a literacy test.

I listened with great interest to my colleague, Senator Buckley, as to those who would like to be Americans and have such a deep passion in their hearts that they will go through anything, including minefields, in order to get here. And in my State that passion is burning in the hearts of many immigrants—as it did in the hearts of my own

mother and father, notwithstanding the fact they could not pass a literacy test. Very few could when they came here, Mr. Chairman.

In my State—surprising at it may seem—it is possible to live for years in a community where English is not spoken. There are parts of Brooklyn, for example, where everyone an old person might see during the course of his day—storekeepers, friends, priest, politician—can speak Italian, or German, or Yiddish. Younger immigrants who must deal with the larger world of job and school learn English, of course. But often their parents, content to stay in the old ethnic neighborhood, never attain much proficiency.

As you note in your statement, Mr. Chairman, the Immigration and Nationality Act of 1952 contemplated a moratorium for these people and excused them from the literacy test if they reached the age of 50 by the date of enactment and had 20 years residency in the United States. S. 3074—the chairman's bill—would move that eligibility date forward to 1976, but would allow that exemption only to persons over 60. I would agree with the age change but propose that instead of setting a fixed date for achieving that age, we do not box ourselves in as our predecessors did in the 1952 act, which requires frequent updating of this provision. I respectfully suggest that the exemption be allowed to any person at 60 who has lived in the United States for 20 years, no matter when he reaches that age.

Now, the other details of the bill, to which I would like to refer, Mr. Chairman, follow:

1. I would not favor allowing crewmen to adjust their status in this country as proposed in section 10. The alien crewmen problem has been a serious one in a port the size of New York, and shipjumping should be discouraged as it is by the prohibition in the present law.

2. The bill proposes, in section 11, to grant an effective amnesty to illegal aliens who have been in this country since 1968. I believe we can be more generous than that and provide amnesty after 5 years of illegal residence in the United States. In many cases firm ties have been established during that time and the human problems involved in deportation after such a period would, in most cases, be substantial. After 5 years the administrative burden of trying to deport is not worth what can be gained.

Mr. Chairman, I am not wedded to 5 years. If the Chair would prefer 7, that would be acceptable. But I did think there will arise all the human problems—the marriages, the members of the family, and all of the connections which go into such a long period of residence. And it is not inconsistent with our concept of the statute of limitations. Mr. Chairman, which generally runs approximately 6 years. I therefore submit that for the consideration of the Chair.

3. I endorse the proposal of the State Department to limit immigration by professionals to those who have already obtained jobs in this country—a requirement already imposed on skilled sixth preference workers—and I favor reordering the preferences so that professionals fall to fifth preference and relatives currently in fourth and fifth preferences be moved up one step.

I had a good deal of experience in this area, Mr. Chairman, with the problem of foreign medical graduates. It is one to which I have given particular attention as the ranking member of the Senate Labor Committee, which is also concerned with health matters, and as a

member of the Foreign Relations Committee, which sees the hardships visited upon third-world nations when their medical personnel emigrate. You have what is popularly called the brain drain.

This particular subject also—and this is not in my prepared statement, so I hope the Chair will bear with me—raises this question: it may be possible to afford entry to a desirable professional for a short period of time, perhaps even as little as 4 weeks, with a bond or whatever other protection the United States should need. This would be done to enable that professional to be interviewed. That is a key point. And that may deal with a great many of the complaints that are directed against this section, because there are very few employers who will take a person sight unseen. I commend that to the Chair—there may be flaws in this suggestion—but from a pragmatic view and from my experience, which I have had with so many thousands of cases, I would suggest to the chairman and the ranking member, consideration of that particular proposition. It may be feasible.

4. I believe section 5 of the bill, which raises the numerical limitation for dependent areas from 200 to 600, is a step in the right direction but not a big enough step. I believe the eight Western Hemisphere and two Eastern Hemisphere dependent areas should be accorded equal status with independent nations and be subject to the same overall numerical limitation. For example, I see no reason to treat Antigua differently from Jamaica—the former having a 6- or 7-year wait for brothers and sisters of American citizens, and the latter being treated as an independent nation under the proposed bill. Since the overall total figures remain the same, raising the individual limitations for the dependent areas simply allows more visas for those close relatives and others with preference. If this change is made, I suggest that visas for dependent areas be charged to hemisphere quotas where they are located, rather than to the hemisphere and individual limitation of the mother country.

Finally, two other major sections of the bill deserve the consideration of the committee. Section 2 would remove the bar which has heretofore limited the employment of nonimmigrant alien workers to those jobs which are temporary in nature.

I noticed the Department of Labor has already testified against that particular proposition.

Further, under the proposed changes, the Secretary of Labor would be required to act at an employer's request for certification within 60 days of filing (20 days in the case of farmworkers), and should the request be denied due to a finding that qualified domestic workers are available in the locality where the work is to be performed, the Secretary is required to refer the domestic workers to the employer.

Mr. Chairman, I feel I must strongly oppose these changes. The deletion of the "temporary" job requirement would cost the American worker thousands of job opportunities. If we in my office have learned anything from our experience with the now best-forgotten bracero program, it is that massive importations of alien workers have a highly disruptive effect on those American workers who are but marginally connected to the work force. This country should place primary emphasis on placing its citizens in jobs which offer some prospect of stability. To do otherwise would mean continuous relocation or permanent unemployment to many workers.

Of course, Mr. Chairman, I am deeply impressed with the 7 million unemployed, and it is our job in the Labor Committee to deal with them and the apparent stickiness which is promised by the administration in getting them reemployed. It looks like there will be no real progress down to a 6-percent unemployment rate, even under the administration's best projections, until we get into 1979 and 1980. We are going to try, in other ways, to dispel that, but it still remains a very, very sticky point.

It has been my experience in dealing with INS and the Department of Labor on these questions over the years that their position is somewhat inflexible in determining whether or not domestic workers are available "at reasonable terms and compensation." These are my words, Mr. Chairman, and are therefore put in quotes, although they should have been underlined. And that is what I think should be the test equally with "availability." We know that the phrase "reasonable terms and compensation" has different meanings in different parts of the country. And what would be a reasonable wage for an agricultural worker in the Deep South is not the same as a reasonable wage for an apple picker in New York State. I fear that if this bill were enacted especially if we do include a "reasonable wage" standard, which is not defined specifically and geographically—I fear we would again be laying the groundwork for large-scale importation of foreign workers who would take jobs, which could be filled at good wages by Americans.

So I hope very much the committee would consider that criterion as well as the criterion which is contained in the Immigration Act now, and that criterion states: "There are not sufficient workers in the United States who are able, willing, and qualified, and available at the time of application" and so on. So that is the test: "able, willing, qualified, and available." "Able, willing, qualified, and available" may include the question of compensation, but it certainly should be spelled out either in the legislative history by agreement with the Department, or in the text of the law itself.

Also, the "worker in the locality" criteria suggested by the bill is unrealistic. It fails to recognize the difficulty of identifying prospective employees and does not take into account worker mobility. The Department of Labor has already testified to that.

Now, Mr. Chairman, it deals with two issues: One, domestic migrant workers, who, in my judgment, should not be discouraged but rather encouraged to continue their work, which is very useful. There is, as you know, a tradition of moving from South to North by these families. These are mobile migrant farmworkers. The other aspect of it is that it is possible to relocate workers in the United States. Again, this is so because we are a very mobile country. Our labor force moves around all the time. Indeed, we could never have a zero unemployment, because you are always bound to have—and everybody now accepts this—3 to 4 percent of a float, as we call it, on the economic side of the Senate, Mr. Chairman, because of the fact that our labor is not set in one place.

Therefore, Mr. Chairman—and I know of the Chair's concern about this—I would suggest that the Chair and the ranking member consider some added definition which involves this mobility: in other words, not only as the statute says, "workers in the United States" but also

adding the factor of whether those workers, who are in the United States, are reasonably available to the particular locality in which the work is located. And that again could be encompassed in the broad language here "able, willing, qualified, and available." And the committee should ascertain that that would be the standard applied, even though the statute does not spell out the issue of mobility. And if it does not, then the committee should rewrite it into the law. That is my suggestion on that.

Lastly, Mr. Chairman—and I shall be through in 1 minute—the problem concerning employment of illegal aliens is a very, very serious question in New York City, where there are allegedly more than 1 million illegal aliens. And the Chair and the Ranking Member knows we can hardly afford it, considering our financial situation in New York City. Now, unlike the bulk of the illegal aliens in this country, the aliens I am speaking of in the main have not entered illegally. That is a very important question, because in the Southwest, Mr. Chairman, for example, the preponderance is exactly the other way, as I understand local conditions. So in our area they have come primarily on valid visitor and tourist visas and have simply disappeared into the general population of this great metropolitan area.

Mr. Chairman, it is well known we have somewhere between 14 and 16 million people in the metropolitan tristate area of New York, New Jersey, and Connecticut, all of which are in a satellite relationship to the 8 million in New York City. Three out of four of those immigrants who came in here legally have then become illegal aliens because of overstaying their time, or taking jobs. And 3 out of 4 of those are from the Western Hemisphere. They are not necessarily from Mexico, which is usually the case in the Southwest. The bulk of the remainder—that is, the one-quarter—are from the Eastern Hemisphere. And aside from the welfare, health and education costs of these aliens to our communities, Mr. Chairman, their most significant impact is on the job market where they hold hundreds of thousands of jobs—many of which might be available for residents in our area.

Now, ironically—and this may amuse the chairman—the INS recently apprehended two such aliens who were employed painting the Statue of Liberty at a net sum of \$9 an hour in the midst of the worst unemployment in the building trades known to man. We have an unemployment rate of about 20 percent in the building trades in the New York area. It is an amusing story, but it also is a very indicative story.

And also, as Senator Buckley has quite properly said, these aliens are often exploited by employers. They are hired specifically because they are illegal aliens and therefore they are in jeopardy and they might have to cut all kinds of corners in order to avoid being discovered.

Now, I do wish—and I will not go into details, Mr. Chairman—but I do wish to impress upon the committee one other point. Let us not forget prohibition, when we are dealing with this problem of employers being held responsible for the illegal alien. I hope very much, therefore, that the idea of the degree of punishment as compared with the action, will be very carefully considered. If the punishment is too condign—and notwithstanding that I am very much on the side of the need for controlling the situation—but if it is too condign because it

is so widespread, it could break down of its own weight for two reasons: one, the distinction about who is guilty and who is not guilty; and second, the sheer weight of numbers and the unlikelihood that juries and judges are going to take normally respectable citizens who—like in prohibition—are perhaps violating the law, and subject them to unusually harsh punishments. For that reason, Mr. Chairman, I would commend to the committee—and this is strictly pragmatically and has no relation, Mr. Chairman, to any effort to reside in an ivory tower—but I would say to the committee I rather think that the penalties of the House bill, which don't even impose a penalty for a first offense, would be preferable to what is suggested in the chairman's bill. I say that with all due respect for the reasons I have stated.

I know these congested metropolitan areas, Mr. Chairman, I was born in them. I have lived in them all my life. I also lived during prohibition, Mr. Chairman. So I speak merely from experience that if we are going to do it, then let's do it with a sense of realism, because it is very novel and could involve us in a situation that could break down of its own weight and, therefore, defeat its own purpose.

Mr. Chairman, I close as follows. This relates exactly to what I have just said. There is real concern in the Hispanic community—where I come from—particularly among the Puerto Rican group, which are native born but Spanish-speaking citizens in many cases—and we've got about 1 million in New York City alone—that legal aliens and naturalized citizens will be discriminated against in employment simply because of their Spanish heritage if these provisions respecting employment of aliens here illegally are to be enacted. And I emphasize the availability of redress under the provisions of the Civil Rights Act, which prohibits discrimination on the grounds of national origin. I direct the committee's attention to the provisions of H.R. 8713. Those provisions propose accelerated relief for this group by authorizing the filing of complaints with the Department of Justice instead of with the backlogged EEOC. And I hope the committee will have in mind that such a special provision for accelerated relief in this bill or one parallel to it, Mr. Chairman, in a separate bill, would be beneficial in quieting the fears of the many Spanish-speaking Americans who are here quite legally, but who are very worried that they simply will suffer if the provisions dealing with illegal aliens of the nature of which I have testified to and which the chairman has included in this bill are enacted into law. The reassurance can come to them, I think, if there is some expedited way in which they can try to correct any discrimination against them.

Thank you very much.

The CHAIRMAN. Senator Fong?

Senator FONG. Senator Javits, you have had tremendous experience in this field. And there are a lot of immigrants in the State of New York. Suppose this bill was enacted and it took effect immediately. According to the immigration officials, there are approximately 8 million illegal aliens here. I think the figures we got showed one-fourth of them would be eligible for adjustment of status. That would leave 6 million illegal aliens.

What would happen immediately?

Senator JAVITS. The flood. We couldn't do it. So I would assume that the committee will give a period of notice before we expect the

act to fully bite. One of the ways to do it is by the no-penalty for the first offense. That is why I suggested that as something the committee could consider, which is in the House bill.

But, I think what you've got to do is give an adequate period of time. The Department's advice on this would be very valuable. You must give adequate time to enable people to straighten themselves out. If they are employing an illegal alien, given them enough time and notice to say, you know, "no can do." So, if he has time, then he could replace him, try to replace him, which often happens by reorganization of one's own household or one's own establishment. These are probably most often small retail establishments in which the employer, perhaps by mechanization or some other way, tries to deal with the problem. But you've got to give people an opportunity to comply with the law without an immediate penalty which in a sense catches them by surprise.

Senator FONG. You are speaking now from the employer's standpoint?

Senator JAVITS. Yes.

Senator FONG. I am talking about the illegal alien's standpoint.

Senator JAVITS. That is why I suggested that it be made more possible to adjust one's status. I suggested a rather low figure, I think, but in my judgment a desirable one for that very reason—that is, the 5 years. I think that will give you an enormous number more than the one-quarter whose status could be adjusted.

And as an initial effort, I think the more lenient we are on the amnesty side, the less likely are we to be inundated with claims of real hardship that we are going to have to listen to and respond to.

Senator FONG. Thank you very much for sharing your experience with us. You have been very helpful.

The CHAIRMAN. Yes, Senator, you have been very helpful and that was a fine statement.

Senator JAVITS. Yes, I have the entire statement—

The CHAIRMAN. That will be placed in the record.

[The prepared statement of Senator Jacob K. Javits in full follows:]

STATEMENT OF U.S. SENATOR JACOB K. JAVITS

In representing the state of New York in the Senate for 20 years, I have been asked by New York constituents to interest my office in an average of 1200 immigration cases per year. Some were particularly worthy and poignant cases; some simply sought undeserved special treatment. Sometimes the subject person was world famous; most often they were rank and file people. But in every case the human factor was foremost in our consideration of the case. The world famous symphony conductor from Western Europe and the young domestic worker from Costa Rica have the same desire as that which motivated all our ancestors: they wanted to be Americans. And the difficult task of deciding which of the applicants should be helped to achieve their goal has occupied me since I was first elected to the Congress.

I was a member of the Senate Judiciary Committee in 1965 when the last major revision of the immigration laws took place, and while I strongly opposed some provisions of that Act—viz, the imposition of limitations on Western Hemisphere migration—it was, in general, a great improvement over the previous system and represented a far more equitable and human approach. Since 1965, some of the deficiencies of that Act have become apparent to me and I am most pleased to note to the Chairman, too, who has introduced S. 3074 to correct many of them.

The most significant improvement, I believe, will be the establishment of priorities and preferences for Western Hemisphere immigration. I have seen a

number of cases in my own office, of the unworkability of the present system in which all the countries of the hemisphere are lumped together with a single numerical limitation and no way is provided to grant preferences even to family members or to highly skilled workers and professionals.

Another difficulty with the present law, which became apparent almost immediately, was the effect on the overall quota of the large number of Cuban refugees who were admitted. In some years, this one category of immigrant used up more than one third of the total visas available to the entire Western Hemisphere. In 1969, Senator Philip Hart and I introduced legislation which would have put those political refugees in a separate category not chargeable to the overall quota. Our bill was never enacted, but I am pleased that a similar provision is included in S. 3074.

Also, in terms of the numbers a relatively minor problem is alleviated by the proposed bill; that is the difficulty faced by older immigrants whose facility with the English language is not sufficient to enable them to pass a literacy test. In my state—surprising as it may seem—it is possible to live for years in a community where English is not spoken. There are parts of Brooklyn, for example, where everyone an old person might see during the course of his day—storekeepers, friends, priest, politician—can speak Italian, or German, or Yiddish. Younger immigrants who must deal with the larger world of job and school learn English, of course. But often their parents, content to stay in the old ethnic neighborhood, never attain much proficiency. As you note in your statement, Mr. Chairman, the Immigration and Nationality Act of 1952 contemplated a moratorium for these people and excused them from the literacy test if they reached the age of 50 by the date of enactment and had 20 years residence in the United States. S. 3074—the Chairman's Bill—would move that eligibility date forward to 1976, but would allow that exemption only to persons over 60. I would agree with the age change but propose that instead of setting a fixed date for achieving that age, so we do not box ourselves in as our predecessors on the 1952 Act did, which requires frequent updating of this provision. I respectfully suggest that the exemption be allowed to any person at 60 who has lived in the United States for 20 years, no matter when he reaches that age.

To touch briefly on a few other areas of concern generally and to my constituency particularly, I would like to make the following points:

1. I would not favor allowing crewmen to adjust their status in this country as proposed in Section 10. The alien crewmen problem has been a serious one in a port the size of New York, and ship-jumping should be discouraged as it is by the prohibition in the present law.

2. The bill proposes, in Section 11, to grant an effective amnesty to illegal aliens who have been in this country since 1968. I believe we can be more generous than that and provide amnesty after 5 years of illegal residence in the United States. In many cases firm ties have been established during that time and the human problems involved in deportation after such a period would, in most cases, be substantial. After five years the administrative burden of trying to deport is not worth what can be gained.

3. I endorse the proposal of the State Department in limiting immigration by professionals to those who have already obtained jobs in this country—a requirement already imposed on skilled sixth preference workers—and I favor reordering the preferences so that professionals fall to fifth preference and relatives currently in fourth and fifth preferences be moved up one step. The problem of foreign medical graduates is one to which I have given particular attention both in my capacity as ranking member of the Senate Labor and Public Welfare Committee which is concerned with health matters, and as a member of the Foreign Relations Committee which sees the hardship visited upon third world nations when their medical personnel emigrate.

4. I believe Section 5 of the bill, which raises the numerical limitation for dependent areas from 200 to 600 is a step in the right direction but not a big enough step. I believe the eight Western Hemisphere and two Eastern Hemisphere dependent areas should be accorded equal status with independent nations and be subject to the same overall numerical limitation. For example, I see no reason to treat Antigua in the Caribbean differently from Jamaica—the former having a six or seven year wait for brothers and sisters of American citizens, and the latter being treated as an independent nation under the proposed bill. Since the overall total immigration figures remain the same, raising the individual limitations for the dependent areas simply allows more visas for those

close relatives and others with preferences. If this change is made, I suggest that visas for dependent areas be charged to hemisphere quotas where they are located, rather than to the hemisphere and individual limitation of the mother country.

Finally, two other major sections of the bill deserve the consideration of the committee. Section 2 would remove the bar which has heretofore limited the employment of nonimmigrant alien workers to those jobs which are temporary in nature. Further, under the proposed changes, the Secretary of Labor would be required to act at an employer's request for certification within 60 days of filing (20 days in the case of farmworkers), and should the request be denied due to a finding that qualified domestic workers are available in the locality where the work is to be performed, the Secretary is required to refer the domestic workers to the employer.

I strongly oppose the changes concerning nonimmigrant alien workers suggested by this bill. The deletion of the "temporary" job requirement would cost the American worker thousands of job opportunities. If we have learned anything from our experience with the now best forgotten Bracero program, it is that massive importations of alien workers have a highly disruptive effect on those American workers who are but marginally connected to the workforce. This country should place primary emphasis on placing its citizens in jobs which offer some prospect of stability. To do otherwise would mean continuous relocation or permanent unemployment to many workers.

It has been my experience in dealing with INS and the Department of Labor on these questions over the years that their position is somewhat inflexible in determining whether or not domestic workers are available "at reasonable terms and compensation." We all know that that phrase has different meanings in different parts of the country and that a reasonable wage for an agricultural worker in the Deep South is not the same as a reasonable wage for an apple picker who must live in New York State. I fear that if this bill were enacted—especially if "reasonable wage" is not defined specifically and geographically—we would be laying the groundwork for the large scale importation of foreign workers who would take jobs which could be filled—at good wages—by Americans.

I also point out that the certification timing requirement and the "worker in the locality" criteria suggested by his bill are both unrealistic. The former fails to recognize the difficulty of identifying prospective domestic employees and the latter does not take into account the mobility which has traditionally been a characteristic of the domestic workforce. There is no justification for removing incentives for employers to employ domestic migrant farm workers.

Section 12, which is concerned with the employment of illegal aliens is of particular interest in New York. The Immigration and Naturalization Service has estimated that there are more than a million illegal aliens in the New York City metropolitan area. Unlike the bulk of the illegal aliens in this country, they have not entered illegally, as do most of those in the Southwest. Rather, they have come primarily on valid visitors or tourist visas and simply disappeared into the general population. Three out of four are from Western Hemisphere nations other than Mexico and the bulk of the remainder are from the Eastern Hemisphere. Aside from the welfare, health and education costs of these aliens to our communities, their most significant impact is on the job market where they hold hundreds of thousands of jobs many of which might be available for U.S. residents.

Ironically, the INS recently apprehended two such aliens who were employed painting the Statue of Liberty at more than \$9 an hour in the midst of a tremendous recession in the construction trades in New York. Most, of course, are not paid so highly, but in taking lowly paid jobs they tend also to depress wage scales for Americans. And, they are often exploited by unconscionable employers and for this reason many are hired because they are illegals. This must stop, and the best—indeed the only—way to do this is to impose some kind of a penalty on the employer who consistently hires such aliens.

S. 3074 imposes a civil penalty, but allows, in my view, a significant loophole for the unscrupulous employer. By obtaining an unsworn statement from the alien, the employer has prima facie evidence that he made a good faith effort to determine the status of the applicant. I favor the stronger, but more graduated approach taken in H.R. 8713, a bill reported by the House Judiciary Committee. Under the provisions of the House bill, on a first offense, the employer is simply given a warning. On the second offense, the government must prove that he

knowingly hired an illegal alien, and the employer is subject to a civil penalty. Only on the third offense do criminal penalties obtain, and the government still bears the burden of proving consciousness of wrongdoing. Because of the gradual escalation of the penalty, I believe this provision is not as burdensome on the conscientious employer, but neither does it free him entirely from responsibility as would the signed statement provision of S. 3074.

In this conviction, I would like to acknowledge the very real concern of the Hispanic community—particularly the Puerto Rican group which are native born but Spanish speaking citizens—that legal aliens and naturalized citizens will be discriminated against in employment simply because of their Spanish heritage if these provisions respecting employment of aliens here illegally are to be enacted. I emphasize the availability of redress under the provisions of Title VII of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of national origin, and direct the Committees attention to the provisions of HR 8713 which propose accelerated relief for this group by authorizing the filing of complaints with the Department of Justice instead of with the backlogged EEOC. The enactment of such a special provision for accelerated relief even in this bill or one parallel to it would be beneficial even if for only a trial period.

The CHAIRMAN. Let's go back to the Labor Department.

STATEMENT OF BEN BURDETSKY, ACCOMPANIED BY KENNETH BELL AND JOHN J. SHEERAN—Resumed

The CHAIRMAN. Mr. Burdetsky, what is the Labor Department's experience with the BWI program?

Mr. BURDETSKY. We find it to be a pretty effective program, basically. You know, we use BWI's primarily in the sugarcane industry and with regard to apple picking. And I have had 2 years of personal observation of it recently. The first year that I observed it, we had a rather hectic and difficult time with the apple industry, particularly in trying to determine if there were adequate American workers available, and things of that sort. But finally we did get the BWIs in, after a lot of turmoil.

But last year, we had, I think, an extremely effective working situation. We were working closely within, with the associations and with the growers. We identified very early the workers that would be required and where they would be required and when. And we went out with them to search for local workers, using the regular process. And we ended up with about 8,500 in the sugar industry and 4,500 in the apple industry.

And we also utilized about 4,000 more domestic workers last year than we had in the previous year, which indicated the economic situation was such that there were many more domestic workers available.

We used about 1,000 BWI's, but the program operated relatively smoothly. We think it is a useful program.

The CHAIRMAN. Is there any reason why that same thing could not apply to Mexico?

Mr. BURDETSKY. Well, technically there is no particular reason. The BWI program has operated almost totally along the east coast. It has been an effective arrangement with the governments there. And there is no technical reason as to why not—

The CHAIRMAN. You say no technical reason?

Mr. BURDETSKY. I mean, there is no reason why such a system cannot be operated that way. It just never has been that way. There are many, many Mexicans, as you know, who are working in the United States through a variety of different sources.

The CHAIRMAN. But why are you still bringing in thousands of BWI workers in the Northeast? The Northeast already has such high unemployment rates.

Mr. BURDETSKY. We are only bringing BWIs in after we have clearly established the fact there are no domestic workers available for those crops at the time and place, Mr. Chairman, who are ready, willing, and able to work. As I indicated, we are using many more domestics last year and this year again; but we certainly have an obligation to make sure the crops are picked when they are ready to be picked and that we have the workers available, whether it be American labor or supplementary foreign labor when the growers need it.

The CHAIRMAN. Under your concept of the mobility of labor, how far does the obligation of the United States' employer run to recruit workers whom he cannot find locally?

Mr. BURDETSKY. Well, we have the most mobile work force in the world. That is one of the prideful things that we continually say. And I know that there were Mexican-American workers from many places in Texas, who were working in Connecticut and other New England States last year. So that is quite a distance to bring them. We also know Texas and Louisiana workers worked all the way up through the Midwest and all the way up through Minnesota. We traditionally have the Florida and east-west coast screen, that has been working effectively many, many years. So there is a fairly well-established principle, Mr. Chairman, that you get workers from fairly far away because of the mobility of your work force and the crop rotation that the weather provides.

The CHAIRMAN. Does the employer have to recruit workers from Alaska when he cannot find them in Atlanta?

Mr. BURDETSKY. You say from Alaska?

The CHAIRMAN. From Alaska when he cannot fill jobs in Atlanta, Ga.

Mr. BELL. Mr. Chairman, what we attempt to do is assist the employer to find workers who are available. Certainly if Alaska does not indicate they have any available workers for the particular type of worker occupation, then the employer would not be required—if he were in, let us say, the Northeast part of the United States—then he would not be required to recruit workers in Alaska. But if there was an identified source of availability, yes, then we would identify that for the employer and assist him in recruiting those workers.

The CHAIRMAN. Assume a case in which an employer shows he has been unsuccessful in efforts to recruit labor through normal channels, including the State employment service, consequently he asks you to certify foreign workers. What do you do then?

Mr. SHEERAN. Mr. Chairman, the process is for the employer to submit an application for the alien he wishes to hire. That application is processed in general, normal conditions through the local State employment service office, where the work will be performed. They furnish information regarding the availability of U.S. workers, prevailing wages for the occupation in that area, et cetera. The application is then transmitted to one of our regional offices that has certifying authority for that area. It is approved or denied, based on the findings of availability and any adverse—

The CHAIRMAN. Would you then deny this?

Mr. SHEERAN. No; not for the permanents; that is, the aliens seeking admission for permanents. We are improving, even at this time of high unemployment, we are approving 65 percent of the applications before us.

The CHAIRMAN. How long does it take you to act on his request then?

Mr. SHEERAN. On a nationwide basis, sir, it takes just slightly over 30 days from the time that the application is received in the local office and in an acceptable form for processing, to the time a determination is made in our regional office. These are the nonagricultural permanent applications, sir.

The CHAIRMAN. The H-2 provision of this bill, which the Labor Department objects to, is identical with one that the subcommittee considered in November of 1974, an amendment to H.R. 982. The Secretary of Labor was willing to accept the amendment. We have his letter to that effect.

When was this letter repudiated and by whose authority?

Mr. BURDETSKY. Mr. Chairman, I don't think it is a repudiation of the letter. I think what we said then was that—well, let me read it:

These provisions do not in any way change the criteria for admission based upon the availability of U.S. workers and adverse effect upon wages and working conditions. Although we believe the requirement for the determination within 20 days for agricultural workers and 60 days for all other workers could easily be accomplished in regulation, we would not object to its inclusion, predicated upon a continuation of the basic criteria that were in effect at the time.

Now, our understanding, at least, of the section-by-section analysis, Mr. Chairman, seem to infer that a lot of the preplanning of the work that goes prior to the actual request for certification, Mr. Chairman, could be ignored or would not be required if you went to the provisions as we read them, or as we understand them. We may be wrong on that score, but we thought the way we read it and the way it appeared on the section-by-section analysis, we thought we would, in effect, be required to just receive the certification, have 20 days to make that decision, and that would not hardly be adequate.

What we are saying is that we have been able to work very effectively with growers and associations in advance of the requirements—and knowing what they need—so that if we got to the point where we have done everything that is required, then that 20-day provision would be fine. But it takes a lot of work to get to that point, and a lot of cooperation, which we think we are now able to get and work with.

The CHAIRMAN. Senator Fong.

Senator FONG. You stated that 57 percent of those who come in with labor certificates, that is, who have to show that they have a job here, then change their jobs within 2 years. Is that correct?

Mr. BURDETSKY. Yes, sir, that is based on research studies.

Senator FONG. Actually, they are coming here and doing something different from what it is intended they should be doing. Is that not correct?

Mr. BURDETSKY. Well, that is part of the problem that we tried to lay out. You know, we act as though we are dealing with an extremely precise labor market situation at a given time for a particular job.

But things change and circumstances change. We know that maybe 3 or 4 or 8 months or even a year later, the circumstances relating to that job will change. The circumstances relating to that job could change almost immediately upon a person's arrival. And what the experience has actually shown is that these changes are taking place with significant numbers of people moving to completely different jobs that were not a part of the original analysis we entered into.

The jobs, if we had looked at them at that point, for instance, would not have been certifiable.

Senator FONG. Well, take the case of a domestic, which of course is a particular job where you could very well delineate the activities of the domestic worker. Suppose a domestic comes in and then quits that job after a month and goes to another job that is entirely different. You have a situation here in which a person comes in for one designated type of occupation, and then goes into another type of occupation. You have nothing here to stop that kind of a situation, do you?

Mr. SHEERAN. No, sir. The Constitution, I believe, permits the permanent resident to have the mobility to move, as do the citizens. There is no way we can stop them from changing occupations when they get here.

Senator FONG. But, once a person is designated for a certain occupation and enters the United States, then the next day he can change that job. Is there nothing you can do?

Mr. SHEERAN. No, sir, nothing that we are aware of.

Senator FONG. That has been going on ever since the law has been in effect. Is that correct?

Mr. SHEERAN. Yes, sir, the research study to which we referred indicates that some of the aliens coming in the professional levels may downgrade themselves. This may be a result of a language problem initially. When they learn the English language fluently, they can perhaps reenter their profession. To some degree, there may be a licensing problem for them, that is, moving immediately into their profession. The research study also indicated the numbers in the lower skilled groups, Senator, a number of them move upward in the occupational scales.

Senator FONG. Approximately 400,000 immigrants are coming to the United States every year. You stated that 10 percent of that number enter the labor force. Of course, many of them are children, spouses, and what not, who do not enter the labor force.

Mr. BURDETSKY. What we said, sir, is that we deal with just 10 percent of the 400,000, and our certification process just touches a very small part of the total immigrant group that comes in. And out of that 400,000, sir, a great number of them enter the labor market without all of the detailed labor market analysis we are asked to apply to just 10 percent.

Senator FONG. But they come under various preferences which you have no control over, correct?

Mr. BURDETSKY. Right.

Senator FONG. Then about 40,000 come in, Mr. Burdetsky, in a year under labor certification?

Mr. BURDETSKY. Yes.

Senator FONG. And, of the 40,000, you say about 20-some-odd thousand may change jobs within 2 years?

Mr. BURDETSKY. Right.

Senator FONG. Now you propose to have a blanket certification. How do you take care of certain exemptions? You say here that you are going to take care of certain exceptions, like those who have exceptional merit and ability. How is that going to be taken care of?

Mr. SHEERAN. People who can document to the satisfaction of the Immigration and Naturalization Service, or the U.S. Consul abroad that they are of outstanding merit and ability. And we are thinking here of the criteria that is generally used by the Immigration Service now in making that determination. Well, these people would be excluded from the provisions of 212(a) (14).

Senator FONG. And this has to be written into the law. Is that correct?

Mr. SHEERAN. Yes, sir.

Senator FONG. This cannot be done by the Immigration Service?

Mr. SHEERAN. No, sir. They are subject to labor certification right now.

Senator FONG. You would not require them to have labor certification?

Mr. SHEERAN. That is right.

Senator FONG. All others would require labor certification?

Mr. BURDETSKY. Senator, what we have suggested as a better approach, as I see it—and this is after 10 years of experience—is that we would conduct a wide range of labor market studies. We have, you know, within the United States employment system that we work with, Senator, we have 2,500 local offices. Each State has a system. They do a lot of labor market analysis right now. We would arrive at decisions about certain occupations and certain places for which certification should not be allowed; in other words, we would not enter into it unless the Secretary determined that a certain occupation in a certain place should not be certifiable. We would not look at each case on an individual basis.

If that attempt by the Secretary does not appear, we would not enter into the scene at all. It is only when we have decided—and let everybody know through the public notice system—that these jobs and these locations are in real shortage and that American workers are available and that we should not allow immigrants to take these jobs—in other words, we would say that on a specific basis only then.

Senator FONG. Are you proposing that this is only limited to different areas or would this be nationwide, this blanket?

Mr. SHEERAN. They would be admitted, sir, in any area where they indicated they intended to reside, unless they were barred.

Senator FONG. For example, there may be an excess of engineers on the United States mainland, yet there may be no engineer available in Guam, for example. How would that be taken care of?

Mr. SHEERAN. Well, under those conditions, sir, we would perhaps state that engineers in a specific field of engineering should not be admitted into the United States, although I don't foresee that happening. They would still be admissible to Guam if there was a shortage.

Senator FONG. If this employer in Guam was unable to secure anyone, then how would the certification work? You have a blanket certification saying that there is an excess of engineers but Guam does not have an excess of engineers. Now, how would you work it out?

Mr. SHEERAN. Well, the Immigration Service would admit the engineer into Guam if there were no bar against the admission of engineers into Guam.

Senator FONG. I see. Would this law, as presently written, take care of that situation?

Mr. SHEERAN. No, sir.

Senator FONG. It does not?

Mr. SHEERAN. They require certification right now.

Senator FONG. No, I mean the present bill, which has been introduced by the chairman of this committee, would that take care of it?

Mr. BURDETSKY. It continues the existing situation, which we are suggesting be changed.

Senator FONG. I see. How many people are in the Labor Department now processing labor certification?

Mr. BURDETSKY. Do you want to answer?

Mr. SHEERAN. We have designated 215 positions that are assigned and funded to the various employment service offices around the country. There are approximately 70 to 75 in our regional offices around the country and in the Virgin Islands, who are processing certifications. We have 15 in the national office. These are professional, secretarial and clerical.

Senator FONG. Had you had this blanket certification, would you be eliminating some of those jobs or would they still be in existence?

Mr. BURDETSKY. No, Senator, I think what we would envision is transferring some of these jobs to the labor market information function in order to make sure we would augment what we now have, Senator, to make sure that what we come up with is appropriate for the system that we are proposing. I do think there would be considerable savings, though, in the overall system, which you know is quite extensive and time-consuming.

Senator FONG. Now you heard me propound a question to Senator Javits. If the law went into effect and if it should eventually be found that eight million are here illegally, how would that affect the labor market immediately with all of these aliens thrown out of employment? How would we get them out of the country? What is the situation, as you perceive it to be?

Mr. BURDETSKY. Well, there are two sides to the question: one is if you were to say that all 8 million were to be located and deported, and if you were to ask what would be the net economic impact—

Senator FONG. Yes.

Mr. BURDETSKY. I cannot imagine that. A goodly number of them are fully occupied, I am sure, in a full range of jobs, mostly at the lower end of the scale. These are jobs which have to be done in an expanding service economy, such as we have, and which, frankly, they have had the larger share of in some countries. I think it would be a chaotic situation.

The other side of it is if you were to suddenly blanket them all in with amnesty, what would be the net effect of this new ability to then

compete actively in the labor market for all jobs? What would be the total net effect on the labor force. Now, that is another question. I just do not know.

Senator FONG. Have you given the matter serious thought as to how you would take care of this situation in this bill?

Mr. BURDETSKY. No, I don't think we have ever sat down and done an adequate analysis. That is certainly something we need to do, though.

Senator FONG. Yes, this is going to be a tremendous problem. It is going to be very, very chaotic if the figures, which have been given to us here, are correct; that is, that only approximately one-fourth of them would be eligible for an adjustment of status.

Mr. BURDETSKY. We have two experiences, though, that we can point to that confirms your concern and our concern. I guess the Virgin Islands situation, in which 40 percent of the work force are illegal aliens is one example, or are working there temporarily. They are temporary aliens who have been there for 5 or 6 or 8 or 20 years. Suddenly, the employment situation worsens and the concerns are expressed as to what do you do about that employment situation and those aliens. There are, perhaps, domestic Virgin Island workers out of work. The question is: Should we not get rid of all of these alien workers? And that is creating a serious problem. You've got all the social and other problems associated with it. I happened to spend a little time on the European guest worker program, in which I was shocked to learn, for example, a country the size of Turkey had 500,000 of its workers working out in Germany and other countries and about 3 million overall. Suddenly, the economy switched and unemployment started to go up. Great concern was expressed about local people being out of work. And there are very serious problems emerging of workers being thrust back into the home countries quickly, without any preparation. Some had established families and had children born and all of the other things associated with being there 5 or 6 years. They are grappling in Europe with what to do about it, that is, with how to have some kind of orderly transitional arrangement.

What does one say about the equity of saying to workers, who have been there all of these years, saying to them: "You have been here 6 years and served us well when we needed you, but now you are going back."

And of course, we have the same problems that would take place here. I don't think we have all the answers. I cannot picture what would happen if we suddenly identified all the illegal aliens, the 8 million or 10 million or 12 million. I don't think anybody really knows.

Senator FONG. In this bill, it says if you have worked illegally, if you have accepted a job, since you are an illegal alien and you are not supposed to accept a job, therefore, you will not be able to adjust your status. How would that affect the situation?

Mr. BURDETSKY. Well, that is a hard one for me to answer. I just happen right now to think of 2 weeks ago when I was in Tucson, Ariz., watching a television program. I just happened to turn it on where there was a raid on a laundry and they raided the laundry and found 17 illegal aliens working there in that laundry in occupations that were very low-level types of occupations, low-pay jobs. And

they asked the employer this very question: "Didn't you know these were illegal aliens?" And he said: "Oh, I looked and there was a social security card." Or whatever it was. And the problem of identifying responsibility, the problem of who is responsible to do what, is a very complicated one. I guess I learned from watching that program and listening to some other testimony, that you can get almost any papers you want somehow. I just don't know how that would all be worked out.

Senator FONG. Would you draw differentiations between those who are already working and those who would be asking for a job?

Mr. SHEERAN. Did you mean the illegals, sir?

Senator FONG. Yes.

Mr. SHEERAN. I don't know whether you could do that very effectively. I think it is entirely possible that if they were granted amnesty, for example, that there could be a significant movement of aliens currently in substandard jobs—because of the very nature of their indenture—who, once given legal status, would be very apt to move up into the better jobs in the communities and in that way they could certainly have an impact on the U.S. workers.

But, in view of the fact that we know so little about the numbers and the estimates of people we are talking about, it is extremely difficult to conjecture what might happen.

Senator FONG. Thank you. I have no further questions.

The CHAIRMAN. We will recess now until 2 o'clock.

[Whereupon, at 12:10 p.m., the subcommittee recessed, until 2:35 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. The Chair now calls Rev. John W. Schauer, who will speak on behalf of the American Council of Voluntary Agencies. This is an organization which, through the years, has performed invaluable services in helping the immigrant, and in particular with respect to refugees.

Proceed.

STATEMENT OF JOHN W. SCHAUER, DIRECTOR OF THE IMMIGRATION AND REFUGEE PROGRAM OF CHURCH WORLD SERVICE FOR THE AMERICAN COUNCIL OF VOLUNTARY AGENCIES; ACCOMPANIED BY WILLIAM MALES, HIAS, INC., AND JEAN MacDANIELS, INTERNATIONAL RESCUE COMMITTEE, INC., BYRON SCHMID, LUTHERAN IMMIGRATION AND REFUGEE SERVICE, LUTHERAN COUNCIL IN THE UNITED STATES, AND JOHN E. MCCARTHY, MIGRATION AND REFUGEE SERVICES, UNITED STATES CATHOLIC CONFERENCE, CYRIL GALITZINE, TOLSTOY FOUNDATION, INC., AND THERON VAN SCOTER, SECRETARY, COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS, AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE, INC.

Reverend SCHAUER. Thank you, Mr. Chairman. I am John—

The CHAIRMAN. Now, wait a minute. Let them state who they are for the record.

Reverend SCHAUER. All right, sir. We will be coming to that in just a moment. It is built into the testimony.

The CHAIRMAN. Fine, sir.

Reverend SCHAUER. I am John W. Schauer, vice chairman of the Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service, Inc. I also serve as director of the Immigration and Refugee Program of Church World Service, which is a member agency of the committee.

Others from the American Council accompanying me today are: William Males, HIAS, Inc.

Miss Jean MacDaniels, International Rescue Committee, Inc. Dr. Byron Schmid, Lutheran Immigration and Refugee Service, Lutheran Council in the United States.

John E. McCarthy, migration and refugee services, United States Catholic Conference.

Cyril Galitzine, Tolstoy Foundation, Inc., and Theron Van Scoter, secretary, Committee on Migration and Refugee Affairs, American Council of Voluntary Agencies for Foreign Service, Inc.

The following statement in regard to immigration legislation is submitted on behalf of the committee whose agencies are and have been for many years vitally concerned with, and engaged in the field of assistance to migrants, refugees, escapees, expellees, and displaced persons from all parts of the world. A listing of these agencies which are members of the American Council's Committee on Migration and Refugee Affairs is attached to this statement.

In the past 25 years hundreds of thousands of refugees have come to the United States, most of them with the assistance and sponsorship of the voluntary agencies which have a wide network of constituents throughout the country. The agencies' resettlement programs are linked to resettlement committees across the Nation through the cooperation of local churches, synagogues, social service agencies, and other organizations. This activity reflects the principle of person-to-person concern which characterizes the work of Catholic, Protestant, Jewish, and nonsectarian agencies.

The agencies stress the need for legislation to give a statutory basis for a humanitarian asylum policy for the United States. Recent events throughout the world demonstrate that refugee problems continue as the flow of persecutees, escapees, and expellees from countries of Eastern Europe, Asia, Far and Near East, Africa, and Latin America continues.

The voluntary agencies have consistently urged that the statutory definition of refugee be in line with that of the United Nations 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, to which the United States is a signatory. We note with satisfaction that the regulations of the Immigration and Nationality Service for the Refugee Travel Document now incorporates this language.

This language, we would like to note, Mr. Chairman, if we may, that we have read the Congressional Record and noted that Senator Fong has introduced an amendment to 3074, which clarifies a statement; and there is also before the committee S. 571, introduced by Senator Kennedy, which moves also in this general direction. And we would hope in consideration of 3074 that these be brought into consideration by the committee.

We would favor the retention a refugee preference within the overall preference system under the numerical ceilings, to assure the admission of a set number and a fair share of the world's refugees. We firmly believe that admission on the basis of visas rather than as "conditional entrants" will facilitate the integration of those refugees into our society.

The importance of admission on parole of additional refugees in emergency situations has been demonstrated in the cases of Hungarians, Chinese, Czechoslovaks, Russians, Cubans, Ugandans, and most recently the refugees from Chile, Vietnam, Cambodia and Laos. Therefore the suggested provision by which the Attorney General be clearly authorized by law to parole additional numbers of refugees to meet emergency situations is strongly recommended. Experience has shown that the lack of specific legislation for the adjustment of status in the United States of parole refugees causes serious problems in the integration of these refugees. It is important that the adjustment of these refugees paroled into the United States not be charged against numerical ceilings.

Again, we note, Senator, that Senator Fong has introduced such legislation as an amendment to 3074.

We also favor the proposal that all refugees who apply for adjustment of their status in the United States, including adjustment under section 245, be permitted to adjust regardless of the manner of entry.

WORLDWIDE CEILINGS

The voluntary agencies are strongly of the belief that the national interest of the United States would best be achieved if the distinction between the Eastern and Western Hemispheres is removed so that a fair, equitable, and just policy exists on a worldwide basis. The preference system for Eastern Hemisphere should be extended to the Western Hemisphere to achieve equity for family reunion, admission of needed workers, and the acceptance of a fair share of the world's refugees. We also urge that parents of legally admitted aliens be included in a preference category.

And we commend S. 3074, the bill the committee is reviewing today, in that it has taken this into account.

While we endorse the principle of worldwide ceilings with a uniform preference system, we believe that there should be a transition period, to enable adjustments to the new system. This is in light of the fact that the Western Hemisphere is so far backlogged at this point.

We strongly recommend the provision by which persons in the United States on a temporary basis be permitted to adjust status without the necessity of leaving the United States regardless of the country of their birth.

LABOR CERTIFICATION

It is our conviction that the present system which requires individual labor certification is cumbersome, time consuming, and expensive. The provision of section 212(a)(14) as it existed prior to the enactment of the 1965 law, allowed immigrants to enter the United State unless the Secretary of Labor certified that there were sufficient numbers of persons available in particular employment categories.

This provision protected the rights of American labor, and in our judgment, was a much more satisfactory arrangement.

EMPLOYMENT DISCRIMINATION BECAUSE OF ALIENAGE

In view of the recent Supreme Court decision, *Espinoza v. Farah Manufacturing Co.*, we recommend that a provision be added to the immigration legislation currently under consideration to bar employment discrimination because of alienage.

Again, there is an amendment introduced by Senator Fong which addresses itself to this consideration.

We favor the proposals which facilitate the admission of mentally retarded aliens with close relatives, extend waivers to married or unmarried sons and daughters who committed fraud in their visa or entry application, extend validity of reentry permits from 1 to 3 years, and bring the date for making a record of lawful admission for permanent residence from June 30, 1948, to July 1, 1968. And we note this is a provision in the bill S. 3074.

We also urge that provision be made to enable those aliens out of status (who are otherwise admissible under the Immigration and Nationality Act) to declare their presence in the United States as of a predetermined date—so as not to disrupt the lives of so many who have established an equity, family, home, job, and so forth, by a “clean sweep” mass deportation. Such adjustment should be made outside of numerical limitations and without labor certification. Every effort should be made by the Government enforcement agencies to determine that under no circumstances should this problem be allowed to recur.

We note in S. 571, again, provision is made for this type of equity as well.

The voluntary agencies commend the record of the administration and of Congress in providing for assistance to refugees, migrants, escapees, and expellees. They express their appreciation for the leadership provided and especially for the role of this subcommittee in furthering our mutual objectives.

We wish to thank the distinguished chairman and the members of the committee for giving attention to the wide-ranging immigration issues which face the Nation, and we know that our views will receive your most sympathetic and understanding consideration.

Thank you, Mr. Chairman.

The CHAIRMAN. Now, you said that this problem should not be allowed to occur, as I understand it?

Reverend SCHAUER. Yes, sir.

The CHAIRMAN. Now, how would you stop it from occurring?

Reverend SCHAUER. Mr. Chairman, I think one of the problems that has caused the increased number of aliens out of status has been that the Immigration and Naturalization Service has been understaffed in enforcing the present immigration law that has allowed people, as was mentioned earlier by Senator Javits, to remain out of status; that is, visitors, students, and so forth. We also have the border problem as we look to the situation of the Mexican-American border and the number of wetbacks that continue to cross and are then subject to deportation.

The CHAIRMAN. Now, you spoke of the United States taking its fair share. What is a "fair share" for the United States?

Reverend SCHAUER. If I might cite what would be considered to be a fair share of a current problem. We are aware of the human tragedy that is taking place in Thailand, of the thousands of refugees who are in refugee camps and the fact that there is a continuing number of people who are escaping from Vietnam, Cambodia, and Laos, who are coming into Thailand. At this point, there is a need for, it seems to me, a response from the United States that would indicate there—

The CHAIRMAN. But my question is, what is our "fair share"?

Reverend SCHAUER. I was coming to that, sir. We would consider, as an ACVA statement—that is, as a report of the committee that made a field trip to Thailand—that about 10,000 parole numbers be available to those for whom the only solution would be to come to the United States. That would be about—I mean, you cannot put it down as to a specific percentage number, but—

The CHAIRMAN. In relation to the rest of the world, sir, what is our fair share?

Reverend SCHAUER. Taking this as a for instance, sir—and again because it is current—the French are receiving, I believe, 600 people a month out of Thailand. Now, Australia is taking some, and the Scandinavian countries are moving in this direction as well. Other countries in the world have assumed some responsibility for the children and refugees, and the largest portion of those who have come out, Mr. Chairman, have gone to other parts of the world, and that is most of the free world, incidentally.

Now, to put it down to a percentage amount, well, I really don't think we can come to that kind of a thinking; certainly, the United States should be responsive to developing and emerging and massive refugee situations.

The CHAIRMAN. Thank you, sir.

Mr. McCARTHY. My name is John McCarthy, and I just wanted to add one little minor addendum to this. On this refugee situation, Mr. Chairman, the people we are talking about in Thailand are largely relatives to those admitted to the United States by the U.S. Government, or people involved in our activities in Southeast Asia. We are not talking about moving 80,000 or 90,000 or whatever the number is. We just cannot do that. We are talking about only moving people who are directly involved with our national interests in Southeast Asia.

Three weeks ago, the situation was not as it is today. We know, over the past fortnight, the Government of Thailand has requested us to remove our military bases. We know that the people who returned to Cambodia have faced tragic results. It may not be the right thing in some quarters, Mr. Chairman, according to some thinking, to move these people; but it could be a real human tragedy if we don't move approximately 10,000 people out of Thailand. We have the homes for them and we have the jobs for them.

Incidentally, Senator, your own State of Mississippi—and working through Bishop Joseph Brunini—has done a tremendous job in this. I don't think our country has suffered by the admission of these peo-

ple from Southeast Asia. I think we have gained international status, because of their admission. I think it has eliminated from the minds of many the tragedies that resulted from the activities on both sides in Southeast Asia.

And all we would recommend is that further consideration be given, while we have homes and while we have jobs and while we have funding, to move approximately 10,000 people from Southeast Asia. Of course, we cannot accept the whole world. There is no question about that. There are refugees throughout the world who want to come in. We cannot do it.

But, this one particular group has a special relationship to the United States. That is the real question.

The CHAIRMAN. Thank you, gentlemen. It has been very helpful. We will recess now until 10:30 tomorrow morning.

[Whereupon, at 2:35 p.m., the subcommittee recessed, to reconvene at 10:30 a.m., Thursday, March 25, 1976.]

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

THURSDAY, MARCH 25, 1976

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 2:53 p.m. in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland and Fong.

Also present: Ed Loughran, staff director; Sidney Rawitz, special counsel; and Mark Hazard, professional staff member.

The CHAIRMAN. The committee will come to order. We open the fourth day of the hearings on S. 3074, a bill to amend the Immigration and Nationality Act.

This afternoon the subcommittee will hear from representatives of three organizations with deep involvement and interest in the issues addressed in the proposed legislation: The Association of Immigration and Nationality Lawyers, the Lutheran Immigration and Refugee Service, and the American Council for Nationalities Service.

The first witness will be Mr. Stanley Mailman, president of the Association of Immigration and Nationality Lawyers. The Chair regrets it was not possible to reach Mr. Mailman and his colleagues last week and welcomes them back today.

I will insert your statement in the record. Proceed, Mr. Mailman.

[The prepared statement of Mr. Mailman follows:]

STATEMENT OF STANLEY MAILMAN, AS PRESIDENT, ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS

My name is Stanley Mailman. I appear as President of the Association of Immigration and Nationality Lawyers. With me today are Gerald Malmud and Robert Juceam, Vice Presidents of our Association, Edward L. Dubroff, a past President, and William Taffet, an esteemed colleague and former immigration judge, all of whom have assisted in the formulation of the positions here presented.

Our Association is a bar association established in 1946, with approximately 600 members throughout the United States, largely specializing in the practice of immigration and nationality law.

For many years, officials of our Association have testified before the Committees of Congress on proposed legislation in the fields of immigration and nationality. Their views represent the accumulated expertise and broad experience of lawyers, who for many years have worked on a daily basis with the Immigration and Nationality Act. We trust those views have been useful and we hope that the following comments will be helpful to your deliberations.

We are particularly pleased to comment on S. 3074, because it offers such a thorough, thoughtful and comprehensive means of solving many of our immigration problems. A final preface to our comments relates to the fact that S. 3074 was introduced barely two weeks ago. Our Board of Governors has earlier taken positions on many of the provisions of this bill or their substance, and unless otherwise indicated, they are represented in these statements. On certain items, I will indicate proposals for which I and my colleagues with me here today must assume sole responsibility, as we have not had an opportunity to consult thereon with our Board.

Although the provisions concerning sanctions against the employers of undocumented aliens and the extension of the preference system to the Western Hemisphere are certainly the most significant provisions in this bill, my comments may be more easily followed if I adhere to the order of the sections in the bill.

Sec. 2 would amend Sec. 101(a) (15) (H) (ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (15) (H) (ii)) (the "Act").

We favor this amendment which seeks to extend the H-2 status to those aliens who perform services on a temporary basis on jobs which may be permanent in character. Such foreign employees, though selectively necessary to our economy on a temporary basis, are now barred by the adjective "temporary" which describes the "services or labor" permissible in the H-2 category.

The concept is wholly sensible, as it would permit greater flexibility in staffing agricultural, industrial and commercial enterprises as needed, while guarding the American labor market by requiring a certification of the Department of Labor that there are not sufficient workers here to do the job.

I have certain specific suggestions and a more general comment concerning the language of the bill. The first concerns the use of the phrase "coming temporarily to the United States for a period not in excess of one year" which appears at lines 8-9 on page 1 of the bill. The provision, as it is now in the statute, contains no time limit on the stay of the temporary worker. Nor does it refer to a labor certification. Instead, it more generally requires that "unemployed persons, capable of performing such labor or services cannot be found in this country." In practice, the Immigration Service, by regulation has recently required that there be a certification from the Department of Labor. As the need for temporary workers often necessitates expeditious administrative processing, it may be better to leave to the discretion of the Attorney General the determination of whether a labor certification should be required at all in a given state of our economy. Similarly, it may be better to avoid crystallizing a time limitation in statutory form. There may be employment situations for which no local labor is available and which can be efficiently staffed only on a three-year basis. If a time limitation must be spelled out, it would be well to substitute the phrase "an initial period" for the term "a period." As the proposed provision contemplates the possibility of a second year, and since "intention at entry" is an important immigration concept, it would be better to avoid an interpretation that an alien is barred because he contemplates staying for a second year, if so permitted, in the face of the statutory limitation that "he be coming temporarily . . . for a period not in excess of one year." Furthermore, if the two-year overall limitation is to be retained, it may be better to avoid the absolute requirement of a labor certification for the second year.

Finally, we wholly subscribe to the recognition at pages 2 and 3, that the Department of Labor should not be permitted endless time to delay a determination of an application for labor certification. It may truly be said of a certification for a temporary worker, that long delay is equivalent to denial.

Setting a sixty-day limit on approving or referring available workers (a new and useful concept) is, therefore, a welcome proposal. We do, however, suggest that the language be re-examined as to effectiveness. It may be deemed exhortatory and, in any event, the requirement might be satisfied if, on the 59th day, a questionably adequate worker were referred. At the least, the certification should be deemed as granted if no worker is referred.

While we would ordinarily hesitate to impute to a federal department, difficulty in adhering to legislative intent, a decade of experience with the Department of Labor in its administration of Section 212(a) (14) suggests this caveat. The numerous decisions of our Federal Court reversing the actions of the Department of Labor in labor certification matters amply demonstrates this point.

In sum, the amendment to the H-2 status as offered by this bill is a welcome provision. We respectfully suggest that its purpose might be carried out even

more effectively by consideration of the points raised herein. Moreover, we would suggest that the provisions relating to procedures for processing labor certifications and setting a time limit thereon be applied to Section 212(a) (14) dealing with immigrant visas.

Section 3. Section 101(a) (27) (A) of the Act would be amended essentially to accomplish an editorial change to conform with the creation of a preference system of immigration for the Western Hemisphere. Persons currently defined as immediate relatives, namely, the spouses and children of American citizens and the parents of U.S. citizens who are over twenty-one, would now be defined as "special immigrants."

While there is, of course, no objection to the editorial change, the amendment suggests an opportunity to conform the substance of the provision to our current idea of the age of adulthood. To the extent that the age of twenty-one is meant to suggest maturity, it is no longer the appropriate number. It has long been noted that military service, when required, was at age eighteen, and virtually all states permit marriage at age eighteen or younger, as well as the purchase of alcoholic beverages. With the adoption of the recent Constitutional amendment permitting voting at age eighteen, there is virtually no significance attached to the chronological age of twenty-one as the age of maturity or adulthood under modern American standards. It is, therefore, suggested that "eighteen" be substituted for "twenty-one" in this section.

Section 4 would simply create an editorial change in Section 201 of the Act to accomplish the extension of the preference system to the Western Hemisphere.

Section 5 would amend Sec. 202 of the Act. Subdivision (a) of this section would extend the limitation of 20,000 visa numbers now applicable to countries in the Eastern Hemisphere, to Western Hemisphere countries, and limit any dependent area, wherever situated, to 600 visa numbers.

1. THE 20,000 LIMITATION

Imposing on the Western Hemisphere the same system of preference currently applicable to the rest of the world is a generally salutary provision. The reasons are so many, so generally understood and welcomed that I will not belabor the Subcommittee with extended discussion thereon.

The general concept, while otherwise excellent, would however, pose a single problem of international proportions. This is the impact on Mexico, the only country in the Western Hemisphere whose immigration under this Act would be radically affected. No Western Hemisphere country has in recent years, been using as many as 20,000 visa numbers, with the exception of Cuba (whose special refugee quota change has been at least 25,000 per year, and would be exempted from the numerical limitation by Section 17 of this bill) and Mexico, which in recent years has used approximately 40,000 visa numbers annually. The limitation would quickly reduce Mexico to the situation of the Philippines whose 20,000 allocation has been so hopelessly oversubscribed as to preclude visas for the 4th, (married sons and daughters of U.S. citizens), 5th (brothers and sisters of U.S. citizens), 6th (workers in short supply), 7th (refugees) preferences and non-preference (investors and others not entering the labor market), and to leave 3rd preference applicants (professionals and persons of exceptional ability) with a six-year wait. The effect of such a drastic reduction in legal immigration from Mexico may have serious international implications, particularly in view of the sanctions that would be imposed by Sec. 12 of this bill.

Substantial immigration from Mexico, chiefly to provide labor on a temporary or permanent basis has a long history. [See Cardenas, "United States Immigration Policy Toward Mexico; An Historical Perspective," 2 *Chicano Law Review* 66 (1975)]. Such immigration had been vigorously supported and vehemently opposed largely for economic reasons. Since 1900 and under changing immigration requirements, unlimited recruitment gave way to successive farm labor programs through bilateral agreement and legislation. Public Law 78 (July 13, 1951) amended the Agricultural Act of October 31, 1949 to authorize the recruitment and employment of Mexican workers, was extended many times and finally ended on December 31, 1964. With the termination of this Bracero program, Mexicans have been largely limited to coming as H-2 temporary workers, as legal immigrants (residents), or as "wetbacks."

The imposition of the 120,000 limitation on resident visa numbers for the Western Hemisphere which took effect in 1968 did not reduce Mexican immigra-

tion as it apparently did Canadian, and Mexican immigration has continued at the same or an increased rate. Mexicans are taking some 40,000 numbers annually.

Turning down the spigot by an immediate reduction to 20,000 may well be considered provocative by the people of Mexico and could have a chilling effect on our relations with that country. This was recognized in the Report of the Select Commission on Western Hemisphere Immigration established by Section 21 of P.L. 89-236 (the 1965 Act). The Commission (at pages 16-18 of its Report) expressed grave concern over the implications of such a cutback as "unnecessarily disruptive to the traditional patterns of Western Hemisphere immigration." Instead it recommended an annual national limitation of 40,000. Similar misgivings were expressed by Congressman Rodino and others in hearings before the House of Representatives in 1970.¹ In recognition of the problem the State Department in 1971 advocated an annual limitation of 35,000 each, to our contiguous neighbors. [H.R. 2328, 92 Cong. 1st Sess. (1971)]. (Substantially the same proposal was made by our Association in my statement to the House Subcommittee on October 9, 1975, *supra*.) The effects on Mexico of imposing a 20,000 limitation and even the motives therefor have been severely criticized in recent symposia in the *San Diego Law Review* (Volume 13, Number 1) and the *Chicano Law Review* (Volume 2, Number 1), particularly in view of the impact that proposed penalties on employers would have on undocumented Mexicans.

There is today already a smoldering resentment in Mexico against Americans and the United States. (See *New York Times*, November 20, 1975, page 18, "Anti-Americanism in Mexico is Deep But Not Blatant.") While we have seriously neglected our relations with Mexico in recent years, there are indications of a renewed interest in improving our Latin American standing. (See Kissinger testimony before House Committee on International Relations, March 4, 1976 and note upcoming Kissinger trip to Latin America). The Latin America Study Association (LASA) has scheduled a symposium in Atlanta, Georgia from March 24-30 on the subject of human ecology which will deal in part with the problem of Mexican immigration.

I, therefore, propose to this Committee that some alternative be considered to cutting by half the visa numbers available to Mexicans and to the bitterness that may follow. Our Association has suggested on October 9, 1975 to the House Subcommittee and here urges that our contiguous neighbors be permitted an additional 15,000 numbers each, not to be charged to the Western Hemisphere limitation.

I propose alternatively that this additional allocation be granted for a period of three years following the enactment of this bill and that during this period there be constituted a commission which would be patterned after the Select Commission on Western Hemisphere Immigration, established under similar circumstances and for similar reasons in 1965. It would be created for the purpose of studying industrial, economic and labor trends in the United States, Mexico and Canada, particularly in relation to immigration. The commission would consider the effects of our immigration laws on the economies of the nations involved and recommend what action might be appropriate to ameliorate any resulting hardship.

An earlier, although more limited, start was made by the bilateral study commissions established by presidential appointments in the United States and Mexico in 1972. One of the recommendations by the Mexican commission was a reinstitution of the *Bracero* program.²

This was rejected by the American commission³ which did, however, state at page 45 of its report that "in light of the existing unemployment and population difficulties in Mexico, and the close cultural bonds between Mexican nationals and many U.S. citizens, the Study Group believes that any changes in the system of numerical limitations should be made so as to prevent a significant reduction in the current rate of immigration from Mexico."

¹ Page 57 of the Hearings before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives, 91st Cong., 2nd Sess., on H.R. 9112, H.R. 15092, H.R. 17370 (1970).

² Resultado de la Encuesta Realizada por la Comisión Intersecretarados Mexicanos a Estados Unidos de América, at 39 (Jan. 1973).

³ At page 39, Final Report of the Special Study Group on Illegal Immigrants from Mexico (Jan. 15, 1973), sometimes referred to as the "Crampton Report."

In a more recent approach, the authors of "A Proposed Solution to the Problem of the Undocumented Mexican Worker,"⁴ seek to establish a system of bilateral economic cooperation and reform modeled after the European Economic Community.

I do not suggest that definitive solutions have yet materialized. The deferral of a drastic cutback of visa numbers to Mexico for a brief period of three years, as suggested, in which solutions can be fashioned, offers, we urge, the possibility of finding a resolution to the otherwise incendiary problem. That period could be used effectively if a commission were appropriately staffed and motivated by a serious desire to arrange economic and other means of dealing with the pressure of Mexican immigration and its causes.

2. DEPENDENT AREA LIMITATION

This amendment would increase the dependent area limitation from 200 to 600. I suggest an increase to 1,000. Such an increase would permit prospective immigrants in the fifth preference and below to be reached and to bring existing backlogs to currency. Moreover, the difference, affecting ten dependent areas, would involve only 4,000 numbers.

Section 6 would amend Section 203 of the Act. We oppose the amendment to the 5th preference which would require that the petitioning sibling be at least 21 years of age and urge that the basic aim and philosophy of the immigration statutes—reuniting of families—will better be served by permitting the young sibling to have brothers and sisters join him in the United States.

The unity of families is much more essential and meaningful during tender years and youth than it is during maturity at which time, generally speaking, the siblings each have their own families.

I propose the addition of another class to the fifth preference, namely, the parents of United States citizen children under the age of 18. Again, here speaking about the reunion of families, an important principle in our immigration philosophy, (philosophy of reuniting families), the young United States citizen child may be precluded from remaining in or coming to the United States if his parent is unable to come or stay here. Comment should be made that the problem of the so-called "dropping" of United States citizen babies is, we believe, greatly exaggerated. There is little by way of statistical support for this alleged fear. Apart from this, the citizen child has a basic, legal, inherent right to be in the United States, which is cut off by refusing the parent an opportunity to immigrate to the United States. Requiring the United States citizen child to wait outside of the United States until he is able to support himself also adds to the future medical and health problems of the population because the child required to live with the parents at a very tender age outside of the United States is then brought up usually in an economically depressed foreign country and problems of malnutrition and undernourishment result which tax the United States when the child matures and comes here. The parent immigrating to the United States would still have to meet the financial requirements of Section 212(a) (15) of the Immigration and Nationality Act as well as all of the other grounds of exclusion and, thus, adequate screening is accomplished.

Section 7 would effectively restore to Section 211 a waiver provision contained in the original Act of June 27, 1952 and which was thereafter apparently omitted by inadvertence. The amendment is salutary in that it gives the Attorney General the discretion to forgive inadmissibility in demonstrably innocent situations. Our Association endorses this amendment.

Section 8 would accomplish an editorial change in Section 212(a)(14) consistent with the extension of the preference system to the Western Hemisphere. This amendment is endorsed by this Association as appropriate remedial legislation.

Section 9 would amend Section 241(a) of the Act in respect of paragraph (3) to strengthen grounds of deportability for institutionalization at public expense because of mental problems existing prior to admission and in respect of paragraph (8) to strengthen the grounds of deportability for becoming a public charge for causes arising prior to entry. In respect of both of these changes I propose that a qualifying restriction be added which would remove the ground of deportability if the alien repaid the costs of institutionalization or the ex-

⁴ 2 San Diego Law Review 42, 61 et seq.

penses of public support within one year from the date of that institutionalization or from the last payment of public support and the institutionalization and/or public support is not likely to remain or recur. Additionally, with respect to 241 (a) (3), I further suggest that the ground of deportability not attach if the alien is eligible for a waiver of the underlying ground of excludability, under Section 212(g) of the Immigration and Nationality Act.

Section 10 would amend Section 245 of the Act. This provision would properly remove the bar against crewmen and Western Hemisphere natives. The problem of crewmen desertions is no longer serious and in any event can be dealt with by criminal prosecutions under existing legislation. With respect to Western Hemisphere natives, it is as unrealistic to require a Chilean to return for a visa to Santiago or an Argentinian to Buenos Aires as to compel an Englishman to return to London for his visa. The distances and costs of travel are in many, if not most, cases greater for the South American.

If the new provision to bar aliens who have violated their visas by employment is deemed necessary, then certain changes would be desirable. As offered, it exempts, from the bar, a special immigrant, now defined as an immediate relative. This means the spouse and child of an American citizen and the parent of such a citizen who is over 21. This exemption should be expanded to the spouse, child or parent of a lawful permanent resident, as the same considerations apply. Close relatives of resident aliens are given the same treatment as such relatives of citizens in various other provisions of the Act. See e.g. 212(g), (h), (i), 241(f), 244(a). Also, in order to avoid particular hardship the word "commences" should be substituted for the word "accepts" before the word "employment" at line 23 of page 10.

Furthermore, in the same paragraph (c), the phrase "by other provisions of this Act or by the Attorney General," should be substituted for the phrase "by the Attorney General." Aliens who are currently in the United States in such nonimmigrant statuses as E, H-1, H-2, H-3, I, and L-1 are authorized to work by specific provisions of law and need no authorization by the Attorney General.

Finally, serious consideration should be given to whether subsection (c) will not operate a hardship on aliens wholly unrelated to its purpose of discouraging improper employment. There are currently, and it is likely that there will in the future be enormous delays by the Immigration and Naturalization Service in processing and adjudicating applications for nonimmigrant statuses which permit employment. An alien in the United States who seeks to change his status, for example, to E, I, H or L and the companies who require that employment may face months of delay before the appropriate petitions and/or applications are approved notwithstanding that they are in good order and approvable as of the date of filing. The commencement of employment, however, prior to final approval may be a technical violation. A more glaring incongruity is the situation of an alien who is in valid intracompany transferee status (L). If he files an extension application two weeks prior to the expiration of his first year of authorized employment, as required, he is not likely to receive the extension for two months. His failure to terminate his employment during that two months period might make him subsequently ineligible to adjust his status under this provision of Section 245.

Section 11 would amend Section 249 of the Act to change the cut-off for registry from June 30, 1948 to July 1, 1968. This is essentially a highly desirable amnesty provision permitting persons who have been in the United States for a long period of time to acquire residence assuming that they are persons of good moral character and otherwise not inadmissible as one of the more undesirable classes described. This is a far more realistic amnesty provision than those suggested in other bills.

Nevertheless, a further suggestion is offered that stems from the Crampton Report. This group composed of representatives from the Departments of Health, Education, and Welfare, Agriculture, Labor and State and Justice proposed that "the registry system should be based on residence for a certain number of years rather than remaining tied to a specific date. While any number chosen would be in some degree arbitrary, ten years seems a reasonable compromise between the need to avoid hardship and the likelihood that too short a period could create an incentive for unlawful entry. The number of aliens affected by these provisions probably would be quite small in relation to the total number now present in the country, since most are apprehended within a relatively short time after their entry. For those who do satisfy the criteria, however, these discretionary remedies are necessary to avert the hardship which may arise from

more effective enforcement of the immigration laws. A person who has resided in the United States for a substantial number of years generally will have strong ties to the American community, and these ties should be formally acknowledged, regardless of his original nationality.⁵ Also at page 43 of that report the study group proposes that Canadians and Mexicans be relieved from the special requirements applicable to them for eligibility to suspension of deportation under Section 244 of the Act.

I ask that consideration be given to the adoption of these important proposals originating in the Crampton Report.

Section 12 of the Bill would amend Section 274 of the Act by making it unlawful for certain persons knowingly to employ or refer for employment any alien in the United States not lawfully admitted for permanent residence unless the employment of such alien is authorized by the Attorney General. The persons who are covered by this prohibition are employers, their agents and those who, for a fee, refer aliens for employment, including labor organizations. Unlike other legislative proposals, the sanctions in this Bill are civil fines and not criminal penalties. This significant reduction in proposed sanction is welcomed, but our Association remains strongly opposed to this provision of the Bill, doubts its effectiveness to achieve the announced objectives and questions the specific provisions drafted to create and implement the prohibition.

I shall touch briefly upon the grounds of our opposition to this and related provisions in pending bills in the House of Representatives. They are, in general, also voiced by such diverse groups as the United States Civil Rights Commission, the U.S. Catholic Conference and Anti-Defamation League of B'nai B'rith, the U.S. Chamber of Commerce and many members of both houses of the Legislature. Then I shall turn to the specific language of the Bill.

First, as a practical matter, the Bill will primarily affect Latin American nationals, chiefly Mexicans, who are the major source of the aliens "unauthorized to work" but by its breadth covers Eastern Hemisphere nationals whose employment here "out of status" is *de minimis*. The Commissioner of Immigration and Naturalization states in his 1974 Annual Report (p. 1) that Latin American nations with high population growth rates, "including Mexico, Colombia, Guatemala and the Dominican Republic . . . are the principal sources of illegal immigration into the United States. . . ." In 1974, "of all deportable foreign nationals located . . . 709,959 or 90 percent were nationals of Mexico." (1974 Annual Report of the Commissioner of Immigration and Naturalization, p. 9). Of these 709,959 persons, 76 percent were located in less than one month. Less than 8 percent had been here more than 6 months. Moreover, in 1974, 640,913 persons were apprehended by less than 3,000 U.S. Border Patrol officers, mostly on the Mexican Border, for unlawful entry and smuggling of aliens. Finally, of 286,826 aliens admitted to detention facilities of the INS in 1974, 93.2 percent were Mexican nationals (*Ibid.*, p. 16). There have been proposed, and are, alternatives to deal with this problem which are more humane and consistent with our foreign policy. It is noteworthy that the House committee proposing similar sanctions, failed to have it referred to the appropriate committees to consider the foreign policy factors. (See also discussion, *supra*, relating to the foreign policy impact of Section 5 of this Bill.)

Next, although no accurate statistics seem available, we find no basis to believe that large numbers of "unauthorized" aliens hold jobs which American workers are ready, willing and able to fill. On the contrary, aside from blatant wetback situations and the broadside allegations of labor organizations and personnel in the Immigration and Naturalization Service in publicity campaigns associated with efforts to obtain increased funding and manpower, our experience is that most "unauthorized" aliens (a) would be "authorized" if INS processing times on applications to permit employment were reasonable and (b) fill positions regarded as menial or involving hard physical work which U.S. citizens and resident aliens openly forego to obtain available unemployment, welfare and other assistance program benefits. Some evidence of this is the relative failure of well-funded government manpower training programs for domestic service workers and other job categories traditionally regarded as without status or long range opportunity. Congressmen Drinan, Badillo, Conyers and Edwards have expressed similar puzzlement in opposing sanctions in the House bills and noted "In all candor, we do not know precisely what kinds of

⁵ Final Report of the Special Study Group on Illegal Immigrants from Mexico (Jan. 15, 1973), pp. 43-44.

positions and in what numbers [job opportunities] would open up if all illegal aliens were by some magic suddenly . . . expelled from their employment." H.R. Rep. No. 506, 94th Cong., 1st Sess. 38 (1975). Like the Congressmen, we too believe further evidence is warranted before accepting the drastic sanction proposal as an appropriate legislative policy.

Third, in this connection, the cost of staffing and administering the sanction program is likely to far outweigh the benefits to be obtained. We believe such benefits could better be had by the proper application of existing provisions of law, including those relating to taxes, wages, hours, and withholding of social security taxes. Although funds within the past year have been appropriated to INS to review the matter and no detailed and documented study has yet been completed, we believe that the recent limitation on issuance of social security numbers only to those aliens authorized to work, under our immigration laws or by the Immigration Service, has had a substantial impact on limiting the opportunity for "illegal aliens" to be improperly employed. In short, we believe the sanctions provisions of the Bill are both premature and "overkill."

Fourth, we have repeatedly expressed concern that employer sanctions would operate to the detriment of U.S. citizens and resident aliens with accents, foreign-sounding names and appearance of foreign national origin. As noted by Arthur S. Fleming, Chairman of the United States Commission on Civil Rights, expressing the Commission's views in a letter to the Hon. Donald Edwards in August, 1975, there is "no uniform system of accurately identifying the citizenship or alien status of all persons in this country" and "the threat of civil or criminal penalties would . . . give rise to employment discrimination . . ." He closed by noting that "minority communities are the most affected by rising unemployment and recession" and that the passage of any legislation which has such discriminatory effect threatens "to set back significantly that progress in civil rights . . . achieved . . . only through long and laborious efforts."

Fifth, the sympathy in some segments of our society for sanctions ignores the increased burdens on employers and the reality of the emerging economic recovery. On the one hand, the role of enforcement we believe is with the government and in developing long range solutions to the problems which give rise to illegal entries. On the other hand, economic recession uniformly gives rise to anti-alien hysteria in an effort to shift blame to outside forces beyond the control of business, union and governmental leaders. It would be regrettable, as the current temporary cycle of decline is reversing, that the legislature would adopt sanctions that, as a practical matter, would become permanent in nature.

Let me now turn to the specific provisions of the Bill on the assumption Congress believes some employer sanctions are warranted.

We agree that the proposals for civil rather than criminal sanctions make S. 3074 the most salutary of all the pending bills. The required statement by the alien as to his status, on a prescribed form, is acceptable provided it is clear that the form will contain merely a simple declaratory statement of fact. We are concerned, for example, that the Attorney General by regulation may seek to utilize the form as a means of information gathering for other purposes.

Next, it seems appropriate that the Bill not only penalizes employers, but also those who, for a fee, refer aliens for employment, including labor organizations, some of whom willingly accept dues irrespective of an alien's status. However, the bill does not define "for a fee" or expressly cover sums paid for multiple services and not denominated as a reference fee. We believe this detracts from the potential scope of the sanction.

The statute also utilizes the concept that it is the "employment" or the reference for "employment" which is an element of the unlawfulness without defining what is meant by employment. For example, we could imagine an alien in the United States on a B-2 nonimmigrant visitor's visa who, while here, wishes to be referred to a potential employer who would seek a labor certification on his behalf, the alien intending to remain as a visitor or to return abroad pending the time when he achieves a status in which he is permitted to work. As drafted, employment of an alien whose work is to commence when the status is achieved or reference of an alien for interviews for employment subject to his achieving an appropriate status seems to be proscribed by the language of the Bill. Since we do not believe this was the intention of the draftsman, we suggest the statute should only prohibit employment or reference for "employment which is to commence" prior to the alien having obtained an appropriate status.

The bill also utilizes the statutory phrase "unless the employment of such alien is authorized by the Attorney General." We believe this formulation ignores the

fact that the existing Immigration and Nationality Act, as amended, itself defines certain nonimmigrant classes, such as H and L nonimmigrants, who are authorized to undertake employment. We would therefore recommend utilizing the concept of employment "authorized by law, rule or regulation; or by the Attorney General."

In many respects, the question of status and authority to work under the Immigration and Nationality Act, as amended, involves technical provisions. It is possible for alien who, at a given time, are in proper status and then, for various technical reasons (such as inadvertently filing late for an extension of their status or filing timely and having the extension application denied) could be technically "out of status." The Bill makes no distinction between sanctions for employers of those who are only technically out of status and those who are unqualified to obtain or renew status for substantive reasons. We believe, therefore, that an exemption from sanctions should be available to the employer or the referrer of an alien where the alien is later authorized by law to accept or continue employment or was so authorized when the application for extension was filed.

As this Committee knows, on February 25, 1976, the Supreme Court, in the case of *DeCanas v. Bica*, (44 Law Week 4235) considered federal preemption under the Supremacy Clause of the U.S. Constitution with respect to legislation by California barring knowing employment of aliens out of status unlawful. If Congress is to enact a sanction bill, we would propose that the bill contain a clear expression of legislative intent to preempt this field for the federal government. The need for national uniformity is obvious. Aliens and employers need be concerned with only one statute. Multistate corporations engaged in interstate and foreign commerce ought not to be required to have, at the risk of sanction, their personnel departments become involved with different interpretations of technical immigration questions under the possible plethora of state laws, some of which might incorporate criminal sanctions.

Section 12 of the Bill, in adding subsection b(3) to Section 274 of the Act, provides for a hearing to an employer charged with a violation. It fails, however, to specify that the Attorney General's determination that a violation did occur must be made by a preponderance of the evidence. We believe such a standard would be appropriate in the Bill.

Moreover, to accomplish uniform interpretation in light of their expertise in construing and applying the laws our Immigration Judges are the most appropriate officials to conduct hearings and adjudicate questions concerning violations. Nonetheless, we believe that the hearings with respect to sanctions should be subject to the entire range of rights and procedures prescribed under the Administrative Procedure Act. In this connection, we note that subsections b(4) and (d) proposed in Section 12 of the Bill provide no method for an employer to seek judicial review of the determination of the Attorney General. It would appear that an employer against whom a civil penalty is assessed, in order to test the determination against him, must refuse to pay the penalty and await a suit by the Attorney General, if any, to collect the fine. We believe such restricted access to the courts unsound. There are many circumstances we could envision where an employer would believe that an adverse finding, improperly arrived at, is the type of blot on his record that should be corrected. This is particularly so if, in a later hearing, a prior violation might be considered by the immigration hearing officer as some evidence with respect to motive or intent or "knowing" violations of the new sanctions.

Section 13 would amend Section 290 of the Act by imposing certain reporting requirements on the Secretary of Health, Education, and Welfare. We are not prepared to offer any position as we have not had sufficient opportunity to study the legal and policy issues involved. I point out that the reporting requirement may be unduly burdensome upon the agency concerned although we do not have any statistics in that regard. I also draw attention to the fact that there may be an unnecessary intrusion upon the right of privacy in this disclosure requirement.

Section 14 would amend certain sections of the Act to accomplish editorial changes involved in extending the preference system to the Western Hemisphere. This amendment is endorsed by this Association as appropriate remedial legislation.

Sections 15 and 16 amending, respectively, Sections 312 and 344(c) of the Act. The first would amend the age at which an applicant for citizenship is excused from the literacy requirements of reading, writing and speaking English. The net effect of the amendment is salutary and remedial.

The second would increase from \$6,000 to \$20,000 the amount up to which the clerk of a naturalization court shall pay to the Attorney General one-half of all fees collected in naturalization proceedings in any fiscal year. We are not prepared to offer any comment as we have not had sufficient opportunity to study the legal and policy issues involved.

Section 17 would amend P.L. 89-732 by exempting the Western Hemisphere visa number limitation of those Cuban refugees who gain permanent residence under that Act. The influx of Cuban refugees has sorely taxed the Western Hemisphere visa lists. The exemption of this group has been universally requested and will be universally acclaimed as appropriate remedial legislation. We heartily endorse this amendment.

Section 18 would amend 18 U.S.C. § 1546 which makes it a crime to forge, alter or make certain travel documents. The amendment would tighten that provision and is endorsed by this Association as appropriate remedial legislation.

Section 19 would amend Section 21(e) of the Act of October 3, 1965 in order to accomplish changes necessary to consistency of provisions in this Bill which make changes in regard to the Western Hemisphere limitation and is therefore endorsed.

Section 20(a) is a customary savings clause. Subparagraph (b) saves the priority dates established by Western Hemisphere aliens under present law and seeks to meld them within the proposed preference system by granting them 8th preference status with their original priority dates. I suggest that because of the present two and one-half year oversubscription of the Western Hemisphere quota, even with the creation of preferences, there is no reasonable likelihood for nonpreference numbers to become available in the next few years. We, therefore, suggest that all those visa applicants registered with U.S. consulates who have been accorded priority dates prior to the effective date of this proposed legislation and who under the Act would not be eligible for any preference, shall be deemed classified as 5th preference quota immigrants (either with or without filing an appropriate visa petition) so that they may ultimately be able to immigrate to the United States.

This would be particularly important to those with priority dates who established that they would not be entering the labor market by reason of age or investment and the parents of United States citizen children. (The last-named class would enjoy 5th preference status if the recommendation made with respect to Section 6 were adopted.)

CONCLUSION

I hope that the committee will appreciate that the extensive remarks made in this presentation are not intended to cavil with a bill that has been so obviously well-conceived and carefully designed. Many of the provisions in this Bill would without change constitute needed improvements in existing law. Particularly because the bill is so comprehensive in scope, it is unlikely that other significant legislation will be forthcoming for years to come. While we therefore endorse the spirit and text of much of this Bill, we feel it can accomplish its purpose more effectively with the changes our Association or I do here respectfully suggest.

STATEMENT OF STANLEY MAILMAN, ESQ., PRESIDENT OF THE ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS, ACCOMPANIED BY GERALD MALMUD, ESQ., VICE PRESIDENT, AND WILLIAM TAFFET, ESQ.

Mr. MAILMAN. I am very pleased to have this opportunity on behalf of our association to comment on S. 3074, which is so clearly a serious effort to resolve our major immigration problems.

As I believe you know, our association, the Association of Immigration and Nationality Lawyers, with 15 chapters throughout the United States, has some 600 members, largely specializing in immigration and nationality law.

I have asked Gerald Malmud, the president-elect of our association, and William B. Taffet, on my right, retired immigration judge and now a distinguished practicing immigration lawyer, to assist me as I try to focus some of our experience on the more significant issues which are raised by the bill and to comment on certain of the positions which have been raised by the Government agencies who have appeared.

If my formal statement can be made a part of the record, I would like then to deal with the issues on a more informal basis, and I would like to touch first upon the most difficult point for us, philosophically, which is the issue of sanctions.

Our association has been opposed to the principle of punishing employers for hiring undocumented aliens. I suppose our main concern is a civil liberties concern; that is, that we feel that such sanctions would be prejudicial to the employment opportunities of the United States citizens and lawful permanent residents who have foreign-sounding names, accents, or dress. We feel that it would be divisive to our society, and we recognize that there are times when there are adjustments to be made in the ways we conduct ourselves and the ways in which the Government sometimes has to interfere with what we regard as important in our lives, and I think the question may come down to the extent to which the issues really require this kind of interference.

Our concern is that we do not yet know the magnitude of the problem. We have heard a good deal about numbers of so-called illegal aliens in the United States. I think the most significant thing that can be said about those numbers is that they are really unreliable estimates. We know that the Commissioner has testified as to millions of so-called illegal aliens in the United States, and he has used numbers like 5 million, 6 million, 8 million, and I have heard higher numbers.

The so-called Lesko report, as I remember, came up with a figure of 8.1 million, if I remember; however, the Lesko report is a rather strange survey which has been criticized by a number of the agencies that have really examined that report. For example, the Director of the Census Bureau wrote that the study was based upon weak and untenable assumptions and should be regarded as conjectural, at best. He pointed out that Lesko made a number of major assumptions about the alien population, including that the amount of immigration is directly related to the number of apprehensions.

I think even more interesting is the fact that what we now know or really do not know about the number of illegal aliens in the United States is based on figures which have been generated without any real basis, largely by the Immigration Service, which I am sure sincerely feels that there is a problem.

The Commissioner has spoken at length throughout the United States. There have been numerous releases, speeches, television, radio, articles in the newspapers, and I think that our sense of the number of aliens in the United States and even the people, the so-called experts in the Lesko survey has been largely determined by these releases.

I think, also, that we have yet to know to what extent certain of the measures already taken, such as the requirement of documentation in order to have a social security number, have been effective. I do not

think we know that yet, and I think that these are things that we really should examine before harsh legislation is enacted.

I think, too, that we have to be concerned with a brooding resentment of our neighbor to the south, the people of Mexico, who will be most affected, and I think we have not yet examined the foreign policy considerations that would be terribly pertinent to such action.

But, having said this much, we wish to add that this provision, section 12 of this bill, is certainly fairer than the other bills which have sought to accomplish this same thing. We feel that the exculpatory statement in subparagraph (b) (1) is, of course, crucial to assuring that innocent employers are not affected.

We would like to mention—and I think this is terribly important—that any action that this committee, that the Congress takes, with respect to sanctions should have in mind the recent decision of the Supreme Court of the United States, which appears to hold that State legislation can be effective in the absence of clear preemption by Congress, and so we would ask that a very clear statement be added to the Federal immigration laws, which shows that such a preemption has taken place.

Let me turn to some of the other issues and—

Senator FONG [presiding]. Are you in accord with the idea that the States should be preempting this field, rather than the Federal Government?

Mr. MAILMAN. No; I think to the contrary. I think that whatever action the Congress deems to be most appropriate to dealing with aliens should be the action of Congress, should be the Federal field, and I believe very strongly that the States should not be permitted to legislate in this field, and I am thinking of the many, not only multinational, but national corporations, which we have, with offices throughout the United States which must have a national personnel policy.

Senator FONG. The States have done something along this line, and you think that whatever laws we enact should preempt the whole field?

Mr. MAILMAN. Yes; and I think it may be important considering at least our reading of the Supreme Court decision—I think it is important that the legislative history of this bill, S. 3074, and the bill, itself, make it clear that such a preemption has taken place.

Senator FONG. You alluded to the fact that the Immigration officials have used estimates of the number of illegal aliens they think are here. Do you agree with those figures?

Mr. MAILMAN. I do not agree or disagree with the figures, simply because I have no knowledge, nor do I believe that anyone has any knowledge at this time.

Senator FONG. You believe we should go slowly in having sanctions until we have that picture clarified?

Mr. MAILMAN. That is correct.

Senator FONG. How would you go about it? How would you ascertain the number of illegal aliens here?

Mr. MAILMAN. Well, I confess that that is a matter beyond my particular expertise, but I understand that surveys are being undertaken. Our concern is that whatever the figures are, the estimates that have been given to this day are wholly without responsible basis, and I

think that it is unfortunate that the figures are being used so indiscriminately, and I think are causing a great deal of concern without an adequate basis therefor.

Senator FONG. I know it is causing a lot of concern because the estimate is up to 8 million. Is that correct?

Mr. MAILMAN. Well, I have heard that, but I must say in reading a rather lurid article in New York Magazine of March 15, the District Director in New York used the figure 12 million, and I am particularly concerned because in the testimony of Commissioner Chapman, which I heard here on March 18, he is relying himself on figures, at least partly, that he is getting from District Directors. Now, I do not know that the District Director of New York has any particular expertise in determining how many illegal aliens there are in the United States.

Senator FONG. It seems that the Commissioner has cut that figure down to 8 million.

Mr. MAILMAN. Well, Mr. Kiley has not, but the Commissioner has used the figure of 8 million in his testimony here. He also used the figures of 5 million and 6 million, so I think it is clear that he really does not know at this point.

Senator FONG. Hearing the question of criminal sanctions, that takes us to the question of civil penalties. How do you feel about that?

Mr. MAILMAN. Well, at the moment I feel that we should not have civil penalties either, until such time as we know the seriousness, scope, and nature of the problem because, in my experience—and I must say I represent various national companies and their immigration problems—and I know that while most of them are today attempting to screen, to the extent possible, employees to determine that they are not clearly undocumented aliens, it is not a hostile screening policy at this point. But at the point where they would be subjected to penalties of any kind, I am just afraid that human nature being what it is, the blacks and other minorities who are readily identifiable, may suffer.

I do agree, however, that if we must have sanctions, the administrative fines that have been suggested here are better than criminal sanctions.

Senator FONG. How do you feel about having the employer held responsible for the employment of aliens who are not legally residents here?

Mr. MAILMAN. Well, I think that is another aspect of the same problem. I think that many companies feel terribly put upon in any event by the number of responsibilities that the Federal Government imposes on them, and I think this is certainly an added burden. But my concern is not only with the companies; my concern is with the population of the United States, people who are seeking jobs, the people who are going to be set aside, the people who are going to be identified too readily, whether they are aliens who are undocumented, or citizens of the United States. In other words, the purpose of punishing the employer is really to affect the alien, but that has a much larger impact, I am afraid, on our general population.

Senator FONG. This bill only addresses itself to willful employment of illegal aliens.

Mr. MAILMAN. Yes; it does.

Senator FONG. So, it leaves out the employer who has not acted willfully.

Mr. MAILMAN. It does, but I guess our fear is that as soon as we say we are going to screen you out—

Senator FONG. You think the minorities will suffer?

Mr. MAILMAN. Not just in employment.

Senator FONG. In other words, as long as you do not look like a white American, you will find that you will be discriminated against or they will say, "I would rather not take a chance"?

Mr. MAILMAN. I think that is true, Senator. I guess I am afraid of the people, like the constituent of Senator Scott, whom the good Senator referred to in the testimony here on March 18, when he told of a constituent who wrote in that when he goes to the supermarket nowadays, the people he sees there are not the kind of people that he is used to.

Senator FONG. I am trying to forestall that by my proposal amendment so that the civil rights bill would tackle that problem. Even then you could have an unconscious, subtle discrimination, could you not?

Mr. MAILMAN. I am afraid that is so, although I would commend the effort to make such discrimination punishable.

Senator FONG. You have a point. Please proceed.

Mr. MAILMAN. Thank you, sir.

Of course, one of the major objects of the bill is certainly highly laudable, and that is the extension of the preference system for the Western Hemisphere. We certainly concur with that provision. It is much needed, and I think it will accomplish much good. Together with that, the exclusion of the numbers, the exclusion of the Cuban refugees, that is, from the use of the Western Hemisphere numbers, if that is, in effect, required nowadays—I am not sure from the testimony from the Justice Department—that certainly would be welcome and would provide many opportunities for other people to immigrate to the United States.

Senator FONG. If you put them in the Western Hemisphere quota system, there would be no more numbers left?

Mr. MAILMAN. That is correct. They would take a very substantial part of the 120,000 numbers as, indeed, they are taking today out of the whole 120,000 limitation.

Talking, however, about the 120,000 limitation and equalizing of the Western Hemisphere and the Eastern Hemisphere, I am concerned, or my association is concerned, with the concomitant application of the 20,000-number rule, which is currently applicable to the Eastern Hemisphere.

Actually, there is only one country, I believe, in our hemisphere that would be so affected, but it would be affected very radically, and that, of course, is Mexico, which has been taking over 40,000 numbers for some years.

I am particularly concerned with that because of the delicate relationship that we have with our closest neighbor, our neighbor to the south, particularly in view of the impact that the sanctions would have. I think it is largely overlooked but there has been reported in our newspapers, even within the last week, a great sensitivity by Mexicans to the actions taken by the U.S. Government which have any impact upon Mexico. The term "brooding resentment" has been used, and there was quite a to-do reported in the New York Times of March 24, when a comment was made by one of our State Department people.

Senator FONG. How would you attack the problem then?

Mr. MAILMAN. Well, our association has asked that we give 35,000 to Mexico and Canada; that is, it would be written, our "contiguous neighbors," or some such language, with the additional 15,000 over 20,000 not charged to the Western Hemisphere allocation.

This is substantially the proposal of the State Department in 1971, as I believe. That would, of course, involve an additional 30,000 on top of the 120,000, perhaps, not a full 30,000 because Canada might not use it, although I am advised by our people close to the situation in Canada that Canadian immigration might again go up if they had ready access to the United States. Many of them just refuse to get on a list when they have to wait.

Senator FONG. Are we not going back prior to 1965 then by having some such discriminatory provision in our immigration laws? Now we do not have any discrimination as far as quotas are concerned.

Mr. MAILMAN. I do not think that is really a form of discrimination. I think that most countries recognize that they have special relationships with their immediate neighbors, and I think that that would not be taken amiss by any other country.

I should add, however, that I have a proposal of my own that I would like to put before this subcommittee, and that is that for a period of 3 years after the effective date of this bill, we do give this additional 15,000 allocation to Mexico and Canada, and that we establish a study commission to investigate the problem that we are concerned with as to the strong pressure of emigration from Mexico and immigration to the United States, and what economic and other efforts can be made—can be taken to deal with this problem.

I think that we have a parallel here to the 1965 situation when this Congress enacted a major change in our immigration laws which took away the nonquota status for Western Hemisphere countries. When they did that, they established the Western Hemisphere Study Commission to deal with what effects this would have, and whether there ought to be an extension of the nonquota situation for the Western Hemisphere.

During that very period, there was a moratorium in effect, so that the 120,000 limitation did not take effect until 1968, and, I think that would be appropriate in this situation, particularly because of similar circumstances.

I want to, then, move quickly to the matter of family preferences. We agree with the proposals made by the Immigration Service and with the State Department and by yourself, Senator Fong, that parents of lawful permanent residents also be given a preference.

This would certainly support and be justified by the underlying philosophy of reuniting families. It is anomalous that parents can petition for children, but children cannot petition for parents. We also believe that a similar benefit should apply to parents of infant U.S. citizen children.

Finally, we disagree with the provision currently in 3074, that would restrict fifth preference to the siblings of adult U.S. citizens. We feel that, if anything, there is a greater need to reunite the infants than adults into the family situation.

In connection with this matter of at what age you can be a proper person to petition, we feel that 21 should not be used, that is, if the

majority is to be used as an age necessary to qualify you as a petitioner, that age should be reduced to 18 in recognition of the constitutional amendment for voting, and in recognition, generally, that 18 is a more usual age of majority in our society.

We do favor the amendments to the H-2 status. With respect to the objection of the Departments of State and Labor, that the deletion of the second "temporary" would cause people to establish roots in the United States, and have them remain here longer than their required time, I think we should recognize that this is true now of all nonimmigrant categories. Anybody that comes to the United States currently as an H-2 or H-1, or an L, or indeed, as an F may grow roots. That is a risk that we always take when we have people come to the United States in a nonimmigrant category.

We think that the time limit that has been established with respect to H-2, that is, the time within which certification must be processed, the requirement that certification cannot be denied if people are available outside of the locality, and the requirement also that the Labor Department must refer prospective employees if they claim that employees are available, are all salutary provisions, and we think that they should be applied as well to the permanent certifications under section 212(a)14 of the act.

The comment has been made by the Department of Labor in objection to the concepts that they would be required to refer American workers if they are to deny a certification, that they are not in the business of referring. Indeed, however, the Department of Labor is in the business of referring. It is one of the chief responsibilities of the State and Federal Labor Departments to provide jobs to American employees, and to assist our economy by making employees available where needed. This is one of the most important functions of the various employment services throughout the United States, that is, the State employment services which are affiliated with the U.S. Department of Labor.

With respect to section 245, we welcome the change which would permit applications by persons born in the Western Hemisphere and crewmen who are in the United States.

The objection was made by the Immigration Service that some 8,000 crewmen overstayed during the last year, or 1974—I forget the year—but that is not a significant figure without knowing the percentages or without knowing whether there are radical increases because, indeed, the Immigration Service has referred to astronomical figures of visitors who have overstayed, and they would be permitted to adjust, and are currently permitted to adjust under section 245.

One of the most important changes, I think, that would be made in section 245 by this bill would be the effective date of residence.

At the present time, for an application under section 245 to be filed, a visa number must be immediately available if a visa number is required, and then, after all of the processing, the alien cannot be adjusted and the green card cannot be issued unless a visa number is again immediately available at that time. Now, given the tremendous delays that we currently have in the processing of all kinds of applications by the Immigration Service, including the section 245 applications, including the underlying preference petitions, delays that run 6

or 8 months, a year, and, in some cases, longer, and the disparity from one district to another, it is very difficult, it seems to us, for the Immigration Service to justify its objection to the recommendation for provision that there shall be only one effective date, and that is the date of filing.

Finally, the proposal is made in the bill that the registry provision under section 249 would now make the effective date July 1, 1968. Any figure that one uses, any date that one uses is perforce, arbitrary, and we recognize that. There are many people that would like to have an amnesty come right to the present time, or to 3 years from now and I must, in honesty, say that I cannot pull a figure in terms of year or in terms of years, that is, date or number of years, which seems magically appropriate to me.

I think that July 1, 1968, is a reasonable date, is one that would certainly help a lot of people who have grown very strong roots in the United States.

We do have a suggestion that the time be fixed to a number of years, rather than to a date so that this Congress does not have to concern itself with updating every couple of years. So that the figure of 10 years, a suggestion in the Crampton report, which is a study group composed of concerned departmental personnel in the U.S. Government; 10 years would seem like a reasonable figure to them.

I think that concludes the direct remarks that I have. One could speak for a very long time on the subject, but I want to make room and time for such questions as you may have.

Senator FONG. Senator Eastland wishes me to propound this question to you.

You represent an organization of lawyers who practice principally in the field of immigration. You get down to cases. You deal with live people daily.

Tell us in a general way what your most pressing problems are today in handling immigration problems?

Mr. MAILMAN. There are a lot of problems, certainly.

One of them, however, probably dwarfs any other problem or class of problems, and that is the tremendous delays in the processing of all kinds of applications. To be fair, I guess I should say virtually all kinds of applications, and I mean naturalization applications, for example, which take many, many months to complete. The delay in such applications, of course, has a profound effect on the rights of many people.

For example, a person who is not yet naturalized may not be able to file a petition for his Western Hemisphere spouse, and bring his wife to the United States or his children to the United States. There are tremendous delays in the processing of what we call I-130 petitions, petitions to classify a relative, either for preference or as an immediate relative, and that, too, prevents people's spouses from coming to the United States in some cases for over a year and in most cases for 8 months and 10 months, and as much as a year. That, too, has a very profound effect on the rights of people.

For example, even those in the United States who have not yet had the I-130 petition approved, are not able to get a social security number and go to work. In other words, you will have the husband of a

girl in Iowa, who is in the United States. He may have come here as a visitor or a student, fell in love, they got married; he can't go to work until that I-130 petition is approved. Even then, he must file the application for adjustment of status and get permission from the Immigration Service to go to the Social Security Administration.

Now, those delays are just colossal, and if there is one thing that it is so difficult for me and my colleagues as lawyers to deal with, it's people who call up and say, but my God, we have to earn a living. I've got to support my wife. What do we do, go on relief? And, that's the situation that we find running through all, or again, virtually all of the processing problems that we have.

Senator FONG. Your statement on page 27 indicated that you are not satisfied with the form of judicial review that would be available to employers who are fined for hiring illegal aliens. What do you propose?

Mr. MAILMAN. Well, we would like an opportunity, if a determination is made that a violation has taken place, to have judicial review of that very determination.

Under the bill as currently drafted, the employer would not have an opportunity for such judicial review until the actual fine procedure, and it could very well be that the Immigration Service would withhold action to collect the fine in that, or in subsequent situations, and that employer doesn't want to have on his record—doesn't want it to be said—that he has violated the law and may well feel that he has not violated the law. So, there ought to be an opportunity to test whether the initial determination was properly made.

Senator FONG. Mr. Mailman, you have sent me a letter dated March 24, 1976, commenting on the amendments that I have introduced, and I want to thank you for this letter.

I will ask that this letter be introduced into the record at this time. [The material referred to follows:]

ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS,
New York, N.Y., March 24, 1976.

Senator HIRAM L. FONG,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR FONG: As you may know, my statement on S. 3074 affecting the Immigration and Nationality Act was submitted to you and to other members of the Subcommittee prior to my scheduled appearance on March 18th which has now been postponed to March 25th. When I was in Washington on March 18th I was given a copy of your "Statement on Amendments to S. 3074."

As our Association has been concerned for many years with many of the problems which your amendments engage, you may find our comments thereon helpful to your consideration. They are given below in the order of the listing given by you in your statement:

I. Amendments Affecting Reunion of Families:

(a) Your proposal, to permit resident aliens to petition for their parents, is well taken. Many of our members have argued for a similar amendment and I plan in my testimony to support this amendment.

(b) There is much merit to extending the waiver provisions for fraud and misrepresentation as they appear in 212(i) of the Act to the sons and daughters of citizens and permanent resident aliens, particularly as discretion is left with the Attorney General.

(c) Under 241(f), however, the fraud is automatically excused. I have some doubt as to whether the family reunification principle which here serves spouses and younger single children requires indiscriminate extension to older or married offspring.

(d) I, too, felt that something should be done to increase the possibility that aliens chargeable to the dependent areas be given an opportunity to immigrate from the lower preferences. I, therefore, proposed that the limitation be expanded beyond 600 to 1,000. Your amendment would permit natives of the dependent area to use all of the unused balance of the 20,000 numbers available to natives of a foreign state. I frankly do not have a sense of whether our members would feel that this might cause disproportionate immigration from dependent areas to the disadvantage of peoples from other countries.

II. Refugees:

(a) I agree that it would be better to complete the job in the first instance if that were possible and to admit refugees as permanent residents under 203(a) (7). I suppose that the purpose of the two-step process is to take people out of their catastrophic situation quickly and do the double checking on their eligibility when circumstances more easily permit. Presumably, the Departments of Justice and State will study this proposal with an objective view to recommending the elimination of the double processing if that is administratively feasible. In any event, the distinctions between consular and immigration officers in their ability to make judgments on admission of refugees does seem to be unnecessarily rigid.

Also, I agree that the concept of resettlement as a bar to refugee status should be re-evaluated with a view to liberalizing the opportunity of the alien to gain refugee status.

Finally, I wholeheartedly agree that the definition of a refugee should be recast. As we are painfully aware, political refugees are not restricted to those who flee from the Middle East or communist countries.

(b) I have, frankly, had insufficient opportunity to study the merit of your proposed amendment to S. 212(d) (5) of the Act.

(c) Similarly, I am not yet prepared to indicate a position with respect to your proposal to permit immediate residence to Indo-Chinese refugees.

III. Elimination of Discriminatory Provisions of U.S. Laws:

(a) I urge that this identification provision of the Chinese Exclusion Act is vestigial and offensive and should be eliminated.

(b) and (c) We most strongly endorse your proposal to eliminate the statement of "country of former nationality" from the passport. Our Association has taken up this very question with the State Department on more than one occasion, strongly advocating the deletion of the country of birth from our passports for the very reasons given in your statement. There may be some advantage, perhaps, to retaining the "country of former nationality" in the certificate of naturalization. This could be used for the benefit of the alien, that is to prove that he has given up a former nationality. On balance, however, as the document could have an unfortunate adverse effect on the naturalized citizen, this information should not appear against the citizen's wishes.

(d) While our Association is not in favor of Section 12 or any provisions imposing sanctions on employers for the hiring of undocumented aliens, we agree that if such sanction is to be enacted, it should be accompanied by the provision you propose, namely, that the Attorney General be empowered to prevent discrimination in hiring because of national origin.

IV. Amendments to S. 3074 to Improve Operation of Immigration and Nationality Act:

(a) We agree that the provision, under Section 12 of S. 3074 applicable to H-2 status, that workers be "available at the time and place" where they are to be employed should be extended to Section 212(a) (14) of the Act and we have so urged in our statement. We have also asked that the time limitations in this bill similarly apply to "permanent" certifications. Finally, I agree that it would be well to have the Secretary of Labor's action made subject to published standards.

(b) As you are aware, the right to review consular action remains, at best, dubious. Informal review to the State Department is sometimes but not always an effective remedy. I am frankly not prepared at this time to state our Association's position on your proposal to permit formal review to the Secretary of State but to deny appeal to the courts.

(c) We, too, feel that the requirements for visiting the United States be liberalized, particularly in the Bicentennial Year. We have so requested Commissioner Chapman, without success. Whether or not it should extend to granting

admission without visas on a reciprocal basis, I am not certain. However, the current situation, as our Association has complained, makes little sense. As you may know, effective Feb. 16, 1975, the Immigration Service stripped itself of the regulatory authority to extend B-2 permits. In practice, many aliens unwittingly seek admission for only two or three months, or, after a trip of many thousands of miles and great expense, are denied admission for a longer time. They are then confronted with an inability to obtain even a single extension. This is utterly unreasonable.

(d) Your proposal to permit entry to the United States of the spouse of a citizen who dies during active duty in the armed forces of the United States seems to me to be simple justice and would obviate the seeking of relief through a private bill.

(e) Your proposal to permit waiver of literacy requirements for naturalized persons who are over the age of 60 years and have 20 years' residence, without pegging such residence to the effective date of the Act appears to be a reasonable amendment.

The proposals in your amendments and as explained in your statement reflect the most thoughtful consideration of some of the most serious problems in the application of our immigration laws and we appreciate the opportunity of commenting thereon.

Sincerely yours,

STANLEY MAILMAN,
President.

Mr. MAILMAN. Thank you, Senator Fong.

One thing I should mention that's really not directly related to the bill, and that is that we are—we feel it would be appropriate and we are going to be writing to the Commissioner of Immigration, General Chapman, to withhold the enforced departure of those aliens who would be helped, particularly the relatives who would be helped by provisions in this bill, and particularly those classes that the Immigration Service and State Department agree should be helped by this bill.

I think there is a strong precedent for that, that that has been done in the past. I know Senator Eastland has requested that in the past, and I think that it would be terribly appropriate to do so.

Senator FONG. That would be appropriate; thank you very much.

The Chair calls as the next witness Dr. George Harkins, general secretary of the Lutheran Council.

Dr. Harkins, your prepared statement will be received in the record as if you had given it in full, and if you wish, you may highlight whatever testimony you may want to give.

Will you identify your associates?

[The prepared statement of Dr. Harkins follows:]

STATEMENT OF GEORGE F. HARKINS, LUTHERAN COUNCIL IN THE U.S.A.

Mr. Chairman and members of the subcommittee, my name is George F. Harkins. I am a minister of the Lutheran Church in America and currently serve as general secretary of the Lutheran Council in the U.S.A. Present with me are Ingrid Walter, acting director of Lutheran Immigration and Refugee Service; and Dr. Byron Schmid, consultant for immigration policy and law.

The Lutheran Council in the U.S.A. is a common agency of the American Lutheran Church, the Lutheran Church in America and the Lutheran Church-Missouri Synod. The membership of these church bodies includes approximately eight million Americans, over 95% of all Lutheran in the United States.

The Lutheran Council's Department of Immigration and Refugee Service, also known as Lutheran Immigration and Refugee Service, and its predecessor agencies have managed immigration and refugee affairs in behalf of the cooperating church bodies for three decades.

The Lutheran Council and its Department of Immigration and Refugee Service welcome this opportunity to make some constructive comments on S. 3074. We commend the efforts of Senator Eastland and those of the other members

of this Subcommittee to achieve needed reform in our nation's immigration law, especially as it relates to the Western Hemisphere.

The following statements are based on the stated position of the Lutheran Council concerning immigration.

PREFERENCE SYSTEM AND WORLD-WIDE NUMERICAL CEILING

From 1921 until the mid-sixties, immigration to the United States was based on a "national origins quota system," which related the entry of persons to the existing ethnic and national origin composition of the U.S. population. That system clearly and perhaps deliberately discriminated in favor of immigration from northwestern Europe.

In 1965 major changes were made in the Immigration and Nationality Act. The national origins quota system was abolished, and three priorities for immigration were established: family reunion, labor skills and refugees. The preference system, however, was applied only to the Eastern Hemisphere which covers all countries except Canada, the Caribbean and Latin America. One consequence of the failure to apply the system to the Western Hemisphere has been a serious backlog on family reunion immigration.

The 1965 changes also imposed an annual numerical limitation on immigration of 170,000 from the Eastern Hemisphere, exclusive of immediate relatives of U.S. citizens, as well as a ceiling of 20,000 from any independent country. A ceiling of 120,000 from the Western Hemisphere was established in 1968. No per country limitations were set for the Western Hemisphere, however.

While these 1965 changes accomplished significant reforms in U.S. immigration policy, the Lutheran Council believes it is time for this nation to extend the preference system and apply it on a world-wide basis. The Council has long supported the priority of preferences based on family reunification, labor skills and refugees. The application of this preference system on a world-wide basis would establish the foundation of a fair, just and equitable U.S. immigration policy.

We urge that the present preference categories be strengthened with respect to family reunification. We believe that the parents of permanent resident aliens should be accorded a preference within one of the categories, and that the spouse or children of an "immediate relative" alien should be accorded derivative status for purposes of family reunification. We also encourage admitting mentally-retarded aliens who have close relatives in this country, and placing the relative preference categories ahead of the occupational categories.

In line with efforts to formulate a more satisfactory definition of family, we favor the elimination of married siblings as well as married children from the present fourth and fifth preferences. We urge the Congress to restrict occupational immigration with respect to skills essential to the country of origin. The percentages within the present system also should be adjusted to reflect known and anticipated demands within each preference category.

The Lutheran Council endorses the principle of a world-wide numerical ceiling on U.S. immigration. The retention of two separate and different hemispheric ceilings is unnecessary, especially in light of per country ceilings and a preference system. Since the adoption of a world-wide ceiling would not affect the total number of immigrants admitted to the U.S. in any one year, we urge the inclusion in pending legislation of a universal ceiling even if the full effect of the provision were to be phased in over a specified period of time.

The Lutheran Council recognizes that any country has a right to limit the number of aliens which it admits as immigrants. As a "nation of immigrants," however, the United States should continue its historic practice of admitting a reasonable number of immigrants each year. We believe that the present ceilings on immigration are reasonable ceilings. We oppose any effort to seek a numerical balance between immigration and emigration.

EMPLOYER SANCTIONS

The presence of out-of-status aliens in the United States is not a new problem, but only recently has public attention been focused on the situation. The need as we see it, is for corrective legislation in labor importation, certification and control.

The Immigration and Naturalization Service estimates that there are six to twelve million "out-of-status" aliens in the U.S. today. These are persons who have crossed the border, largely although not exclusively, from Mexico, without

documentation or inspection, as well as persons who have entered legally, such as visitors and students, but who either have overstayed the limits of their visas or who have accepted employment illegally.

The Immigration and Naturalization Service apprehended a record 788,000 out-of-status aliens in 1974, a 20 percent increase over the previous year and an 80 percent increase over a decade earlier. Of this number, 693,000 gained entry surreptitiously. 710,000 of the total number apprehended were Mexican nationals. The Immigration and Naturalization Service estimates that the apprehensions represent only 20-25 percent of those who entered illegally or otherwise violated the terms of entry.

The suspected impact of undocumented workers on domestic employment is of growing concern, especially in this time of recession and high unemployment. While illegal entrant aliens do occupy some jobs which would otherwise be available to U.S. workers, such persons generally have taken jobs in agriculture and the service industries which frequently experience a shortage of available or willing domestic labor.

The Lutheran Council agrees that employer sanctions must be imposed if illegal immigration is to be reduced. The Council believes that if employers were prohibited by law from hiring undocumented and other out-of-status aliens, the economic incentive for illegal immigration would be greatly reduced. Accordingly, the Lutheran Council supports civil penalties for persons or organizations who knowingly employ or refer for employment, aliens who are not legally authorized to work. The penalties however, should be applied only prospectively.

But while the Lutheran Council agrees with the principle of sanctions, it is concerned about the possible discriminatory effect of sanctions on job applicants who are legally authorized to work. The Council is especially concerned that employers might tend to deny employment solely on the basis of skin color, surname or accent, i.e., because the applicant may appear "alien," and thus discriminate against Blacks, Mexicans or other minority persons who are U.S. citizens or legal resident aliens.

We believe that the best non-discriminatory evidence of employability would be the requirement that all job applicants produce a tamper-proof Social Security card. The sole criterion for legal employment then would be the possession of a Social Security card. We urge the Congress to explore the development of such a system. We also urge the Subcommittee to add a provision to bar employment discrimination because of alienage.

In addition, we favor development of new initiatives to promote increased economic improvement in the Western Hemisphere in order to reduce or eliminate the economic pressure for emigration to the United States. Particular attention in this regard must be given to Mexico.

OTHER LABOR RESTRICTIONS

The 1965 amendments to the Immigration and Nationality Act also instituted a "labor certification" requirement. Except for close relatives of U.S. citizens or legal resident aliens, immigrants must be certified by the Department of Labor that they possess needed skills which the U.S. labor force cannot provide. In the past few years, due to rising unemployment, the Labor Department has reduced the number of certifications issued.

The Lutheran Council supports the replacement of the present individual certification procedures with a system under which aliens would be allowed to enter and engage in employment in the absence of prescribed occupational classification quotas established and monitored according to geographical area. Under this change, immigration would be possible unless restricted by the Department of Labor. At the present time, it is restricted unless authorized by the Labor Department. We view the present proposal by the U.S. Department of Labor as a movement in this direction. In the event that the present system is changed, however, we caution against any effort to place the entire United States within restricted occupational quotas.

In regard to the problem of migrant workers, we view with alarm any proposal which would allow aliens to enter the United States temporarily for the purpose of engaging in employment which is permanent in nature. At the present time, such aliens are restricted to work which is temporary in nature. We believe that an expansion of this system, which sometimes operates as a form of "indentured servitude," is undesirable with respect to human dignity and family

separation. If additional unskilled workers are needed for domestic labor of a permanent nature, which cannot be obtained through increased remuneration or improved employment conditions, we prefer the admittance of aliens with permanent resident status to satisfy the need.

ADJUSTMENT OF STATUS

The Lutheran Council supports the proposal to reinstate the adjustment of status privilege to Western Hemisphere aliens who are in the United States at the time of application and who are otherwise eligible. At the present time such aliens must leave the United States in order to apply for visas for permanent residence here. The present practice is unnecessarily burdensome. Inasmuch as the privilege of adjustment is at the discretion of the Attorney General, and any potential abuses can be controlled by prudent exercise of that discretion, we favor the removal of all restrictions to that privilege.

With respect to the millions of out-of-status aliens in the country who have established equity, we urge that the Attorney General be authorized, for a period of one year, to grant permanent residence status. This regularization of status should be made outside of numerical limitations and without labor certification. The Lutheran Council believes this change must accompany the adoption of any employer sanctions.

The adoption of employer sanctions will result in severe social disruption for untold numbers of families with out-of-status workers. Without doubt, many ineligible employees would be removed from the U.S. job market. However, in such circumstances, many families would lose their sole means of support, forcing hundreds of thousands of persons either to go on welfare or to leave the United States in order to keep the family together. Yet children born here, whether of legal or illegal-entrant parents, are U.S. citizens, and many out-of-status aliens are married to citizens or legal resident aliens.

The Immigration and Naturalization Service has estimated that approximately 265,000 aliens would be aided, under Section 249, by the regularization of the status of persons continuously present in the United States since July 1, 1968. We find this proposal grossly inadequate inasmuch as it fails to treat the situation of most of the out-of-status aliens present in the country. We believe strongly that legislation must be devised to deal with the present situation of most of the illegal population in the country. It is our judgment that the proposed change in S. 561, viz., to grant an adjustment of status for continuous residence since 1972, is a more adequate resolution of the need.

The out-of-status alien is constantly in danger of apprehension and deportation, even though some family members may be U.S. citizens or legal resident aliens. For fear of exposure, he or she has little access to public services and police protection. Exploitation by employers and landlords is a frequent occurrence. As this nation attempts to forge a more humane immigration policy, we believe that the perpetuation of this situation, which is dehumanizing at best, cannot be tolerated.

REFUGEES

The Lutheran Council supports an expansion of the definition of "refugee" in the Immigration and Nationality Act to include victims of racial, religious or political persecution anywhere in the world, in accord with the 1951 U.N. Convention Relating to the Status of Refugees and the 1968 Protocol. Provision for victims of natural calamity or military operations should be continued in the present law.

We favor retention of a refugee preference category under numerical ceiling in order to insure the admission of a "fair share" of the world's refugees. Due to the frequent inadequacy of the present 6% allotment for the seventh preference, we encourage expansion to perhaps 10%. We also encourage the admission of refugees on the basis of visa rather than as "conditional entrants." In addition, we strongly favor an authorization under which the Attorney General could parole into the United States additional numbers of refugees to meet emergency situations when current numbers are unavailable. We urge the adjustment of status of refugees who are admitted as parolees, such as the Cubans and Indochinese, or who are granted asylum, outside numerical limitations.

In addition to the above proposed changes relating to refugees, the Lutheran Council also is concerned about the treatment of asylum seekers. In spite of the

provisions of the Immigration and Nationality Act and the UN Protocol Relating to the Status of Refugees, acceded to by the United States in 1968, there sometimes appears to be an arbitrary and capricious differentiation in procedures such that some applicants are accorded the requisite due process of law while others are not.

At the present time, persons who enter the United States with non-immigrant visas and then claim refugee status, as well as persons who flee here and gain entry surreptitiously, are accorded due process: the right to an attorney at the outset, an opportunity to present witnesses and documentation, a hearing before an immigration judge on the asylum claim, and review of any denial by the Board of Immigration Appeal. On the other hand, persons who covertly flee their homelands without visas and, upon arrival, notify the Immigration and Naturalization Service that they seek entry into this country, are not accorded these same due process rights under exclusion proceedings. Except for the brief initial interviews which are conducted without benefit of legal counsel, the latter persons cannot even receive a hearing on the merits of their asylum claims.

We believe it is essential that uniformity of due process be accorded both types of persons who claim asylum in this country. The issues of life and death are the same for both inasmuch as the danger of persecution does not depend on the mode of arrival here. Because of the present differentiation in treatment which violates the spirit and the letter of the UN Protocol, we urge the Congress to make this uniformity explicit by specifically mandating equal due process of law for all asylum claimants.

OTHER CONCERNS

The Lutheran Council opposes the proposed change which requires employees of the Department of Health, Education, and Welfare to initiate disclosure to the Department of Justice information on out-of-status aliens who are receiving public assistance. While such records of the Department of Health, Education, and Welfare should be available to the Department of Justice for inspection, we reject any effort to turn the Department of Health, Education, and Welfare into an investigative or enforcement arm of the government.

Finally, the Lutheran Council rejects the amendment of Section 241(a) to establish, as a ground for deportation with respect to circumstances present at the time of entry, the receipt of any form of public assistance by a legal entrant alien. We believe this basis for deportation should be restricted, as at present, to those cases where an alien has a legal obligation to repay the monies received, was aware of the responsibility to repay at the time of reception, and has received but has not satisfied a demand for repayment.

Mr. Chairman, we urge the Subcommittee to move expeditiously in the consideration of these proposals for reform of our immigration law. The Lutheran Council in the USA through its department, Lutheran Immigration and Refugee Service, has long supported the direction of reforms which are embodied in several bills before the Congress. We believe that immigration reform, such as we have proposed, reflects and reaffirms our nation's continuing pursuit of justice, equality and freedom. In this "nation of immigrants," it is worthy of the best efforts of all Americans and a fitting tribute to our Bicentennial.

Thank you, Mr. Chairman.

STATEMENT OF DR. GEORGE F. HARKINS, LUTHERAN COUNCIL IN THE U.S.A.; ACCOMPANIED BY DR. BYRON SCHMID, CONSULTANT FOR IMMIGRATION POLICY AND LAW, AND INGRID WALTER, ACTING DIRECTOR, LUTHERAN IMMIGRATION AND REFUGEE SERVICE

Mr. HARKINS. Mr. Chairman, I will summarize our prepared testimony.

My name is George F. Harkins. I am a minister of the Lutheran Church in America and currently serve as general secretary of the Lutheran Council in the United States of America. Present with me on my right is Ingrid Walter, acting director of the Lutheran Immi-

gration and Refugee Service; and on my left, Dr. Byron Schmid, consultant for immigration policy and law.

The Lutheran Council in the United States of America is a common agency of the American Lutheran Church, the Lutheran Church in America, and the Lutheran Church—Missouri Synod. The membership of these church bodies includes approximately 8 million Americans, over 95 percent of all Lutherans in the United States.

The Lutheran Council's Department of Immigration and Refugee Service, also known as Lutheran Immigration and Refugee Service, and its predecessor agencies have managed immigration and refugee affairs in behalf of the cooperating church bodies for three decades.

We welcome this opportunity to make what we believe to be constructive comments on S. 3074. We commend the efforts of the chairman of this committee and the other members for their desire to achieve needed reform in our Nation's immigration law, especially as it relates to the Western Hemisphere.

Mr. CHAIRMAN. I wish to highlight three features of our testimony: Employer sanctions, the regularization of status for out-of-status aliens who have equity, and increased economic development for Western Hemisphere countries.

The presence of out-of-status aliens in the United States is certainly not a new problem, but only recently has the public begun to focus attention on it. These are persons, estimated to number between 6 and 12 million, who have crossed the border, largely though not exclusively from Mexico, without documentation or inspection and who have either overstayed the limits of their visas or who have accepted employment illegally. We favor the imposition of legal sanctions on employers who knowingly employ such people.

In order to help reduce the possible discriminatory effect of sanctions on persons who are legally authorized to work, we urge the Congress to develop a tamperproof social security card. We are concerned lest employers reject applicants who can legally work merely on the basis of surname, skin color, or language. We favor possession of a social security card as the sole criterion of employment eligibility.

We also favor the regularization of status for out-of-status aliens who have established equity. We urge that the Attorney General be authorized, at least for a period of 1 year, to grant permanent resident status for such persons. This regularization of status should be made outside the numerical limitations.

The adoption of some employer sanctions will no doubt result in severe social disruption for untold numbers of families with out-of-status workers. While many ineligible employees would be removed from the U.S. job market, many families will lose their sole means of support, forcing hundreds of thousands of persons either to go on welfare or to leave the United States in order to keep their families together.

Finally, we favor increased economic development for Western Hemisphere countries, especially Mexico. We believe this to be essential not only as part of our responsibility to those countries, but part of our responsibility to the people who want to come to this country for reasons which could be alleviated if the conditions in their own country were changed.

Thank you, Mr. Chairman.

Senator FONG. You stated, Doctor, that the Government should have a period for regularization of status of those immigrants who are illegally here during a certain period.

How far would you go in that respect?

To whom will that program extend?

You are not advocating that everyone who is illegally here would be given a chance to remain, are you?

Mr. HARKINS. That is correct.

Senator FONG. Then how far would you go in advocating that a certain number of those illegal aliens here now be allowed to remain? Where is the dividing line? How would you set the policy on it?

Mr. HARKINS. Perhaps Dr. Schmid can answer.

Mr. SCHMID. Mr. Chairman, under the proposal in the bill before us, there is a recommendation to advance the date in section 249 to 1968. The Immigration and Naturalization Service estimates that only 265,000 persons, or 4 percent of the illegals presently in the United States would be affected.

It is our judgment that this provision is grossly inadequate as a response to the human problems involved. For this reason we are much more favorably inclined to the proposal in S. 561, which would, in addition to the adjustment of section 249, make possible the adjustment of status for those who have been in continuous residence at least since 1972. We feel this is a much more adequate solution to deal with the mass number of persons who are here.

Senator FONG. So, you would rather have this bill act prospectively?

Mr. SCHMID. That's right.

Senator FONG. From 1972 on?

Mr. SCHMID. What we are dealing with is how far in the past do we want to make allowances for the change in the law in order to adjust the status of those who are here illegally. Our judgment is that if the time is advanced only to 1968 and only in section 249, we are allowing for an adjustment on the part of a very small percentage of the affected numbers. We have to do better, because if the Congress adopts strong employer sanctions we are going to affect millions of persons in this country. If we don't allow some possibility for a normalization of their status, we are going to be creating some rather horrendous human problems.

Either we are going to separate the breadwinner from his employment, putting his family on welfare—and I haven't heard anyone suggest that we do—or we break up families, sending the illegal out of the country, leaving infant children and permanent resident spouses in this country.

The proposed legislation before us does not deal with this human problem, and somehow we have to do that.

Senator FONG. That was the question I addressed myself to, this morning when I asked the witness what would happen if we identify the 8 million aliens. What do we do with them and how is it going to affect our economy? How chaotic would this situation be?

Mr. SCHMID. This is why we think the provision in S. 561 is at least a more adequate resolution of this problem.

Senator FONG. Thank you very much.

Senator Eastland has some questions for you.

Your statement urges that the United States continue its historic practice of admitting a reasonable number of immigrants each year.

Do you have any feeling about providing for a so-called "new seed" immigrant?

MR. HARKINS. I think Mrs. Walter would be best equipped to answer that question.

MRS. WALTER. The policy statement of the council suggests the admittance of a reasonable number of persons who can testify to the United States recognition of the interlocking and mutual interest of all nations. We favor the admittance of persons not only for the purposes of family reunification, special skills, and the proper share of refugees, but also persons who choose the United States as their new homeland and who impart to their American neighbors an understanding of culture, attitude, and interest of other races and peoples of the world. So, this is the new seed.

Senator FONG. How would you go about that in the framework of this quota that we have set?

If we continue with the quota of 120,000 for the Western Hemisphere, and 170,000 for the Eastern Hemisphere, would that bring in the new seed immigration that you talk about? Would they be included in this quota?

MRS. WALTER. Yes; it would be included. But I believe we should change the labor certification requirement so the new seed would be not coming on a request of the employer but rather because of the possibility of employment for that person. This change would make it possible for larger numbers of new seed to enter.

Senator FONG. Thank you.

If we grant amnesty as you propose to millions of illegal aliens already in the United States, are we not encouraging additional millions abroad to follow the same illegal path?

Will they not also be hoping for the same reward?

MR. SCHMID. Senator, you raise a very good point, and this certainly is one of the concerns.

However, we must balance a number of conflicting claims for justice. Our primary concern relates to the situation of millions of persons who are, at the present time, without legal status. Many of them have established equity. Many of them have families or serious business enterprises. We have to deal with this problem in some way. We can't simply "sweep it under the rug" because of some presumption that if we make an adjustment for them somehow we are saying that we can make an adjustment for anyone in the future.

To a considerable extent, this situation has come about from irregularities within the law itself, which has built up the present backlog to migration to the U.S., especially from the Western Hemisphere. The Lutheran Council wishes to underscore as dramatically as it can the urgency of making some provision for these millions of people. We must deal with them, make adjustment, and begin anew from here into the future.

While INS speaks about 6 to 12 million illegals, the actual number of persons involved in family situations is much greater. When we speak about the members of families who are affected and consider the families who have citizen and permanent resident members, millions of additional persons are affected.

Senator Fong. Thank you very much.

We will now have Mr. Wells Klein, American Council for Nationalities Service.

Mr. Klein, we will have your full statement incorporated in the record at this time as if given. Will you try to do what you have to do in 5 minutes? I have got to go and answer a vote call.

[The prepared statement of Mr. Wells Klein follows:]

STATEMENT OF WELLS C. KLEIN, EXECUTIVE DIRECTOR, AMERICAN COUNCIL FOR NATIONALITIES SERVICE

Mr. Chairman, my name is Wells Klein, and I am Executive Director of the American Council for Nationalities Service (ACNS), a national non-sectarian voluntary organization concerned with the rights and welfare of immigrants and the foreign born in our society. ACNS has some thirty member agencies and affiliates throughout the United States, generally called International Institutes, which for fifty years have provided direct services to the foreign born in their communities. ACNS, with its member agencies, is the largest non-sectarian agency structure in the United States dealing with service to the foreign born. Though it is difficult to give precise figures, I would estimate that we provide direct services to several hundred thousand people each year, and that our local constituencies amongst the ethnic and nationality groups may run to several million.

Our testimony this afternoon has a particular point of departure deriving from our concern for the welfare of the foreign born in this country and their effective integration into our society. The staffs of our member agencies deal with very real, very human problems on a day-to-day basis. It is their experience and their concerns which we bring to the Subcommittee this afternoon.

Before turning to specific considerations in the pending legislation, I would like to commend the Subcommittee and its Chairman on behalf of all my colleagues for taking the initiative in grappling with needed changes in our immigration law. Some of the issues are complex and, unfortunately, some of them are also emotionally laden. I think I should inform the Subcommittee that in our discussions within ACNS, particularly those related to "sanctions", we have had to work out a consensus which represents compromise between different points of view. Our ability to arrive at a consensus also represents our appreciation of the need to deal with some of the pressing, if difficult, questions facing this nation in the area of immigration policy.

OUT-OF-STATUS ALIENS

Probably the most difficult issue reflected in the proposed legislation is that of how to deal with the continuing problem of large numbers of out-of-status aliens in the United States. May I draw the Subcommittee's attention to the recent Supreme Court decision in the case of *De Canas v. Bica* (No. 74-882) in which, in effect, the Court recognized the rights of individual states to impose sanctions against employers of aliens who have no federal right to employment within the United States. With this decision we stand in danger of having fifty separate state laws governing the employment of out-of-status aliens if the Congress does not preempt this area as one of federal jurisdiction.

With this concern in mind, ACNS nonetheless stands opposed to the concept of imposing either civil or criminal penalties on employers who, knowingly or otherwise, hire out-of-status aliens. Our reasons are twofold: First, we are greatly concerned with the impact of sanctions legislation on the civil rights of those citizens and legal resident aliens who, by reason of accent, surname or physical appearance, might be thought by an employer to be "illegal aliens", or on the civil rights of those whom the employer might not wish to hire, using the excuse that the individual might be an "illegal alien" as a rationale for discrimination. I will not elaborate on this concern—it has been mentioned time and again by witnesses before Congressional committees concerned with immigration. We feel strongly, however, that sanctions legislation, as proposed, would be inconsistent with basic democratic principles and concepts of equal opportunity.

Our second area of concern is that we fear the proposed legislation is based on inadequate knowledge of the problem, of its dimensions, or of what might occur if sanctions legislation were adopted. Let me be more specific. Nobody knows how many aliens are illegally in this country. We have heard figures ranging from several million to twelve million. The Immigration and Naturalization Service itself has used figures as disparate as six and twelve million. We do not know how many out-of-status aliens are in competition with American workers, nor do we know how many such aliens are filling a needed labor force role in this country. Furthermore, we have very little objective information on the social impact of out-of-status aliens, in such terms as their use of public assistance in its various forms, or their effect on our balance of payments through remittances abroad. In short, Mr. Chairman, much of the discussion of this question has been characterized by subjective judgements and emotion rather than by the search for objective information on which to base meaningful solutions. ACNS is deeply concerned that if sanctions legislation as proposed in both the House and the Senate is passed, we may have compounded our problems on the basis of precipitous action.

Having voiced our opposition to sanctions legislation, we feel under obligation to suggest some alternative approaches. ACNS does not condone illegality and we support this Subcommittee and the Congress in its search for legislative solutions. As I stated earlier, we also believe it is important for the federal government to preempt this area of legislative concern. We would, therefore, suggest that this Subcommittee consider a legislative approach which would make the employment of out-of-status aliens illegal, but without attaching a schedule of either civil or criminal penalties. This action would preempt the area as one of federal concern. It would also enable the Attorney General, on a case-by-case basis, to seek injunctions in the courts against employers of out-of-status aliens. This approach would permit the Justice Department to deal with the largest and most notorious employers first and then work its way down. While there would probably be some negative impact in terms of the civil rights of citizens and legal resident aliens, it would be nothing like the impact of much broader sanctions legislation. Finally, the enactment of legislation such as we are suggesting could be considered an interim step and would provide time for the further study of the problem, its impact, and reasonable approaches to its mitigation.

Our second recommendation, Mr. Chairman, is that the Congress consider establishing a time-limited commission to study the complex problem of out-of-status aliens in its entirety and to report back to the Congress with its findings and recommendations within a specified time. Such a commission could be along the line of the Western Hemisphere Commission, which was established following the revisions in the Immigration and Nationality Act in 1965.

Mr. Chairman, if, despite our importuning, it comes to pass that sanctions legislation is to be passed by the Congress, it follows that the Congress must also consider the inevitable question of how to deal with those out-of-status aliens already in the United States. The adoption of employer sanctions legislation would result in serious social disruption, with many thousands of heretofore employed out-of-status aliens no longer part of the labor force. We are concerned not only with the workers themselves but with their families as well, many of whom are either United States citizens or legal resident aliens.

We are indeed a nation of immigrants, and the motivations that brought many of our forefathers to these shores are, by and large, the same that have brought our present population of out-of-status aliens to this country. In our Bicentennial year, it is obvious that this society will not suddenly resort to massive round-ups and deportations reminiscent of Stalin's Russia or Hitler's Germany. Various proposals have been offered to deal with the question of those out-of-status aliens already in the United States if and when employer sanctions legislation is passed. Frankly, Mr. Chairman, this is one of the areas which I and my colleagues in ACNS found difficult. On one hand, we did not wish to propose that those who have circumvented our law be rewarded, while those who stood in line waiting their turn to immigrate legally are penalized. On the other hand, we recognize the seriousness of the problem presented if sanctions legislation is passed. Our consensus recommendation is that a mechanism be established to regularize the status of out-of-status aliens where personal or family hardship would result from the sanctions legislation. This would

include those people who have been here for a sufficient period of time that the United States has, indeed, become their home. Our recommendation would specifically exclude the unattached out-of-status alien, without roots in the United States, who is here solely for economic reasons.

PREFERENCE SYSTEM AND NUMERICAL CEILINGS

Mr. Chairman, we are gratified that S. 3074 contains provisions for equalizing Eastern and Western Hemisphere immigration with the same preference system for both. This is an adjustment to the 1965 Act long overdue. However, we believe that the country limitations for Mexico, and therefore for Canada as well, should be greater than the 20,000 limitation on other countries. This is particularly important in the case of Mexico. Last year, some 45,000 immigrants from Mexico were chargeable to the Western Hemisphere quota. If the permissible quota from Mexico were reduced to 20,000, we believe it would work undue hardship on this contiguous nation, and might, indeed, contribute to an increase in illegal immigration across our southern border.

In addition, Mr. Chairman, we would like to propose that there be a worldwide numerical ceiling after a transition period of, say, three years, to do away with the arbitrary and unnecessary distinction between Eastern and Western Hemispheres.

CIVIL RIGHTS

Of particular concern to ACNS is a loophole in the present Civil Rights Act which denies aliens protection under the Act. We recommend that the Congress strengthen the Civil Rights Act of 1964 by barring employment discrimination based on alienage for those aliens lawfully present in the United States with the legal right to work. This would include refugees as well as permanent resident aliens.

REFUGEES

An area of major concern to ACNS and its member agencies is the question of refugee asylum. In its overall review of immigration legislation, we urge this Subcommittee to consider broadening the definition of refugee from its present "cold war" context to include all refugees from racial, religious or political persecution. We believe our law should be brought into accord with the 1951 United Nations Convention Relating to the Status of Refugees and with the 1967 Protocol, to which the United States is a signator. We further consider the present 6 percent allotment for the seventh preference inadequate, though we deeply regret the world situation which makes this true. Without increasing the overall numerical ceiling, we recommend that the allotment for the seventh preference be expanded to something on the order of 10 percent. We believe this recommendation is consistent with the history of the United States as a haven for refugees, and with the realities of today's world.

Finally, we would like to recommend that, after consultation with Congress, the Attorney General be authorized to parole into the United States additional numbers of refugees to meet emergency situations where numbers are unavailable. This recommendation would permit the Attorney General the needed flexibility in dealing with pressing emergency situations.

MISCELLANEOUS

Mr. Chairman, there are several other sections of S. 3074 on which we wish to comment. For the sake of brevity, I will restrict my comments to those provisions which present a problem to ACNS. However, I wish to point out that there are many provisions in the bill with which we find ourselves in complete agreement and we are gratified that they are available to this Subcommittee for its consideration.

Frankly, Mr. Chairman, we have not had time to consider all the implications of the proposal contained in section 2 of S. 3074, concerning temporary foreign labor. We are presently going through a period of high unemployment, and ACNS questions whether this is a realistic time to consider a new immigrant labor provision. We have no idea of how many people might be admitted to the United States to take just such work as is the subject of this section. On the other hand, we know that a number of out-of-status aliens come to the United

States to take just such work as is the subject of this section. If, indeed, there is a shortage of labor within a particular geographic area or industry, and if wage scales and working conditions are not substandard, then one must realistically ask, why not allow foreign workers to fill these jobs legally, with adequate social and economic safeguards, rather than illegally? Since we have had neither the time nor the information to consider this proposal in perspective, our recommendation is to defer its consideration until more is known about its potential impact, and until it can be viewed in the light of other experiences, particularly those of several Western European countries, which for many years have had programs similar in intent to that contained in section 2 of S. 3074.

ACNS strongly opposes the provisions of section 13, which requires employees of the Department of Health, Education, and Welfare to disclose to the Attorney General the names of out-of-status aliens who are receiving public assistance. We believe it completely inappropriate to turn the Department of Health, Education, and Welfare and its individual employees into an investigative or enforcement arm of the government. If carried to its logical conclusion, enactment of this provision could turn every federal department and employee into a law enforcement agent. While we recognize that this is not the intent of this provision, its implications are unacceptable in a democratic society.

Finally, ACNS cannot agree with the provision of section 9 of S. 3074 which establishes, as grounds for deportation, the receipt of any form of public assistance within five years of entry by an alien legally admitted to the United States, for causes present at the time of entry regardless of whether the alien is legally liable to repay the expense or whether any demand for payment has been made. We consider that the present statute provides ample protection for the public interest. If enacted, section 9 would be unduly restrictive and would create unnecessary hardships.

In conclusion, Mr. Chairman, and with your permission, ACNS will submit a supplementary statement for the record which will suggest some technical modifications to the present Immigration and Nationality Act, which we believe the Subcommittee may wish to consider.

Thank you very much, Mr. Chairman and members of the Subcommittee, for permitting the American Council for Nationalities Service this opportunity to express its views.

Mr. KLEIN. Mr. Chairman, I think I had best summarize certain pertinent concepts in my statement.

First, that there are many provisions in S. 3074 with which we find ourselves wholly in agreement and we are gratified that this legislation as well as other legislation which has been introduced in the past is now before us.

The most critical element in S. 3074 is the so-called sanctions legislation. Within our own constituency we discussed this at length over the last 2 years. We are a broad and diverse constituency. ACNS represents many ethnic and nationality groups, yet we come down hard against the idea of enacting employer sanctions for two reasons.

First, we are very concerned with the negative impact on the civil rights of those Americans and permanent resident aliens who, by reason of accent, surname, or physical appearance, would be discriminated against in the process of implementing sanctions legislation.

Second, and equally important, Mr. Chairman, we are very much concerned that none of us at this time have sufficient information, on the number of out-of-status aliens in this country, and on their impact on this society or this economy to take radical action without further investigation. We are afraid that such actions might open up all sorts of negative results.

For instance, if we could push a button and all out-of-status aliens would suddenly disappear. What effect would this have on the labor force in America? To be frank and honest, do we know what effect

the out-of-status alien has on our society, and its social institutions? We feel sanctions legislation would be precipitous action based more on emotion and speculation, frankly, than on real hard facts which we feel should be the basis for legislation.

Second, Mr. Chairman, we are recommending a quite different approach from sanctions. It is detailed in our written statement and I will not attempt to go into it now except to say that it is an alternative which would enable the Attorney General to employ injunction mechanisms against employers of illegal aliens. It is a relatively new idea and we think it represents a useful compromise approach.

If, however, the Congress does enact sanctions legislation, we feel strongly, as do many of our colleagues, that S. 3074 makes no provision whatsoever for the inevitable question of what to do with those out-of-status aliens presently in the United States. Within our own constituency we have discussed this question at length and we find that, whereas we do not want to recommend legislation that would reward those who circumvent our laws, while those who respect our laws stood in line and waited to immigrate legally, the immense social disruption resulting from sanctions legislation, affecting not only out-of-status aliens, but legal resident aliens and American citizens, the immense social disruption would be totally unacceptable. We strongly recommend that the Congress realistically face this problem if it is going to pass sanctions legislation. I see no way, Mr. Chairman, for you to avoid it; otherwise, the Congress would be dealing with only one side of the coin which would be totally counterproductive in terms of the interest of society as a whole.

In addition, Mr. Chairman, we would hope that the subcommittee would focus attention on that aspect of our testimony dealing with refugees.

Senator FONG. You will excuse me, I will ask Mr. Loughran to take over. And, I have to go; I am sorry.

Mr. KLEIN. Thank you for your amendments, Senator Fong. We feel that they are very helpful.

Mr. LOUGHRAN. Have you completed your statement, Mr. Klein?

Mr. KLEIN. I have summarized it very quickly. I would be glad to respond to questions.

Mr. LOUGHRAN. Senator Eastland has two questions. In your comments on section 2 of the bill, relating to the importation of temporary foreign workers, you express concern about the high unemployment rate which the country is now undergoing. Why are you not equally concerned about the illegals now in the country who may be displacing citizens or resident aliens?

Mr. KLEIN. We are very concerned about that sir, as I said in my testimony. And we do not condone illegality. We are very glad that the subcommittee is turning its attention to this question. As I said earlier, we feel that this question is complex and we have offered some suggestions for dealing with it.

With regard to section 2 we, frankly, have not had time to consider all of the implications of this provision. As I said in our testimony, if jobs are available and if standards and wages are not substandard, we feel it would be inconsistent not to allow foreign workers to fill these jobs legally rather than to let them serve as an inducement to illegal immigration.

As you know, Western European countries have been using similar mechanisms, including foreign labor, for a number of years. They have had very mixed results with a lot of family division and social disruption. Many European social institutions have been radically changed as a result of high levels of immigrant workers.

We feel that the impact of this proposal needs to be studied more carefully than, at least, we have had an opportunity to study it to date. We feel that we need a better indication of the numbers of immigrant workers that might be involved. We have no fix on this and of course, the questions of the numbers would have direct bearing on the impact of the proposal.

Mr. LOUGHRAN. Senator Eastland's second point is with respect to higher ceilings for Canada and Mexico. Your statement advocates that the country limitation for Canada and Mexico should be greater than the 20,000 limitation for other countries. Why?

Mr. KLEIN. Two reasons. First, these are contiguous areas where we have a very close social and political connection.

Second, and more importantly, is the impact a 20,000 limitation from Mexico would have on immigration from that country compared to the same 45,000 which come from Mexico each year under our present law.

If, under new legislation, the allocation or ceiling was reduced to 20,000, this would work, I think, a real hardship on our neighbor to the south. And, I am afraid, depriving Mexico of those 25,000 additional numbers, in reality, would induce illegal immigration which is hardly the intent of the legislation or the intent of any of us who are considering it.

I think we have to recognize a special situation, vis-a-vis Mexico. And, I think we are obligated, therefore, to recognize Canada as well, in the same category.

Mr. LOUGHRAN. You do not think this will be a step backwards to the old system, the national origins quota system?

Mr. KLEIN. No, I do not think so—I think it is recognizing reality and recognizing the special nature of the relationship between ourselves and Mexico.

I would not like to see, however, special ceilings allocated to any other country on special circumstances. I see your point. If you start a precedent, you could run into trouble. But, I think it ought to be very clear that this was based on the special relationship we have with Mexico. In fact, Mr. Loughran, if we could do this vis-a-vis Mexico and not Canada, if that is politically possible, I would certainly recommend this cause because there is no particular immigration pressure from Canada.

Mr. LOUGHRAN. Do you really think that applying a 20,000 limitation to Mexico can make much difference in the rate of illegal immigration from that country?

Mr. KLEIN. I think the 25,000 who might otherwise have come might attempt to come to the United States regardless of whether they came legally or illegally. The answer is, yes.

Mr. LOUGHRAN. Mrs. Parker, for Senator Fong.

Mrs. PARKER. You mentioned Senator Fong's amendments to S. 3074. If you would like to comment on those amendments, would you do so for the record? We could appreciate that.

Mr. KLEIN. Mrs. Parker, I will not comment on all of them. I read through the amendments carefully and I think the major thrusts of the amendments represent two things and therefore I am very pleased with them.

One, the amendments in total represent a recognition of reality situations, which are not touched on in the legislation before us.

Second, I think they represent a humane, considerate approach to the humanitarian needs of people around the world. Some of the amendments suggest solutions to elements in our present law. The way the law is being administered, and the regulations under which it is administered clearly work an unequal hardship on people.

Mrs. PARKER. I have no questions. Thank you.

Mr. LOUGHRAN. Thank you. We will recess until the next session, 10:30 a.m., March 31.

[Whereupon, at 3:56 p.m. the subcommittee recessed, to reconvene at 10:30 a.m. on March 31, 1976.]

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

WEDNESDAY, MARCH 31, 1976

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:45 a.m., in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland and Fong.

Also present: Ed Loughran, staff director; Sidney Rawitz, special counsel; Mark Hazard, professional staff member.

Senator FONG. The subcommittee is now in its third day of hearings on S. 3074, a bill to amend the Immigration and Nationality Act.

We welcome as our first witness this morning the distinguished Senator from Oregon, Senator Packwood.

STATEMENT OF HON. BOB PACKWOOD, U.S. SENATOR FROM OREGON

Senator PACKWOOD. Thank you, Mr. Chairman.

Mr. Chairman, let me begin my remarks this morning by commending this committee for taking action to deter the alarming increase of illegal alien employment in this country.

Many people have regarded the estimate that there are 6 to 12 million illegal aliens in our midst as a scare tactic, perpetuated by the Immigration and Naturalization Service to secure greater congressional appropriations. However, two independent studies completed last fall substantially confirm what INS has been telling us all along.

The first study, by Lesko Associates of Washington, D.C., found that the number of illegal aliens in this country exceeds 8 million.

On the heels of this report came a study by ICF, also of Washington, D.C., that the cost of maintaining the illegal alien population in this country amounts to roughly a net tax burden of \$2 billion for every 1 million adult illegal aliens, or a total of \$13 billion—therefore they were estimating 6½ million illegal aliens. In addition because the number of such aliens is increasing dramatically, ICF indicated that the \$13 billion figure is increasing by at least \$500 million per year.

There is no doubt in my mind that the problem has reached crisis proportion. Further, I think we all agree that the best approach to solving the matter lies in restricting employment of illegal aliens because it is for reasons of employment that most of them come here.

The question to me, then, becomes, does the committee bill make it more difficult for illegal aliens to obtain jobs in this country? Under the bill, while it is illegal to hire those not entitled to employment, the employer can make a prima facie case of satisfying his responsibility by merely obtaining a signed statement from the employee that the employee is entitled to employment under the laws of the United States.

Mr. Chairman, I submit that this procedure will not deter in the slightest the employment of those not entitled to hold jobs in this country. By the time the illegal alien beats a path to the employer's door he has already violated a handful of U.S. Immigration laws; it is pure folly to expect such aliens to own up to their illegal status when they are literally a pen stroke away from fulfilling their dream of lucrative employment in the United States. If apprehended at a later date, the alien knows very well that our only reprimand will be to provide him with a prepaid ticket home.

Since the unsuspecting employer is protected by a statement signed by the alien that the employment was legitimate, the whole affair is at best an exercise in futility, and at worst a fraud on the U.S. taxpayer who was led to believe that Congress has finally done something about the problem of employment of illegal aliens in this country.

I suggest that two additions are necessary to this committee's bill if we are going to effectively discourage the employment of those who are not supposed to have jobs.

First, some type of simple screening procedure should be implemented by the employer at the time of hiring.

Second, the Government must be made a partner to any scheme to keep illegal aliens off the job, so that those who attempt to find employment and are not entitled to it can be properly escorted out of the country.

Let me be more specific. If an employer is going to be required to fill out a form relating to the employee's right to hold a job in the United States, let's put some useful information on that form, and not just a statement by the employee that he is entitled to work. It takes little effort by an employer to view the employee's social security card and transfer that number on a form.

In addition, supporting documentation can be required to ensure that the person presenting a card is the one entitled to it.

There are two legitimate concerns that are raised with reference to checking identification prior to employment, that the foregoing procedures should take into consideration.

First, the presentation of identification by the prospective employee should not be made mandatory, so as to turn the social security card, or a similar identification, into a national identifier. And let me say at this stage, Mr. Chairman, I toyed with the idea of requiring a national identifier, some type of compulsory work identification, or the requirement that you must have a social security card and present it, otherwise you could not get a job. I considered that possibility.

The objections to it from a variety of sources, other than illegal aliens, civil liberty groups, were such that this bill would not have a chance with it, and I therefore backed away from that position.

Senator FONG. If it were only applicable to aliens?

Senator PACKWOOD. Pardon me?

Senator FONG. If it were only applicable to aliens, would that be acceptable? If only aliens have to present this card, and the law could say he shall have his picture on it?

Senator PACKWOOD. Well, that would be very satisfactory to me. You are going to run into two problems; you are saying that, one, the indigenous legal American worker need not present his social security card, even though he probably has one; he need not present it.

So, then, what does the employer do when a person comes up to him and says, "I want a job", does the employer say, "Are you an illegal alien", or what? Does he require everybody to show the card?

Senator FONG. Presently you have to have a social security number.

Senator PACKWOOD. Yes; but he doesn't have to show the card.

Senator FONG. If the employer says, "I want to see your card," is there anything wrong with that?

Senator PACKWOOD. That was my initial position, and that is a position that I would still support if you think the bill can come out of committee. It would require, before you can get a job, that you must have some kind of identity card—social security is the easiest because it is broadly held, and Social Security will soon have computerized the ability to retrieve a number immediately, who it is assigned to.

So, I would be very amenable to that procedure. You come in for a job, the employer says, "May I see your social security card," with an updated picture, or however you want to have one. If a person refuses to present it, then he would not be eligible for a job. I would think this would be a very quick way of stopping illegal employment.

It will not stop—and I don't know how we are going to stop—illegal aliens having bogus social security cards, taken from somebody who died, or some other counterfeit procedure. We are not going to make men and women perfect by passing laws, but I think we would take care of 95 percent of the problem by following what you suggest.

The second objection raised with reference to the identification procedure is that it would not catch all illegal aliens because many have bogus social security cards and documentation to back them up.

Mr. Chairman, that is true, no matter how hard we try, we will never be able to completely eliminate the employment of illegal aliens; but checking identification is a start, and time will permit the tightening of a number of important loopholes.

For example, the Social Security Administration is in the process of automating their records, and it will be possible in the near future to check a social security number and almost instantaneously find out if the person presenting it is the one to whom the number has actually been issued. Utilization of this procedure will go a long way toward eliminating the effectiveness of face identification.

It should be pointed out that the reliance on the social security card as a means of screening those not entitled to jobs, is completely consistent with recent efforts by the Social Security Administration to issue accounts only to those persons who are entitled to employment in the United States—I say that specifically, to those entitled to employment in the United States. There are legal aliens in this country entitled to employment, and they would have a social security card. So, it would not apply to indigenous native American citizens, or to those who had received their citizenship, but it would mean ipso facto that those who are not entitled to work are not eligible for a card.

To get a social security card nowadays, you must furnish proof of eligibility for employment in the United States.

Mr. Chairman, as a sponsor of legislation to prohibit the employment of illegal aliens, I can assure you that I have searched long and hard for a way to achieve this goal with 100 percent effectiveness, without at the same time inconveniencing anyone, or trampling on their civil liberties.

I am equally convinced that the magnitude of the problem calls for more than a token effort on the part of Congress. The social security account program provides us an alternative, and I would suggest that this committee carefully evaluate this procedure and consider undertaking it.

Senator FONG. Do you have any objection to a national identity card?

Senator PACKWOOD. No, I would use the social security card because I think now anybody who works, or is entitled to work, has one.

Senator FONG. There seems to be some objection to having a photograph of the person holding the social security card, because that would be a national identity card; I fail to see that.

Senator PACKWOOD. I know the fear. The fear is of a gigantic computer bank in the hills, or some mountain, where everybody is kept on file. And once we have the social security number, then you start to require that the social security number be on your driver's license, be on your passport—be on any kind of official document; and pretty soon the Federal Government has a dossier on every citizen in this country. I think that is a justified fear.

But the fact that you require a work identity card to prove your legal status is a long way from some kind of national violation of civil liberties because of the system.

Senator FONG. Yes. The committee will have to really delve into that problem and see what we can do.

You did mention that the illegal aliens are costing the U.S. Government around \$13 billion a year.

Senator PACKWOOD. That is a report by ICF, and I will submit a copy of that report with my testimony.

Senator FONG. Could you give us what was the reason for that?

Senator PACKWOOD. ICF—I'll give you the main ones, the rest of them are in the report—but they tried to consider all the possibilities, how much the total cost was. Thinks like balance of payments where the aliens send their money back to wherever they come from; the loss of wages that would otherwise go to U.S. workers; evasion of taxes, which many illegal aliens do, except for withholding; welfare; the cost of apprehension of illegal aliens. ICF factored all of that into their report in coming to their \$2 billion per million illegal aliens.

Senator FONG. Thank you, Senator Packwood.

Senator PACKWOOD. Thank you, Mr. Chairman.

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C., March 31, 1976.

HON. HIRAM FONG,
Dirksen Office Building.

DEAR HIRAM: Thank you for the opportunity to testify this morning before the Immigration and Naturalization Subcommittee on S. 3074, the Immigration and Nationality Act Amendments of 1976.

I am attaching to this letter the reports that I mentioned in my testimony this morning by Lesko Associates and ICF, Inc. The Lesko report deals with the subject of the illegal alien population in this country and the ICF study projects the cost of maintaining that population.

I sincerely hope that the Committee will carefully evaluate the benefits of utilizing the resources of the Social Security Administration in our attempt to screen for illegally employed aliens in this country. Jim Kingzett on my staff has spent a considerable amount of his time in the past year working with this aspect of the problem and I would make his services available to the Committee at their request.

Cordially,

BOB PACKWOOD.

FINAL REPORT, BASIC DATA AND GUIDANCE REQUIRED TO IMPLEMENT A MAYOR
ILLEGAL ALIEN STUDY DURING FISCAL YEAR 1976, IN PARTIAL FULFILLMENT
OF CONTRACT No. CO-16-75, OCTOBER 15, 1975

INTRODUCTION TO THE STUDY REPORT

The study effort was divided into three interrelated tasks:

- Task 1—Estimate the Current Illegal Alien Population in the U.S.;
- Task 2—Validate the Design of the FY 1976 Illegal Alien Study; and
- Task 3—Review Existing Data and Analytical Methodologies; Recommend Improvements for INS In-house Data Analysis, Evaluation, and Utilization.

Because very little of the INS data proved to be usable for the Task 1 estimation effort, the study team conducted an extensive search of data outside of INS. The results of the data search and the resulting process for estimating the illegal alien population in the U.S. are fully discussed in the Task 1 report.

The planned Task 2 efforts were restructured somewhat as a result of a request from the INS staff to evaluate and redesign an ongoing Border Patrol line watch staffing experiment. The study team welcomed this additional task as it was compatible with the ongoing effort; the results of this effort are presented in the Task 2 report together with exhaustive analysis, evaluation, and recommendations for improving the design, implementation, and results of all major components of the FY 1976 major illegal alien research study.

The majority of the Task 3 data analysis effort was focused on the estimation work within Task 1; the specific findings are included in the Task 1 report. Recommendations to INS concerning the need for a systems analysis effort, a working definition of illegal aliens, and improved internal INS data systems are included in the Task 3 report.

TASK 1—ESTIMATE THE CURRENT ILLEGAL ALIEN POPULATION IN THE UNITED
STATES

INTRODUCTION

The objective of the Task 1 effort is twofold:

1. to review data currently collected and collated by INS in addition to other illegal alien research, and
2. to estimate the current illegal alien population in the U.S.

Only a major study project will suffice to make an accurate estimate of the illegal alien population upon which to base major policy and planning decisions; the INS staff recognized this fact at the outset of its illegal alien analysis. The major study effort has begun but, because of its magnitude, accurate estimates of the illegal alien population size and impact will not be available until late 1976. Current estimates of the illegal alien population in the U.S. range rather widely between four and 12 million.

For planning and budgeting purposes, it was necessary for INS to initiate a quick-reaction study to reduce the wide variance of the estimates. The limited effort reported herewith cannot replace the major study effort; rather, this task effort will attempt to narrow the wide range of previous estimates.

REVIEW OF DATA ON THE ILLEGAL ALIEN POPULATION

Review of previous studies

During this task, the study team reviewed several studies performed by other researchers which estimated the size of the illegal alien population in the U.S.

With one exception, all of the studies contained unsubstantiated assumptions or educated guesses. The one exception was a research paper written for the Center for Population Research by Howard Goldberg of Georgetown University.

Mr. Goldberg applied life table survival rates, by age and sex, to the 1960 census population of Mexico in order to obtain the expected 1970 population. These values were compared to the enumerated 1970 population and the difference was assumed to represent the net emigration from Mexico to the U.S. Taking into consideration the increase in legal immigrants and applying U.S. Census data, Mr. Goldberg calculated that 1,597,000 illegal Mexican immigrants resided in the U.S. during 1970.

In the opinion of the LESKO ASSOCIATES study team, Mr. Goldberg's research is analytically sound and represents a credible estimate of the illegal Mexican population residing in the U.S. at a given point in time. Unfortunately, the methodology used depends upon ten-year census data and cannot be applied annually where fluctuation in the rate of migration is significant. Mr. Goldberg's estimate can be used, however, as a base point in the development of a current estimate of the illegal alien population.

Review of INS data

Over the term of the study effort, the study team discovered that actual data (sampled or otherwise) regarding the number of illegal aliens in the U.S. do not exist within INS or any other government or private agency. This discovery was not surprising in light of the fact that no formal, comprehensive analysis effort has ever been undertaken; furthermore, no illegal alien will volunteer objective information regarding his or her illegal status. The only worthwhile information that exists relative to illegal aliens is INS apprehension data. However, it is apparent that these apprehension data are extremely biased in a statistical sense. The data are heavily influenced by the level and allocation of INS resources expended to capture illegal aliens. In addition, in the case of EWI's, information on place of entry, method of entry, length of time in the country, etc., is obtained from the aliens themselves. Unless the arrest is made directly at the border, what is known about the illegals other than how and where they were apprehended is only what the illegals themselves wish to tell the arresting official.

In spite of these severe biases, apprehension data remain the only source of data for illegal alien research which are collected with consistent definition over a substantial period of time. Also, the study team assumes that, in the past, INS concentrated its resources wherever the need was most apparent and thus apprehended illegal aliens in their largest concentration. Therefore, the study team believes that apprehension data, despite their shortcomings, can provide insight into the flow and stock of illegal aliens.

Definition of an illegal alien

The Immigration and Nationality Act sets forth the laws regarding the entry of aliens into the U.S. Any alien entering or residing in the U.S. in violation of these laws is *technically* an illegal alien. In broad terms, an illegal alien is any alien who:

- enters the country surreptitiously,
- uses false or fraudulent documents or claims to enter, or
- violates the conditions of his or her entry.

However, the technical definition does not suffice for estimating the number of illegals in the country. According to the letter of the law, foreign tourists who overstay their visits are classified in the same manner as foreign crewmen who desert their ships. Similarly, a Canadian on a hunting trip who unknowingly crosses the border is illegal in the same respect as a Haitian who entered the U.S. surreptitiously and now lives on welfare in St. Louis. For decision-making purposes, the impact of an alien's illegality must be considered. Therefore, the Task 3 section of this report contains a recommendation for developing a working definition of an illegal alien which specifies parameters such as length of time in the country, status (e.g., employed, in transit, etc.), and the like. In this way, a clear distinction can be made between flow of illegals and stock of illegals.

In his research design for estimating the impact of illegal aliens in the U.S., David S. North discusses alternative ways to measure the stock and flow of illegals (his comprehensive research design is reviewed below in the Task 2 section). An important question which arises relative to the definition of an illegal alien concerns the point in time at which the illegal ceases to be counted as flow and

becomes stock. For instance, in FY 1975, 416,000 Mexican nationals were apprehended within 72 hours of entry (including 227,000 apprehended "at entry"). It seems reasonable not to include these illegal aliens as part of the stock when the primary objective is understanding the impact of illegals on the economy and other facets of American life. Because the study believes that the technical definition of an illegal alien is inadequate for performing a study on impact, a reasoned (although probably arbitrary) definition must be set forth to accomplish the intended research objective.

Sources of illegal aliens

Of the three broad categories of illegal aliens—EWI's, fraudulent document holders, and visa or border card abusers—the EWI is overwhelmingly the greatest source of illegal aliens. Figure 1-1 shows the total number of illegal aliens apprehended from 1970 to 1975 and the proportion of EWI's. In addition to confirming that the large majority of deportable aliens found are EWI's, Figure 1-1 shows that the proportional trend is increasing.

Figure 1-1.—Percent EWI's of total illegal aliens apprehended, 1970-75¹

Year	Total illegals apprehended (thousands)	Total EWI's apprehended (thousands)	Percent EWI's of total
1970.....	335.1	244.5	72.9
1971.....	412.6	317.8	77.0
1972.....	432.2	338.3	80.9
1973.....	647.5	551.3	85.1
1974.....	781.0	693.0	88.7
1975.....	756.8	667.7	88.2

¹ Source: Immigration and Naturalization Service, Table G-23.18 for FY 1975.

Figures 1-2 and 1-3, below, show the proportion of EWI's who, from 1970 through 1975, entered over the southwest border and were Mexican nationals. From Figures 1-1 through 1-3, it is clear that the overwhelming majority of apprehended illegal aliens are Mexican nationals who cross the southwest border and enter the U.S. without inspection.

Figure 1-2.—Percent EWI's who entered over the southwest border, 1970-75¹

Year	Total EWI's apprehended (thousands)	EWI's entered over southwest border (thousands)	Percent EWI's entered over southwest border
1970.....	244.5	240.9	98.5
1971.....	317.8	313.8	98.7
1972.....	398.3	393.2	98.7
1973.....	551.3	545.0	98.9
1974.....	693.0	687.6	99.2
1975.....	667.7	662.0	99.2

Figure 1-3.—Percent of EWI's apprehended who were Mexican nationals, 1970-75¹

Year	Total EWI's apprehended (thousands)	Mexican national EWI's apprehended (thousands)	Percent Mexican national EWI's apprehended
1970.....	244.5	239.9	98.1
1971.....	317.8	312.9	98.5
1972.....	398.3	391.9	98.4
1973.....	551.3	542.2	98.4
1974.....	693.0	681.1	98.3
1975.....	667.7	654.9	98.1

¹ Source: Immigration and Naturalization Service, Table G-23.18 for FY 1975.

ESTIMATING THE STOCK OF ILLEGAL ALIENS

The study team conducted an intensive review of INS data to estimate the number of illegal aliens in the U.S. The review showed that most of the data accumulated by INS are focused on operational activities. These data, which are collected and analyzed to measure productivity, are not satisfactory for making statistical estimates of the unknown illegal alien population. The most useful data relating to illegal aliens are the apprehension data, which give a measure of workload; however, they contain no information on attempted apprehensions or on suspected EWI's who passed through a sector. Although several statistical methodologies using INS data were attempted, none withstood the tests of logical and statistical scrutiny.

The most critical missing item of data is a count, or at least a scientifically-valid sample estimate, of the number of illegals who eluded the Border Patrol at entry and subsequently have not been captured (although sensor data now being collected address this count, sensors are not in operation throughout the southwest border and are ineffective in high-density metropolitan areas). If the study team had access to such a count, a ratio of "gotaways" to apprehensions could be established; then, using historical apprehension data, the number of illegals who successfully entered the U.S. could be established.

Since statistically-valid information on the number of gotaways is not available, an acceptable alternative approach is to assume values of the unknown parameter (gotaways) and then *bound* the assumption by using any other appropriate information. This is the approach which the study team has employed in estimating the number of illegals.

Scope of the analysis

It was shown above in the section entitled "Sources of Illegal Aliens" that the vast majority of apprehended illegals are Mexican nationals who attempt to cross the southwest border. The analysis will focus on this aspect of the illegal alien population for the following significant reasons:

EWI's constitute the greatest portion of all illegals found, as shown in Figure 1-1.

As shown in Figure 1-4, below, while apprehension of illegals other than Mexican EWI's has not quite doubled in the past 15 years, the number of Mexican EWI's has increased 46 times.

Because the Mexican segment of the EWI population is so large, ignoring the non-Mexicans introduces a relatively small error.

The Mexican nationals are the only category of illegal aliens for which a valid reference point (Goldberg's estimate) exists.

Figure 1-4.—Comparison of Mexican national EWI's to all other EWI's

[In thousands]

Year	Mexican national EWI's	All other illegals apprehended
1961.....	14.0	65.3
1962.....	14.1	68.7
1963.....	20.8	50.3
1964.....	22.7	51.8
1965.....	29.7	60.1
1966.....	57.9	69.3
1967.....	77.6	73.2
1968.....	117.2	85.2
1969.....	161.6	96.9
1970.....	239.9	95.2
1971.....	312.9	99.7
1972.....	391.9	100.3
1973.....	542.2	105.4
1974.....	681.1	99.9
1975.....	654.9	101.9

Estimation of Mexican Illegals Currently in the U.S.

The methodology for estimating the number of illegal Mexican aliens in the U.S. is presented in the following sections; an evaluation of the estimate and its

limitations is also included. The following steps represent an overview of the methodology:

1. A "gotaway-at-entry" (GAE) ratio is defined.
2. A minimum GAE ratio (MGAER) is calculated for each year.
3. The actual GAE ratio is assumed to be some constant multiple of the minimum ratio.
4. The constant multiple is calculated using a known data point.
5. Finally, the number of Mexican illegals currently residing in the U.S. is estimated.

The gotaway-at-entry definition

A GAE is defined for the purposes of this analysis as a Mexican national who attempts to cross into the U.S. over the southwest border without inspection and who is not immediately apprehended and returned to Mexico. By this definition, any person who illegally enter the U.S. and is not apprehended "at entry" is considered a GAE. The study team recognizes that this definition does not coincide with the one used by INS for sensor reporting. For example, the INS "Instructions for Preparation of the CBP-39 for Remotely Monitored Sensor System," paragraph 4B(2), states, "If as a result of the information furnished by the sensor system the subjects are later apprehended, they should properly be reported in 4A(1) above." The referenced section 4A(1) addresses responses which result in apprehensions. The INS definition would not classify an illegal picked up several days after entry as a gotaway if it could be construed that the apprehension was made as a result of sensor data. For the purposes of this report, a more definitive distinction between gotaways and apprehensions must be made in order to maintain consistency with other INS data.

Figure 1-5. Minimum gotaway-at-entry ratio

[In thousands]

Year	Mexican nationals apprehended	Apprehended at entry	Apprehended at other than entry	Minimum gotaway-at- entry ratio
1961	29.8	5.7	24.1	4.22
1962	29.9	6.1	23.8	3.90
1963	38.8	9.5	29.3	3.08
1964	43.7	9.2	34.5	3.75
1965	55.2	11.5	43.7	3.80
1966	89.8	19.8	70.0	3.56
1967	108.3	23.8	84.5	3.55
1968	151.7	29.7	122.0	4.10
1969	201.5	41.6	159.0	3.84
1970	277.3	70.9	206.4	2.91

Figure 1-5, below, shows the total number of Mexican nationals apprehended from 1961 through 1970, the number apprehended at entry, and the number apprehended at some time other than at entry.² Under the definition given above, all those apprehended "at other than entry" are GAE's. The minimum gotaway-at-entry ratio (MGAER) is then calculated as:

² INS data are collected on a fiscal-year basis while census data used later in the analysis are based on the calendar year. This introduces a lag error into the analysis but should not adversely affect the final estimate.

$$\text{MGAER} = \frac{\text{APPREHENDED AT OTHER THEN ENTRY}}{\text{APPREHENDED AT ENTRY}}$$

APPREHENDED AT ENTRY

The last column in Figure 1-5 shows the MGAER from 1961 to 1970. As an illustration, 70,900 illegals were apprehended at entry in FY 1970; 206,400 penetrated into U.S. territory for at least some period of time. Therefore, the minimum gotaway-at-entry ratio is 2.91:1. The MGAER would be equal to the actual ratio if INS had eventually captured all the illegals who attempted entry. However, since this is not the case, the actual GAE ratio is something greater than the minimum. Figure 1-5 shows that, although the number of apprehended illegals is rising rapidly, the Border Patrol in recent years has been able to

increase the proportion of illegals apprehended at entry and thus has reduced the GAE ratio. This reduction is probably due to operational tactics such as concentration of Border Patrol forces in the southwest, improved manning patterns, and the application of electronic sensors, among others.

Because some Mexican nationals do elude apprehension, the actual GAE ratio must be determined and applied to the ongoing apprehension data in order to estimate the stock of illegal Mexican aliens. However, Figure 1-5 shows the MGAER to be both variable and declining. Since this information must be used in the derivation of an actual GAE ratio, the study team, for lack of other knowledge, assumed that the actual GAE ratio is varying but varies by a constant multiple of the MGAER. Before calculating the MGAER multiple, two other parameters must be considered: the survival rate and the rate of emigration back to Mexico by illegal aliens.

Illegal alien survival rate and rate of returns to Mexico

Not all Mexican illegals who successfully enter the U.S. remain indefinitely. The study team is aware that there is considerable movement of illegal aliens from the U.S. back to Mexico. In addition, some of those who enter successfully die while in the U.S. These two factors must be considered in estimating the number of illegals currently in the country.

There are no definitive data as to the size of the return migration. However, a research paper by Warren and Peck of the U.S. Census Bureau, prepared for presentation at the annual meeting of the Population Association of America, addressed the emigration of legal immigrants from 1960 to 1970. The paper reported that about one out of every seven legal immigrants emigrated by the end of the decade—a conclusion which gives at least a rough estimate of foreign-born migration. The study team assumed that the migration rate of illegals is somewhat higher than that of legal aliens. Since the goal is to prepare a conservative estimate of the stock of illegal aliens, the study team arbitrarily used a higher migration rate of one-in-five over the ten-year period, which has the net effect of lowering the final illegal alien estimate. On an annualized basis, a 5:1 ratio over the ten-year period is equal to 20 per 1,000. Although the study team intuitively feels that the number of illegals who emigrate is greater than 20 out of 1,000, there are no factual data to confirm this opinion. The major study effort to be conducted by INS will give much more insight into the in-and-out flow of illegals.

INS apprehension data indicate that the majority of Mexican illegals are young, adult males. For lack of a more definitive data base, and average ten-year life survival rate of 0.9382 was derived³ for males between the ages of 20 and 45. This information was then annualized to yield a death rate of 6.2 per 1,000. When the emigration rate and the death rate are combined, a total loss rate of 26.2 per 1,000 or, conversely, a "survival" rate of 97.38 percent, is derived.

Estimating the actual gotaway-at-entry ratio

As stated above, the actual GAE ratio is assumed to be some constant multiple of the MGAER. To calculate the multiple, Howard Goldberg's estimate of 1.597 million illegal Mexican aliens in the U.S. in 1970 will be used. This estimate, as previously stated, was the only analytically-sound estimate discovered during the research effort and is believed to be fairly accurate.

The equation derived by the study team for the total number of illegal Mexican aliens in the country during any year is:

$$T_y = \sum_{i=1}^y A_i (MGAER)_i X R^{y-i} - \sum_{i=1}^y B_i R^{y-i} + T_0$$

where

T_y = total illegal Mexican nationals in year y

A_i = number apprehended at entry

$MGAER$ = minimum gotaway-at-entry ratio

X = constant multiple for MGAER

R = survival rate (0.9738)

B_i = number apprehended at other than entry

T_0 = number of illegal Mexican nationals at base year

³ Source: S. Preston, N. Keyfitz, and R. S. Schoen, *Causes of Death: Life Tables for National Populations*. Seminar Press, 1972.

Using Goldberg's estimate for 1970 of 1.597 million (T_y) and assuming, as Goldberg did, that the number of illegal aliens in 1960 was zero, the equation can be solved for X —the constant multiplier for the MGAER. Upon performing this operation, the study team found the constant multiplier X to be equal to 3.13. For example, the MGAER for the year 1970 was 2.91; thus, applying the constant multiplier of 3.13, the actual GAE ratio for that year is estimated to be 9.11. In other words, for every illegal apprehended at entry, 9.11 eluded apprehension to successfully enter the U.S. or to be apprehended at a later date.

Before proceeding further, it is necessary to compare the GAE ratio definition used by the study team with the gotaway ratio normally used by INS. Gotaway ratios are usually quoted in terms such as, "For every one we catch, one gets away." More specifically, General Leonard Chapman was quoted as saying that INS finds "only about one out of two or three, at the most, of those entering the country each year."⁴ The actual GAE ratio of 9.11 for 1970 which was calculated by the study team is equivalent to a 1.58:1 gotaway rate expressed in normal INS terms. To illustrate, 277,300 Mexican nationals were apprehended in 1970—70,900 at entry and 206,400 at some time other than at entry. Using the study team's actual GAE ratio, the number of actual gotaways is derived in the following manner:

$$\begin{aligned} \text{Actual gotaways} &= (\text{number apprehended at entry}) \times \\ &\quad (\text{GAE ratio}) - \\ &\quad (\text{number subsequently apprehended}) \\ \text{OR} \\ \text{Actual gotaways} &= 70,900 \times 9.11 - 206,400 \\ &= 439,500 \end{aligned}$$

The INS gotaway ratio is:

$$\frac{\text{Actual gotaways}}{\text{Number apprehended}} = \frac{439,500}{277,300} = 1.58$$

Illegal Mexican alien estimates for the 1970's

Based on the assumptions stated above and using the "survival" rate, the constant multiplier, the apprehension data from INS records, and the Goldberg estimate for 1970 as a base year estimate, the estimated number of Mexican illegal aliens may be calculated from the formula given in the preceding section. Figure 1-6, below, provides such estimates for the years 1971 through 1975. The 1975 estimate of 5,204,000 illegal Mexican nationals in the U.S. probably represents the major portion of the total illegal alien population residing in the country. An estimate for the total illegal alien population is discussed in the following section.

Figure 1-6.—Estimates of Mexican Illegal Aliens in United States

Year	Gotaway-at-entry ratio	Successful illegal entries (thousands)	Illegals remaining from previous years (thousands)	Mexican illegals in U.S. (thousands)
1970	-----	-----	-----	1,597.0
1971	8.61	544.6	1,555.2	2,099.8
1972	7.64	648.9	2,044.7	2,693.6
1973	6.89	845.0	2,623.0	3,468.1
1974	5.67	972.3	3,377.2	4,349.5
1975	6.26	968.4	4,235.6	5,204.0

¹ Goldberg estimate.

Estimate of the total illegal alien population in the United States

Using currently-available data, the only analytically-credible estimate which it was possible to make was of the Mexican national segment of the total illegal alien population. Fortunately, this segment should be by far the largest; the study team could find no estimate of the Mexican segment which was less than 50 percent of the total estimated illegal population and most estimates, in fact, were much higher. To arrive at a reasoned estimate of the total illegal alien

⁴ *U.S. News & World Report*, July 22, 1974.

population, the study team relied upon a different and less analytically-sound procedure: the Delphi process.

The Delphi process involves derivation of a consensus of opinion from a panel of experts regarding some parameter of interest. In the present case, a Delphi Panel was asked to estimate the ratio of illegal aliens to legal aliens in the U.S. (a complete list of Delphi Panel members is included as an appendix to this report). The initial round of responses to the Delphi Panel question is summarized in Figure 1-7, below.

Figure 1-7.—First Round of Delphi Responses

	Estimates		
	Low	Average	High
Ratio of illegal aliens to legal aliens.....	60:100	288:100	550:100
Number of illegal aliens.....	2, 536, 000	10, 467, 000	25, 102, 000

Since the objective of the Delphi process was to reach a consensus of opinion concerning the estimate of the size of the illegal alien population, a second Delphi round was conducted wherein the panel members were presented the results of the first round and were asked to comment on the average and range of response statistics and to modify or reiterate their estimates of the illegal alien population in the U.S. The following are some of the more interesting comments received from panel members on the first round results:

"The number [of illegal aliens] is very large and every labor market indicator points to an acceleration of their numbers in recent years."

"The INS estimation given during House hearings in 1970-71 was about 2 million. Thus, about 1.8 million *net* have had to come to the U.S. and survive per year to reach the above average [10,467,000]. Something was wrong with the earlier INS estimate or 4,400 people per day have been entering, staying, and surviving for the past five years, to say nothing of returnees and mortality. Or, finally, the average is too high."

". . . my estimate takes into account three broad categories of undocumented aliens presently residing in the United States: (a) old, or long-time illegals, including family members, who entered this country prior to 1948 and who have never been covered by immigration papers, but perhaps partly by false documents such as fraudulent birth certificates and partly by census takers; (b) illegals, including family members, who entered in the period 1948 to 1965, also partly covered by false documents and census takers; and (c) illegals, including family members, who entered the U.S. since 1965 to the present. Roughly, the ratio of [the] three categories seems to be one, one, and two, respectively; and the Mexican proportion of all illegal aliens in the U.S. would possibly be two-thirds. . . . In short, 10.5 million is close to a realistic estimate in my considered opinion."

"The average strikes me as unreasonably high, and it occurs to me that one wild guess of 25,000,000 is far enough out of line to lift the average response by several million."

"The low estimate of around 2.5 million could only be defensible if this figure is understood as limited to the number of undocumented aliens employed in the U.S., Mexican and all others, but principally men, and who have entered since 1965. It could not realistically embrace family members, nor groups who entered before 1965. . . . Perhaps the high estimate of 25.1 million has been too much influenced by annual INS figures on apprehension which include a high percentage of repeaters; or perhaps the figure takes too literally the estimates that one, or two, or more get away for every apprehension. Probably true, but in regard to Mexican *mojados*, the principal source of illegal aliens in the U.S., a high percentage return to spend the off-season in Mexico as they have been doing since the 1880's. . . . The doors leading back to Mexico are left wide open by the Immigration Service which has never made a serious attempt to detain illegals headed back to Mexico. That country is full of people who have tried life and work in the U.S."

"We have done some work with previous apprehensions of illegals that were interviewed, and . . . have come to the conclusion that there may be as many non-Mexican illegals as Mexican ones."

The resulting estimates from the second round of Delphi questions are presented in Figure 1-8, below.

Figure 1-8.—Second Round of Delphi Panel Responses

	Estimates		
	Low	Average	High
Ratio of illegal aliens to legal aliens.....	118:100	195:100	260:100
Number of illegal aliens.....	5,000,000	8,227,800	11,000,000

Figure 1-9.—Third Round of Delphi Panel Responses

The results of the third, and final, round of the Delphi process are summarized in Figure 1-9, below.

	Estimates		
	Low	Average	High
Ratio of illegal aliens to legal aliens.....	100:100	194:100	260:100
Number of illegal aliens.....	4,226,000	8,180,000	11,000,000

The end result of the Task 1 estimation effort is that the study team has derived an enlightened, professional estimate of 8,180,000 illegal aliens in the U.S. during mid-1975. This estimate is not analytically defensible but it is based on a logical process of consensus from professionals in the "business" of dealing with the illegal alien problem and, more importantly, who are not officially connected with INS. The estimate of 5,222,000 as the size of the Mexican national segment of the total illegal alien population, undoubtedly the largest segment, is analytically defensible and represents an encouraging beginning for INS in dealing with the illegal alien problem.

ICF INCORPORATED,
Washington, D.C., December 4, 1975.

Gen. LEONARD CHAPMAN,
Commissioner, U.S. Immigration Service,
Washington, D.C.

DEAR MR. COMMISSIONER: It was a pleasure to have the opportunity to meet with you yesterday and to discuss the preliminary illegal aliens policy analysis which ICF has undertaken. Pursuant to our conversation, I thought it might be helpful to outline a few general points concerning the costs of the illegal aliens problem.

As with the estimates of the number of illegal aliens, estimates of the costs of illegal aliens are, of course, highly uncertain. Nonetheless, it is possible to develop a reasonable view of the associated costs by considering the following:

Insofar as illegal aliens are employed in the U.S. labor market, they are—to some extent—displacing American workers who lose earnings, and whose unemployment and welfare expenses in turn, become a tax burden. Of the 780,000 illegal aliens apprehended in 1974, approximately 117,000 held jobs in agriculture and 129,000 held jobs in industry or services. (As you know, INS has offered an estimate—admittedly rough and clearly subject to question—that the total number of jobs which could be freed by improved enforcement programs is 1,000,000.) It is often argued that most of the jobs held by illegals would not otherwise be performed because of the menial character of the work—and that the displacement effects are accordingly the lower. This argument is countered by anecdotal evidence which cites instances of illegals painting, welding, serving as design engineers, etc. Whatever the facts on this matter—and the upcoming INS survey should help provide necessary information—it is clear: (a) that there is some displacement effect; and (b) that for every 250,000 legal residents displaced and thrown into unemployment, these legal residents lose an estimated \$1.5 billion in earnings (assuming average annual earnings of \$6,000) and the tax burden is increased by \$0.5 billion (assuming annual unemployment and welfare-related costs averaging \$2,000/unemployed employable person).

To the extent that illegal aliens evade U.S. income taxes on their earnings, the tax burden borne by taxpayers is further increased. The extent of such tax

evasion is unknown. The total tax loss effect is probably relatively insignificant compared with total unemployment and welfare-related costs. (One congressional report has estimated the annual tax loss at \$115 million.)

To the extent that illegal aliens increase the demand for public services of which they are beneficiaries—but for which they do not pay their full share—the tax burden borne by taxpayers is further increased. The extent of this burden is a function of the number of illegal aliens, their taxpaying status and their effect on the demand for public services—all of which are not now adequately known. (The New York Times estimated that in New York City alone, 1973 education and welfare costs for illegal aliens totaled approximately \$180 million. A crude extrapolation to the national scale would suggest direct education and welfare costs of roughly \$1 billion—that is, without consideration of other infra-structure costs and displacement costs.)

There is, further, a cost to be attached to the balance of payments loss associated with illegal aliens. It has been variously estimated that from \$3-10 billion per year is returned abroad by illegals. Although there may be some further domestic unemployment as a result of this international income transfer, the balance of payments loss, of course, is not directly additive to tax costs cited above.¹

It is argued by some that these costs are to some extent offset by the anti-inflationary effect (or the productivity effect) of the relatively low-cost labor which illegal aliens provide. This argument is not given significant weight in the preliminary policy analysis for these reasons: There is reason to question whether the extent of the effect is very great—given that illegal aliens seem increasingly to compete in non-farm labor markets, given that there is already a considerable pool of unemployed persons in these labor markets (even in non-recessionary periods), and given that a major (and increasing) portion of the labor market is subject to minimum wage requirements. And even if there is some selective wage-depressing effect of illegal aliens, this is not a net benefit to the economy—it affects the distribution of economic resources and rewards within the economy without significantly affecting aggregate income, aggregate product or aggregate tax revenues.

While currently available statistics do not permit reliable determination of the number of illegal aliens in the country, or of the percent of these in the labor market or on welfare, it is nonetheless possible to give some more specific sense of the net tax cost associated with illegal aliens by noting the following:

Given the reasonable assumption that the principal motive for the illegal entry of most illegal aliens is economic, and given the current state of law and practice, it is reasonable to assume further that most illegals are either employed and to some extent displacing legal residents in the labor market, or on welfare—and that therefore they are, in general, causing a direct or indirect demand for income transfer and public services which exceeds their tax contribution.

The size of this net demand for tax-supported income transfers and public services can be very roughly estimated as an average of \$2,000 per employable adult illegal alien per year. The principal components of this tax burden are: (a) welfare payments—which averaged \$75 per AFDC recipient per month in 1974; (b) Food Stamp bonuses—which averaged \$21 per recipient per month in 1974; (c) Medicaid payments—which averaged approximately \$290 per AFDC Medicaid recipient per year in 1974; (d) unemployment insurance costs (for those displaced by illegal aliens)—which averaged \$61 per week per unemployed beneficiary in 1974; (e) infrastructure costs (education, police, fire, transportation system costs) of additional population not adequately supported by the net tax revenues for which they are responsible—with education costs alone averaging \$1,035 per pupil per year in 1974.

That is, for every one million adult illegal aliens, there is a presumable net tax burden of roughly \$2 billion. And for every additional 250,000 adult illegals—

¹ It is important to note that insofar as one prefers a foreign economic development strategy as an approach to the illegal alien problem (or any other) this \$3-10 billion international income transfer may be conceived as a form of development program. It must also be noted, however, that this is an exceedingly inefficient form of "development aid." If, for example, it is assumed that illegal aliens return an average of \$1,000 per adult illegal per year, and that the tax burden averages \$2,000 per adult illegal per year it costs \$2 in taxation for every \$1 in "aid." If more reliable numbers than these crude estimates were to show the opposite pattern—i.e., greater "aid" than tax burden—there would of course remain the inefficiency of the aid's being oriented toward consumption and not directly targeted on investment. This is not the whole argument, of course; it is developed further in the preliminary analysis.

the conservative estimate of the current annual rate of increase—there is an additional tax burden of \$500 million. Depending, therefore, upon the actual number of resident illegal aliens, and the rate of increase in this number, the associated annual tax burden would be *roughly* as in the following exhibit:

ROUGH WORKING ESTIMATES OF TAX BURDEN ASSOCIATED WITH ILLEGAL ALIENS

Hypothetical number of adult resident illegal aliens as of January 1975 (mil- lions)	Estimated annual adult increase for 1975 (millions)	Associated 1976 tax burden (billions)
1.5	0.25	\$3.5
2.0	.5	7.0
6.0	.75	13.5

As I emphasized in our discussion, the tax burden associated with aliens is particularly interesting, as an analytical matter, when compared with the costs of enforcing a prevention-of-entry strategy. The current *average* cost of apprehending a single illegal alien through a prevention strategy (essentially Border Patrol and Inspections) is roughly \$225. This obviously compares very favorably with the rough estimate of the tax burden incurred if an adult illegal is not apprehended—i.e., \$2,000 per year. The comparison is even more favorable if one considers not the average cost of prevention, but the *marginal* cost of prevention—which would seem clearly to be very considerably lower than the \$225 average. And in short, the gap between the apparent tax burden associated with illegal entry, on the one hand, and the cost of prevention, on the other, would seem to be sufficiently wide so that even if the rough estimates are off by, say, as much as 100 percent, incremental investment in an enforcement strategy oriented toward prevention of entry would seem to be sound public policy—and a clear net saving to the taxpayer.

We continue, as you know, to work with your staff on the refinement of these and related points.

RICHARD G. DARMAN,
Principal.

Senator FONG. The subcommittee will next hear from Mr. Andrew Biemiller, director of the Department of Legislation, AFL-CIO. Mr. Biemiller?

**STATEMENT OF ANDREW J. BIEMILLER—AFL-CIO, PRESENTED BY
KENNETH MEIKLEJOHN—AFL-CIO**

Mr. MEIKLEJOHN. My name is Kenneth Meiklejohn, I'm legislative representative of the AFL-CIO; and I will read Mr. Biemiller's statement.

Senator FONG. All right.

Mr. MEIKLEJOHN. And if there are any questions, I will try to answer them.

Mr. Chairman, the AFL-CIO appreciates this opportunity to present to the Senate Subcommittee on Immigration and Naturalization our views on proposals to deal with certain problems arising under the Immigration and Nationality Act.

These proposals deal with a number of matters that are of great interest to the members of unions affiliated with the AFL-CIO. Of special importance, of course, are the provisions of S. 3074, the Immigration and Nationality Act Amendments of 1976, which has been introduced by the chairman of the Senate Judiciary Committee and of this subcommittee, Senator James O. Eastland.

The operation and administration of the Immigration and Nationality Act has been of growing concern to members of the unions

affiliated with the AFL-CIO. This concern was clearly and emphatically expressed in a resolution, entitled "Immigration Abuses," which was adopted unanimously by the Eleventh Constitutional Convention of AFL-CIO meeting in San Francisco, Calif., on October 6, 1975.

Mr. Chairman, I would ask for inclusion of a copy of that resolution in the record of this hearing.

Senator FONG. It will be included in the record.

Mr. MEIKLEJOHN. Our resolution is a comprehensive statement of what we view as wrong and inadequate in the operation and administration of the Immigration and Nationality Act. Let me summarize its salient points.

The resolution notes that America is a Nation of immigrants, but criticizes illegal immigration and abuses of the Immigration and Nationality Act. As we have pointed out time after time, illegal immigrants have for years been taking jobs from American citizens and legal immigrants in increasing numbers, often work for substandard wages and accept substandard working and living conditions, are easy targets for blackmail and intimidation by unscrupulous employers, and are all too frequently a drain on the welfare resources of the communities where they live.

The resolution specifically calls attention to the increasing problem arising from the use of temporary nonimmigrant aliens under existing law, depriving American workers in building construction, graphic arts, crafts, manufacturing, transportation, and the service trades of even scarcer job opportunities. Theatrical employees and artists have also been adversely affected.

The resolution urges upon Congress swift passage of H.R. 8713, the illegal alien bill reported by the House Committee on the Judiciary on September 24, 1975, which would provide for criminal penalties for employers who knowingly and willingly employ illegal aliens. It also calls for effective enforcement of existing laws and an end to abuses by the Departments of Labor and State, the Immigration and Naturalization Service, and other Government agencies.

I hope this subcommittee, Mr. Chairman, will give careful consideration to our total program for legislative and administrative action set forth in our convention resolution. At this time I would like to discuss some of the specific aspects of the bills before you on which I understand the subcommittee would like to have the views of the AFL-CIO. Some provisions of these bills concern us greatly.

Mr. Chairman, let me emphasize that we in the labor movement do not, of course, have special knowledge or expertise in respect to the details of operation and administration of the Immigration and Nationality Act. We understand the committee has already received testimony concerning the application, implementation, and effects of these laws from representatives of the principal Government agencies, including the State Department and the Immigration and Naturalization Service of the Department of Justice and the Assistant Secretary for Employment and Training of the Department of Labor.

It is also important to keep in mind that evaluations of these questions are inevitably conditioned by the general point of view of the person or agency making them. We make no apology for the fact that we look at the immigration laws and proposals for their amendment from the standpoint of their impact on the wage earners of the United

States, on their opportunities for employment and on maintenance of decent standards with respect to their wages and working conditions. This is required, we feel, by sound policy and it is mandated by the terms of the law itself. We owe our primary responsibility to wage earners. We trust this subcommittee will feel the same and that it will give careful consideration to the policy questions involved in the legislation before you and not simply to administrative difficulties and inconveniences under which Government administrators say they are suffering in administering the present system.

I should like now to turn to a discussion of the provisions of Senator Eastland's bill, S. 3074. Many of these provisions make technical or other changes in the Immigration and Nationality Act upon which we see no need to comment at this time. Other provisions, however, deal with questions of great interest to the labor movement. Some would seriously undermine the wages and working conditions of American citizens and permanent residents, and reduce their opportunities for employment.

Section 2 of S. 3074 would amend section 101 (a) (15) (H) (ii) of the Immigration and Nationality Act. That section provides that an alien having a residence in a foreign country which he has no intention of abandoning may come temporarily to the United States to perform temporary services or labor if unemployed persons capable of performing such services or labor cannot be found in the United States. As amended by S. 3074, this section would allow such aliens to take permanent as well as temporary jobs.

The AFL-CIO has consistently opposed any amendment of existing law that would allow temporary workers to take jobs which are permanent in nature. We agree with the position taken by the Department of Labor before this subcommittee that the temporary worker in such a situation is all too often wholly at the mercy of his employer. If he joins a union or objects to his wages or working conditions, he may be sent back to his own country on the slightest pretext. The Department of Labor takes the position that if the job is a permanent one, the person who comes here to fill the position should be coming here not for a temporary period but for permanent entry and in compliance with the rules and procedures applicable to those who seek permanent entry. The Department has repeatedly stated its opposition to any proposal that would provide that aliens coming temporarily to the United States may take permanent jobs. We strongly agree with and support this position.

But section 2 of S. 3074 contains other provisions which we believe would substantially curtail employment opportunities for unemployed American workers and seriously undermine their wages and working conditions. This section would permit aliens to be employed for up to 2 years if the Secretary of Labor has "determined and certified to the Attorney General that sufficient domestic workers who are able, willing, and qualified are not available at the time and place required to perform the work, and employment of such aliens will not adversely affect the wages and working conditions of workers similarly employed." The Secretary would be given up to 60 days (20 days in the case of workers to be employed in agriculture) in which to provide workers needed by the employer, or to certify that no such domestic workers are available.

These provisions, it seems to us, would result in enacting into permanent law a new bracero program similar to the one killed by Congress in 1962. This program would be even more dangerous than the old one as a result of the lack of standards and controls to protect the workers. The Department of Labor in its testimony before the subcommittee last week set forth a number of specific objections to reinstituting a new bracero program. We strongly urge rejection of any proposal to revive such a program with its damaging consequences in terms of loss of employment opportunities and the undermining of decent wages and working conditions for American workers and permanent alien residents.

Section 4 of S. 3074 would enact into basic law the 120,000 annual ceiling on immigration from the Western Hemisphere which was established by Congress in 1965. In doing so, the bill also applies to the Western Hemisphere the individual country ceilings of 20,000 and the system of preferences heretofore applicable only to the Eastern Hemisphere.

At the present time, the preference system provided for in the Immigration and Nationality Act applies to immigrants from all countries outside the Western Hemisphere. As set forth in section 203 of the act immigration visas are allocated on the basis of eight preferences in an overall limit of 170,000 immigrants authorized to be admitted annually. No more than 20,000 natives of any one foreign state may be admitted in any year. If they come to the United States to work, they must comply with the labor certification requirements contained in section 212(a) (14) of the act.

At the present time the overall limitation and the preference system do not apply to immigrants from the Western Hemisphere. A ceiling of 120,000 is fixed for immigrants who may be admitted from the Western Hemisphere. These immigrants are admitted without reference to any limitation with respect to their country of origin or any of the established preference quotas. They are, however, subject to the labor certification requirements.

The establishment in 1968 of an overall ceiling on immigration from the Western Hemisphere and the application of the labor certification requirements to immigrants from this Hemisphere represented a significant departure from the policy and practice which had been followed with respect to immigration from the Western Hemisphere prior to the 1965 amendments to the Immigration and Nationality Act. Under the 1965 act, a special study commission was set up to determine whether the Western Hemisphere should continue to be treated differently from the rest of the world and whether special conditions should be applied to immigrants from the Western Hemisphere. The fact that the overall ceiling on Western Hemisphere immigrants was allowed to go into effect indicated a decision by both the executive branch and the Congress that special treatment should no longer be allowed. We concur in this judgment.

We do not see any reason, Mr. Chairman, why a preference system such as the system presently applicable to countries outside the Western Hemisphere should not now be put into effect.

We see no objection to proposals along this line and we would support any reasonable recommendations on this subject which may be made by the subcommittee.

In applying the preference system to the Western Hemisphere, it seems to us, however, that consideration may have to be given to the fact that by far the largest proportion of the 120,000 Western Hemisphere immigrants now authorized to immigrate annually come here from Canada and Mexico. The present preference system provides that no more than 20,000 visas and conditional entries may be made available to persons from any foreign state.

In recommendations made in 1974, the State Department proposed ceilings of 35,000 each for Canada and Mexico and a 20,000 per country limit for other countries in the Western Hemisphere. This year the Department, I understand, is recommending the same 20,000 ceiling for all countries. Representative Peter Rodino, Chairman of the House Committee on the Judiciary, has proposed a ceiling of 35,000 each for Canada and Mexico, and 20,000 per country for other Western Hemisphere countries.

We express no firm preference between these proposals, but we do recognize that special conditions prevail in Canada and Mexico which may require special treatment.

In this connection, we believe that any proposals which the subcommittee may recommend must keep in mind the special problems in connection with Mexican commuters and those who enter the country illegally from Mexico to seek employment here. We do not believe that regularizing immigration from the Western Hemisphere upon the same terms as immigration from the rest of the world should be allowed to interfere with prompt necessary action to deal with the far larger number of Mexicans who enter this country and remain without proper accreditation. Many take jobs needed by American citizens and permanent residents, and their employment undermines the working and living standards of all too many Americans.

Section 8 of S. 3074 retains the labor certification provisions contained in section 212(a)(14) of the Immigration and Nationality Act without change except as the scope of these provisions is affected by the application of the preference system to the Western Hemisphere.

In testimony last week before this subcommittee, however, the spokesmen for the Department of Labor came up with what they appeared to think was a brandnew proposal for dealing with the problem of labor certification under section 212(a)(14) of the act. This proposal "would admit aliens as immigrants for employment within prescribed quotas and without individual labor certification unless the Secretary of Labor should act to stop them."

At present, section 212(a)(14) of the Immigration and Nationality Act provides that aliens seeking to enter the United States to perform skilled or unskilled labor are excluded "unless the Secretary of Labor has determined and certified 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."

This labor certification requirement was written into the Immigration and Nationality Act in 1965 in the form in which it now appears

in the act upon the urgent insistence of the labor movement. Prior to the 1965 amendments, aliens could enter the United States unless the Secretary found that their entry would result in loss of employment opportunities for American workers or would adversely affect the wages and working conditions of American workers.

Robert J. Brown, Associate Manpower Administrator for the U.S. Employment Service in the Manpower Administration of the Department of Labor, testified before the House Immigration Subcommittee on June 7, 1973, that the pre-1965 requirement was exercised only if it came to the attention of the Department that immigrant workers might be jeopardizing the American job market. This information might come to the Department in the form of a complaint from an individual who believed that an immigrant was being employed to replace him, from a union concerned for its members, or from an American consulate abroad when 25 or more applications from one employer had been received. Because the obtaining of facts required to form the basis for excluding aliens under the pre-1965 amendment was cumbersome and time consuming, exclusionary action by the Labor Department was seldom used. Indeed, only 56 such actions were issued in the 8-year period between 1957 and 1965.

These figures should make clear why the AFL-CIO has consistently and strenuously opposed proposals to go back to the pre-1965 provisions and why it continues to oppose any such modification of the present law. The difficulty with the pre-1965 law was that the alien seeking employment in the United States would come in unless the Secretary of Labor made an affirmative certification that he should not be allowed to come in. This minimized virtually to the point of repealing the supervisory authority of the Secretary and had the effect of removing the issue from public scrutiny. It tended to concentrate primary responsibility for administering the labor protection provisions in the hands of the Department of State rather than the Manpower Administration of the Department of Labor. In our judgment, the conditions which the administration proposes for preventing abuse of this proposal are no more adequate than was the pre-1965 requirement that the Attorney General consult with the Department of Labor in administering section 212(a) (14) of the act.

Although various mechanisms would be provided for under the Department's proposal which the Secretary of Labor could use in administering his responsibilities, these mechanisms, we believe, would be largely ineffective. This results from the fact that the Secretary of Labor would enter the picture only if the Attorney General or some other interested party brought the matter to his attention. In all too many cases this would be only after the immigrants had been admitted. Unless the Secretary of Labor has the responsibility of determining in advance—and I stress that—that the aliens' admission will not adversely affect employment opportunities or wages, hours, and other conditions of employment in the United States, he cannot effectively regulate the flow of immigrants coming to the United States to seek employment.

We strongly urge that section 212(a) (14) of the law be retained unchanged. Any such change will necessarily reduce the authority of the Secretary of Labor to protect the job opportunities of American

workers and to safeguard wages and working conditions. We have often indicated to the Department of Labor—and we certainly make clear to this committee—our willingness to cooperate in developing procedures and regulations which would make the application of section 212(a) (14) more workable from the standpoint of its administration and effectiveness. We are glad to renew this offer of cooperation at this time.

Section 12 of S. 3074 contains provisions dealing with the so-called illegal aliens problem which are generally similar to those contained in H.R. 8713. This bill has been reported by the House Committee on the Judiciary and is now pending before the House Rules Committee.

The need for enactment of legislation along the lines of section 12 has long been recognized. While there is disagreement as to the number of illegal aliens who may be present in the United States and who may be holding jobs which would otherwise be available to the millions of American citizens and permanent residents now in the ranks of the unemployed, there can be no doubt that the number is significant and that it has been growing, not declining. The Department of Labor has released a study estimating that there may be as many as 8 million illegals in the country.

It is important, too, to recognize that the problem today is not, as it used to be, limited to agricultural employment. Fully 40 percent and maybe as many as 50 percent of the jobs held by illegal aliens are in industry, trade, and commerce, as well as in related industries. No longer is the employment of illegal aliens restricted to States along our Southern border, but extends to all parts of the country and in most metropolitan areas.

It is also important to bear in mind that the alien who comes to the United States, legally or illegally, does so because of the work he can find here, work which is more satisfactory than anything he can get at home, even if the pay for the work he gets here is at the lowest end of our wage and salary levels. Both the jobs and the pay he receives are better than he can get at home. Unfortunately, this makes him an easy prey for the unscrupulous employer looking for cheap labor.

We have maintained, and we believe that the record makes clear, that the illegal alien's need for the work he obtains and his liability to be deported at any time upon discovery results in serious discrimination and exploitation, both at his expense, and indirectly at the expense of other workers. The illegal alien is in constant danger of loss of job and deportation if he is discovered, or his presence is made known to the Immigration and Naturalization Service. If he entered in violation of law, he may also be subject to fines and imprisonment. In these circumstances, he is in no position to complain when his employer pays him poorly or treats him unfairly. As a result, his employment is characterized by substandard wages and denial of rights and benefits normally associated with employment in America. The net effect of the illegal's presence in the job market has been to depress and maintain low wage levels and substandard living conditions for America citizens, permanent residents and illegal aliens alike, in areas where they are employed in large numbers.

In addition, of course, the availability of a substantial supply of illegal aliens able and willing to work for substandard wages and

working conditions also results in loss of jobs and employment opportunities for American workers. Obviously, too, the effectiveness of the rights of union organizations and collective bargaining are seriously undermined. At the same time, all too many illegal aliens who are unable to find jobs, or who lose jobs, end up on relief and become a burden on the community in terms of medical care and other social services.

For these reasons, we welcome the provisions to deal with the illegal alien problem along the lines of those contained in H.R. 8713, which are included in S. 3074. In several respects, however, we believe the provisions contained in S. 3074 to deal with illegal alien problem should be strengthened.

We believe that the provisions contained in subsection (b)(1) of section 12, which would allow an employer to rely on self-serving statements by prospective employees as to the legality of their holding jobs in the United States would both weaken the legislation and all too often merely implicate the alien employees in the employer's illegal conduct.

We strongly urge that the penalties for violations should be substantially strengthened. We do not believe that the phased schedule of civil penalties and injunctive relief is adequate to assure effective enforcement. Willful violations, we believe, should carry substantial criminal penalties.

Section 11 of S. 3074 would update the availability of relief to aliens in unlawful status who can prove they have maintained continuous residence in the United States following an arrival prior to June 30, 1948, provided they meet certain conditions. The bill would move the eligibility date forward to July 1, 1968, the date on which the numerical restrictions applicable to the Western Hemisphere became fully effective.

We support this provision. We recognize a strong case can be made for permitting aliens with family and employment ties going back over a period of years to become eligible for permanent residency. It is important that this legislation be dealt with in an atmosphere of concern, not only for native American workers and their families, but also for those from other lands who have come here, to the land of freedom and opportunity.

It is important to bear in mind that any program of remedial action to reduce the economic and social impact of exploitation of illegal aliens by unscrupulous employers and their agents must take into account the fact that, as we know, America is a country of immigrants. As we pointed out in our resolution of October 6, 1975, our people have come from every part of the world. To a very great extent the strength and vitality of our country have been molded by the skill and aspirations of those who have come here. We are proud to be, and we must continue to be, a haven of liberty for the persecuted and the oppressed.

At the same time, we must be aware that the opportunity to continue the policy of welcoming immigrants to our country is seriously threatened by the increasing numbers of persons who enter or remain in this country illegally, take jobs needed by our own unemployed, and undermine domestic labor standards by working at low wages and under substandard working conditions. Failure to correct this situation helps

neither the citizen, the permanent resident, nor the alien seeking a better life in our fortunate land.

Senator FONG. Mr. Meiklejohn, you have stated that temporary alien labor should not be allowed to work on permanent jobs here. How do you feel, do you have any objections, does the AFL-CIO have any objection to temporary alien labor coming into the United States to fill temporary or seasonal jobs, if the Secretary of Labor certifies a shortage of domestic workers?

Mr. MEIKLEJOHN. We have no objections to the provisions which are available under existing law, that aliens may temporarily come to the United States to perform temporary work. There are provisions under the existing law under which workers do come to the United States for that purpose, both for agriculture and for other work.

Senator FONG. Do you have any objection to seasonal labor?

Mr. MEIKLEJOHN. We have no objections to seasonal labor as such; the British West Indies program does bring to the United States a number of seasonal workers in sugar and tomatoes. Programs along that line we would have no objection to.

Senator FONG. On page 9 of your statement you suggest that you have some thoughts of making present section 212(a) (14) of the law more workable and effective. This subject is of great interest to the subcommittee. Would you tell us about some of your ideas for improving the administration of this law by the Labor Department?

Mr. MEIKLEJOHN. Well, shortly after the 1965 act was passed, we had a series of discussions with the Department of Labor as to ways in which this provision could be implemented and made effective and efficient. At that time the Department of Labor issued a series of lists of occupations in which there was a shortage of skills, or other occupations in which there was a great superfluity of employees; in the one case that would be a basis for issuing a certification, and in the other not. We believed then, and we believe the Department of Labor felt, too, that this would be a useful procedure, we believe it would be a perfectly valid procedure if followed through today. The Department of Labor abandoned that system, however, and now engages only in individual certification for each alien coming in.

Senator FONG. The AFL-CIO is in favor of having that individual certification, is that correct?

Mr. MEIKLEJOHN. Well, we would like to keep the law the same way it is, but we would be willing to sit down with the Department of Labor to see if some regulation can't be issued that would make that more workable.

Senator FONG. You don't think the individual certification should remain?

Mr. MEIKLEJOHN. We didn't think it was necessary.

Senator FONG. Beg your pardon?

Mr. MEIKLEJOHN. We didn't think the law required the individual certification.

Senator FONG. It could be a general certification?

Mr. MEIKLEJOHN. It could be a general certification; yes.

Senator FONG. What you are concerned about is that the Department of Labor should have a first look at it.

Mr. MEIKLEJOHN. That's right, that's our main concern.

Senator FONG. That there is a job here for an alien.

Mr. MEIKLEJOHN. Right, and that he is not taking someone else's job.

Senator FONG. Prior to 1965, was that not the case?

Mr. MEIKLEJOHN. It was just the other way, when an alien came in, before somebody raised a question whether he should be here, he was already here.

Senator FONG. Now, the testimony we have received from the Immigration Service shows that the bulk of the immigrants who come in change their occupation within 2 years. Do you have any comment on that?

Mr. MEIKLEJOHN. Well, we believe it would be desirable. I think there is a provision in Senator Kennedy's bill to require the Department of Labor to follow up, to provide procedures for following up the employment record of aliens who are admitted under the Immigration and Nationality Act, so that we would then have some definite information as to what exactly the facts are with respect to those that come in for one purpose, how long they stay dedicated to that purpose, and when they move on to something else. We think that would be very helpful.

Senator FONG. The fact given to us was that 57 percent changed their occupation within 2 years. Now, the initial certification is for them to come in and do a certain type of job where there is a shortage of labor.

Mr. MEIKLEJOHN. That's right.

Senator FONG. Within 2 years they change their occupation does that not sort of get away from the idea that we are dealing with a job which needs a certain person.

Mr. MEIKLEJOHN. It raises that question. The difficulty that we see in this area is that we have very little hard information about it; we don't know how long the alien stayed in the job he came for. Maybe at that point the job turned sour for both the alien and the employer, so he went to something else; once here, he was able to do that. You cannot keep the alien, the immigrant coming in here, tied to a particular job without running into indenture, which we would find very distasteful.

Senator FONG. How do you feel about an alien coming in, then after a year or two of working he refuses to work and gets on welfare?

Mr. MEIKLEJOHN. I would think that under the present law there are ways of dealing with that particular problem. We would have no objection to strengthening the law in that respect, if that is a serious problem.

Senator FONG. We have things in this bill that would strengthen that.

Mr. MEIKLEJOHN. We have no particular comment to make on that. I don't think we would have any objection to such a provision.

Senator FONG. Now, if willful violation in hiring illegal aliens carries criminal penalties, how do you propose the employer should determine a person's eligibility for employment?

Mr. MEIKLEJOHN. Well, it's our belief—and this is a matter that perhaps needs further study—it's our belief that in the great majority of cases most employers, other than the very small, do make an effort to learn something about the background of the people that they hire. All too often, in the great majority of cases, the employer does know

because he is hiring from definite sources and is certainly in a far better position than anybody else to know whether the worker he is taking on is properly employable, or isn't.

Senator FONG. The question is, how far do we go to force them to find out? This is the difficulty.

Mr. MEIKLEJOHN. It is a difficult question. But, since we are talking about criminal penalties, we would not anticipate that there would be a criminal proceeding in any but the most aggravated type of situation. There are other provisions in the bill for dealing with the problem. There are provisions for citations; there are provisions for civil penalties; there are provisions for injunctive relief, all of which would precede resort to any criminal penalty, except in the very aggravated case.

That aggravated case might be a very important case from the standpoint of setting a pattern, warning employers that if they do recklessly, or without due regard, hire illegals, they may run into very serious difficulties.

Senator FONG. Under present law an illegal alien can't have a social security card. If the employer does see a fraudulent card and doesn't know it is a false card, you wouldn't hold him, would you?

Mr. MEIKLEJOHN. I certainly don't think he would be held for a criminal penalty, no.

Senator FONG. The violation would not be willful, is that it?

Mr. MEIKLEJOHN. We would not see willfulness in that case.

Senator FONG. Thank you, Mr. Meiklejohn.

Mr. MEIKLEJOHN. Thank you, Senator.

[The resolution of the AFL-CIO, adopted at the 11th Constitutional Convention of October 6, 1975, is as follows:]

Adopted by the Eleventh Constitutional Convention of the AFL-CIO
October 6, 1975

IMMIGRATION ABUSES

This nation is a nation of immigrants who came to the United States to make their permanent homes, with the intent of becoming part of this society, abiding by its laws, and committing themselves to productive work and responsible efforts to better their fellow workers and citizens.

Immigration by large numbers of persons who enter the United States illegally threatens rather than advances our national well-being, because such illegal immigrants, easy targets for blackmail, exploitation and intimidation by exploitative employers because of their illegal status, often work for substandard wages and under sweatshop conditions. Their presence takes jobs from American citizens and legal aliens and undermines the movement toward fair wages and working conditions.

Foreign national employers in various industries are similarly depriving Americans of jobs and threatening workers' progress by importing temporary "non-immigrant" aliens, refusing as a matter of policy to hire skilled American craftsmen, exploiting skilled and unskilled American workers in the guise of providing training programs, although the programs are either non-existent or totally inadequate) and refusing to hire any American union members. These deplorable results are accomplished because of abuses of various statutes and regulations of the Immigration and Naturalization Service, deceptive information regarding foreign national operations, and insufficient vigilance by the government to interpret and administer the law so as to prohibit the use of temporary non-immigrant foreign nationals except as true managerial or appropriate training personnel.

The Department of Labor and Department of State have further exacerbated these problems by their misadministration of the certification procedures written into the law to protect workers in this country. The result is that American

workers in the arts, industry, building, services and agriculture find themselves displaced from already scarce job opportunities. Therefore, be it

Resolved: AFL-CIO calls for the following steps to assure that only immigrants who can become a part of the full social fabric of this country, with all the rights and responsibilities of permanent, legal residents, are able to live and work here:

1. Swift passage by Congress of pending legislation providing criminal penalties for employers who knowingly and willfully hire illegal immigrants;
2. Development of effective methods for patrolling our borders to curb illegal entry, investigating applicants for entry to assure compliance with existing laws and regulations designed to admit only productive, needed workers, and otherwise providing for strict enforcement of our immigration laws.
3. Administration of existing legislation by the Immigration and Naturalization Service, the Department of Labor, Department of State and other agencies so as to curb abuses by foreign companies operating in this country and to assure that temporary foreign national non-immigrants do not take jobs which rightfully belong to American workers.
4. Commitment by this organization to persuade members of Congress to sponsor, endorse, and pass remedial legislation to limit the discretion of the Immigration and Naturalization Service, the Department of Labor and other agencies with regard to employees of foreign companies operating here, and to increase funds authorized for effective enforcement of existing legislation.

Senator FONG. We will now hear from Melanie J. Wirken, political director, Zero Population Growth.

Miss Wirken?

STATEMENT OF MELANIE J. WIRKEN, ZERO POPULATION GROWTH

Miss WIRKEN. Mr. Chairman, with your permission I would like to summarize my statement.

Senator FONG. Your statement will be included in the record as if given in full.

Miss WIRKEN. Thank you.

STATEMENT OF MELANIE J. WIRKEN, POLITICAL DIRECTOR ZERO POPULATION GROWTH, INC.

Mr. Chairman, members of the subcommittee, as our economy has worsened and our unemployment has increased, it has become increasingly popular to relate the rate of illegal immigration to our economic woes. ZPG agrees a reduction in illegal immigration may, in fact, bring some economic relief especially to our minority groups and teenagers who frequently compete with illegal aliens for employment. But we do not think that a modification of our immigration laws will significantly improve our economy nor do we think that an improved economy would justify keeping our present immigration policy. In addition to the economic ramifications, we encourage the subcommittee to also consider the other equally valid reasons for taking immediate and decisive action to reduce illegal immigration and modify current immigration policy. As an organization focusing on the problems of unrestrained population growth, we see mushrooming illegal immigration as a serious obstacle to stabilizing population growth in the U.S.

It is not true that the U.S. has reached ZPG (zero population growth) where the number of persons we gain each year through births and immigration is offset by the number of deaths and emigration. What is true is that fertility rates are declining as a result of increased availability to contraceptive information and services, liberalized abortion laws, changing status of women, and an increasing awareness of the consequences of unrestrained population growth.

In recent years the U.S. total fertility rate has gradually declined to its present rate of 1.8, meaning that the average American couple is having less than the 2.11 children necessary to replace themselves demographically. Even with this low fertility rate, however, the U.S. population had a natural increase (births over deaths) of 1.2 million persons in 1975. Even at replacement fertility (an average of two children per family), our numbers will continue to grow for at

least fifty years, during which time they will increase by nearly 26 percent. This is due to the large number of post-World War II babies who are just now coming into their peak reproductive years, giving much "momentum" to our still-growing population. Applied to our present population base of about 214 million, this built-in assured growth, allowing for no net immigration, will give us an additional 35 million people to provide for by the year 2000.

But this is not the whole population growth story. Our numbers also increase from legal and illegal immigration. Legal immigration is currently running at 400,000 annually. At this rate, according to the Commission on Population Growth and the American Future, legal immigration will add some 13.4 million persons to our numbers by 2000.

Levels of illegal immigration are not accurately known, but estimates run from 800,000 to several million yearly. If projections are correct that one million illegal aliens are entering the country annually, our population increase is in effect being doubled as a result of illegal immigration.

An indirect effect of immigration on population growth is the fertility of immigrant women. Insofar as they come from under-developed countries, their fertility is higher than that of American women. In the U.S. in 1970, the number of children born to women aged 40 to 44 was 4.4 per women for those of Mexican origin and 2.9 for all women. Taking into account the higher birth rate of persons from the less developed countries, we conservatively estimate that illegal immigration at the rate of 800,000 persons yearly would contribute some 40 million additional persons to the U.S. by the year 2000. And the pressure for illegal immigration is certain to increase in the decades ahead, as the conditions in many of the less developed countries worsen. The incentives for entering this country illegally far outweigh the disincentives that now exists. Attached are a series of graphs which we feel dramatically illustrate the demographic and economic pressures to migrate currently existing in South America, Central America and the Caribbean.

Latin America has the most rapid rate of population growth in the world today. It has a birth rate of 36.9 per thousand; a death rate of 9.2 per thousand; a growth rate of 2.7% and 42% of its population under 15 years of age. With a total population exceeding 285 million it will enter the 21st century with well over half a billion people. The population doubling time for Latin America is a mere 26 years.

The United States, in comparison, has a birth rate of 16.2 per thousand; a death rate of 9.4 per thousand; a growth rate of .09% and 25% of our population under 15 years of age. The population doubling time for the U.S. is 77 years or nearly three times that of Latin America.

In addition, unemployment rates in most Latin American countries are high and soar even higher when underemployment is taken into consideration. Private estimates of unemployment rates in Mexico range from 10-14% (in the urban areas only), in El Salvador from 20-30%, in Brazil from 8-10%, in Colombia from 12-16% and in the Dominican Republic from 15-20%. When underemployment is taken into consideration the rates jump to 15-30% in Mexico, 30-50% in El Salvador, 40% in Brazil, 17-30% in Colombia and 60% in the Dominican Republic.

The prospect for improved employment opportunities in these countries is doubtful. One case in point is Mexico. Mexico, which is reported to be a major source of illegal immigrants, now has a total population of 60 million, with 46% of its population under 15 years of age. With a growth rate of 3.2%, the Mexican population is doubling every 21 years which means that it will pass the 100 million mark before the turn of the century. As a result of this pressure, Mexican emigration to the U.S. has increased 88% in the past decade from a level of 37,969 in fiscal 1965 to 71,586 in fiscal 1974.

These startling demographic and economic statistics coupled with per capita incomes ranging from a low of \$130 in Haiti to a high of \$1,290 in Argentina plus the availability of modern transportation provide ample explanation for why the pressures to migrate will continue to intensify.

In deciding what our future immigration policy should be, I think it is instructive to reflect on historical immigration trends and the development of immigration policy. Immigration laws were an unknown entity in our early civilization even though man has been a migratory species as far back as human history can be traced. As civilization advanced and cities developed, the dominant pattern of migration through the 1700's was from less developed to more

developed areas, and from the rural to the urban. These patterns persisted until the middle 1800's when European population began to press hard upon the resource base and environment. Grave difficulties were avoided as the less developed world of that day—North America, Latin America and Australia—opened to comparatively easy migration. Steamships came into use, lessening the difficulty and danger of the voyage. Excess population was exported and resources were imported, lessening pressures in Europe.

The twin factors of the 'push' to leave home and the 'pull' of opportunity abroad thus served to reverse the historical trend of migration. People began migrating from the then developed world to the less developed in massive numbers. Between 1840 and 1930 at least 50 million persons emigrated from Europe. This trend of migration continued in pulses of varying strength through 1950, with the recipient countries developing and in some cases surpassing the countries of origin in their stage of development.

Since the end of World War II, the flow of migrants from the developed countries of northern Europe has slowed, and the historical pattern of migration from the less to the more developed countries has returned. The poorer countries around the Mediterranean Sea, and those of Latin America, Africa, and Asia are now supplying increasing numbers of migrants.

Before Congress can appropriately deal with these increasing numbers, we believe it is essential for the subcommittee to reexamine what the basis of our immigration policy should be. We are no longer a young, underdeveloped country in need of immigrants to settle our frontier, or man our factories. We are, more realistically, one of the wealthiest nations in the world with a population of some 214 million persons, a GNP exceeding one trillion dollars, and a per capita income of \$5,590 which are primary attractions to the millions of less advantaged living in Third World countries. Ideally, our immigration policy should constitute only one part of a larger population policy setting forth the desirability, if any, of future population growth, the size of that growth, and what component immigration should play in that growth.

It is worth noting that Canada is currently in the process of reevaluating its immigration policy and what role immigration should play in its future growth. To date, Canada has prepared both a green paper and a white paper on their work which I would like to share with the committee. Australia, another major recipient of immigration has also recently completed a study of immigration and population growth in their country.

Believing very simply that the U.S. does not have an unlimited capacity to absorb the millions that would want to come here if there were no immigration restrictions, ZPG supports an immigration policy aimed narrowly at the reunification of immediate families, the provision of asylum for refugees, and the protection of American labor from foreign competition.

ZPG enthusiastically supports the adoption of universally applied criteria for immigration to this country as well as some basic changes in the present system of preference categories. Our proposed changes would include 1) placing the relative preference categories ahead of the occupational categories; 2) adding the parents of permanent resident aliens to the second category; 3) setting the age of majority at 18; 4) eliminating both married brothers and sisters as well as married sons and daughters from the preference system; and 5) combining the two occupational categories into one.

Since the application of a preference system is not expected to reduce the Western Hemisphere backlog, we question the necessity of testing a Western Hemisphere preference system before adopting a universal system. Both approaches would have equal impact on eliminating the discrepancies which currently exist between the two hemispheres.

If a universal system cannot be adopted immediately, we would recommend that a cut-off date for applying and evaluating a Western Hemisphere preference be incorporated into the law. As a result of the cut-off date, Congress will be forced to take up the idea of a universal system within a specified amount of time preventing its adoption from being delayed indefinitely.

Placing a preference system on the Western Hemisphere with a standard 20,000 national quota will however, reduce the number of legal emigrants from Mexico to the U.S. by approximately half according to State Department representatives. This reduction will further add to the already existing pressures to by-pass the formal U.S. immigration process and enter the U.S. illegally sig-

nificantly increasing our illegal alien population. Consequently, the Immigration and Naturalization Service must be given the additional manpower and resources necessary to adequately secure the border.

In addition, a Western Hemisphere preference system is also likely to increase the total number of persons emigrating from the Western Hemisphere since it will give preference for the first time to relatives of persons who have already emigrated to North America which is another reason why we support excluded married sons and daughters and brothers and sisters from the preference categories.

Section 2 of S 3074 at first blush sounds mild enough—a provision that empowers the Secretary of Labor to certify the need for temporary foreign workers in cases where American workers are not available, and under circumstances in which the employment “of such aliens will not adversely affect the wages and working conditions of workers similarly employed.” What could be more reasonable?

Upon closer analysis, however, it turns out that this proposal is a far more sweeping one than one might imagine—in fact one might characterize it as a major (and unwelcome) intrusion of the State, of Big Government, into the American Free Enterprise System.

What does Section 2 do? We should bear in mind that we already have a temporary worker program, operating under existing legislation, which brings tens of thousands of foreign workers to the country every year to do work for which the Labor Department certifies that there are no U.S. workers.

Sugar cane cutters are brought into Florida, under these provisions, woodsmen and potato harvesters into New England, apple pickers for many East Coast States (including Virginia); other specific labor shortages—some of them rather exotic—are satisfied by this program. It gives the nation most of its professional soccer and hockey players; it provides show girls for night clubs in Las Vegas. When there are worker shortages in the construction industry—no problem at the moment—it is used to import skilled craftsmen to places where they are needed.

Section 2 however, suggests that the law be changed quite radically on three counts:

1. Currently one can import a temporary (H-2) worker to do temporary work; S. 3074 would make it possible to bring in a temporary H-2 worker for permanent work.

2. Currently, the test of availability of U.S. workers relates to the normal ebbs and flows and flexibilities of the U.S. labor market; we are known as a fast moving people who migrate to places where the economy beckons. Thus, corporate executives move from Dallas to New York to Little Rock and back, and migrant farm workers follow the crops from south to north. This fluidity in the labor market is ignored in Section 2 which says that the Department of Labor must certify that there are, in the location of the work, available workers to do the job.

3. Finally, and most importantly, the proposed law would shift the burden of proof from the employer to the Government. If the Department of Labor rules that workers are potentially available for the work to be done, it must produce them for the employer; currently the Department is obligated to make a judgment regarding the state of the labor market, not to manipulate it for the benefit of a given employer.

We at ZPG have three objections to this provision—which we feel runs directly contrary to the spirit of much of the rest of the legislation. Our objections are to the prospective economic, social and of course population impacts of the legislation.

On the economic front, we find the temporary worker program to be a radical proposal, one running against the grain of a Congress which has made a number of strong stands and difficult decisions about eliminating the dead hand of government from private enterprise. A Congress which eliminated crop support programs, as needless interference with the free enterprise system, and which refused to interfere with laws of supply and demand by sinking billions into the SST, is now being asked to provide employers with a guaranteed labor force. Will growers of apples or producers of automobiles next demand guaranteed supplies of raw material (including rainfall) and a guaranteed market for their products? We hope not. We think that the existing temporary worker plan—par-

ticularly in a time of acute unemployment—should meet any real emergent needs of American employers, without eliminating the generalized need for employers to compete in the labor market for the workers they want.

In terms of social costs, what is proposed here is most worrisome. One thinks of the massive problems of Europe, with the guest worker program; one remembers, unhappily, the problems of our own bracero program.

Any major foreign worker program creates an under class of lesser people who do the society's dirty work, but cannot join the society. This is the creation of a caste—not simply a class-system in the work place. It is a step which a democracy should think through very, very carefully before any action is taken.

Further, any major foreign worker program—like the bracero program of yesterday and the green card commuter program operating along our southern frontier today—is an effort to secure the labor of a given class of workers without paying the social costs for their families' education and other needs. It is inherently exploitive.

Finally, were this country in the midst of a labor shortage—created by war or just a booming economy—we might think about such a program, on a temporary basis. But we are in neither of those situations. There are inordinate numbers of Americans out of work. This is no time to shove them aside, our own unemployed—many of whom are receiving tax dollars through unemployment insurance, food stamps and welfare. We should figure ways of putting these Americans to work, not bringing in outsiders to take work which could be theirs.

In terms of population, of course, it is only fair to say that temporary workers often do not remain temporary; they often stay, legally or illegally; they are the first stage of the chain migration that scholars love to describe; the bracero first comes and goes as the Government tells him to; then he decides he likes it here, and make arrangements to stay, legally or illegally; then he sends for his family. INS is still looking for some braceros who never managed to find their way home after that program ended a decade ago. A temporary worker program—besides bringing more people than we need to the country temporarily also causes many of them to stay whether we want them to or not. If we are going to augment our population through immigration—and there must be room for some such movements—let's do it through the front door, and not through the fall out from a needless temporary worker program.

ZPG supports the limited amnesty provided in Section 11 and cautions the subcommittee against liberalizing the provisions any further. The granting of amnesty should be strictly applied to only those aliens who have long, firmly established ties in the country who would incur a serious emotional hardship if those ties were severed.

In attempting to provide for aliens who have acquired equity in this country, we must not overlook the fact that we must also provide for their relatives who most certainly will follow once the alien has obtained his permanent resident status. If we assume the typical alien who has entered illegally has an average of four dependents each then we must be prepared to absorb four times the number granted amnesty into our society.

We must also be careful to avoid having amnesty become an incentive to other aliens who will enter the country surreptitiously in hopes they will go undetected until another amnesty is granted.

We also concur with the penalties established in Section 12 for employers who knowingly hire illegal aliens but would again like to point out that such a provision will be meaningless unless the INS has the manpower necessary to enforce it. Congress cannot continue to disapprove increases in border patrol agents, investigators and inspectors and at the same time hold the INS accountable for not identifying employers who violate Section 12.

ZPG is concerned with previous applications of the Attorney General's parole authority and recommends that its continued use and application be reexamined. We believe that Section 17 of S. 3074 is indicative of the problems that arise from paroling large groups of aliens into the U.S. We oppose the adoption of Section 17 because: 1) it increases the number of immigrants allowed in the U.S. beyond the previously established quotas; 2) it sets a dangerous precedent of removing persons from the quota once they are under it; and 3) we would prefer to see all future parolees brought in under the quota with the Attorney General and Congress knowing from the start that the number paroled would be deducted from the overall quota.

Finally, I would like to add that I hope the subcommittee will not delay action on S. 3074 until recommendations are received from the Domestic Council Committee on Illegal Aliens which I suspect will not be announced until the November elections are over. The problems we are discussing are much too severe to suffer further neglect and your leadership is crucial if we are to address them while they are still manageable.

Thank you.

ADDENDUM TO ZERO POPULATION GROWTH TESTIMONY
WESTERN HEMISPHERE—POPULATION AND ECONOMIC STATISTICS

Country	Population doubling time (years)	GNP per capita in U.S. dollars
Honduras.....	20	\$320
Dominican Republic.....	21	470
Nicaragua.....	21	470
Mexico.....	22	740
El Salvador.....	22	340
Colombia.....	22	400
Ecuador.....	22	360
Guatemala.....	24	420
Peru.....	24	520
Venezuela.....	24	1,240
Brazil.....	25	530
Costa Rica.....	25	630
Panama.....	25	880
Guyana.....	32	400
Cuba.....	35	510
Chile.....	38	800
Jamaica.....	46	816
Haiti.....	50	130
Argentina.....	53	1,290
Canada.....	53	1,440
Trinidad and Tobago.....	63	970
Uruguay.....	69	760
United States.....	77	5,590
Barbados.....	139	930

WESTERN HEMISPHERE POPULATION STATISTICS

[In percent]

Country	Growth rate	Birth rate	Percent under age 15
Honduras.....	3.5	49.3	47
Dominican Republic.....	3.3	45.8	48
Nicaragua.....	3.3	48.3	48
Mexico.....	3.2	42.0	46
Ecuador.....	3.2	41.8	46
Colombia.....	3.2	40.6	46
El Salvador.....	3.1	42.2	46
Guatemala.....	2.9	42.8	44
Peru.....	2.9	41.0	44
Venezuela.....	2.9	36.1	44
Brazil.....	2.8	37.1	42
Costa Rica.....	2.8	33.4	42
Panama.....	2.8	36.2	43
Guyana.....	2.2	32.4	44
Cuba.....	2.0	29.1	38
Chile.....	1.8	27.9	36
Jamaica.....	1.5	33.2	46
Haiti.....	1.4	35.8	40
Canada.....	1.3	18.6	27
Argentina.....	1.3	21.8	28
Trinidad and Tobago.....	1.1	25.3	39
Uruguay.....	1.0	20.4	28
United States.....	.9	16.2	25
Barbados.....	.5	21.6	34

WESTERN HEMISPHERE IMMIGRATION

Country	Total immigration by country		Percent change in 1974 immi- gration over 1965
	1965-74	1974	
Mexico.....	514,028	71,585	+88.5
Cuba.....	284,565	18,929	-4.2
Canada.....	190,684	7,654	-80.0
Dominican Republic.....	121,233	15,680	+65.0
Jamaica.....	114,882	12,408	+575.5
Colombia.....	68,878	5,837	
Haiti.....	53,242	3,946	
Trinidad and Tobago.....	50,148	6,516	
Ecuador.....	42,633	4,795	
Argentina.....	31,743	2,077	
Guatemala.....	18,466	1,638	
Brazil.....	17,928	1,114	
El Salvador.....	17,410	2,278	
Guyana.....	17,144	3,241	
Panama.....	16,634	1,664	
Honduras.....	14,961	1,390	
Peru.....	14,796	1,942	
Costa Rica.....	14,245	752	
Barbados.....	13,978	1,461	
Chile.....	10,862	1,285	
Nicaragua.....	7,564	942	
Venezuela.....	6,413	604	
Uruguay.....	5,608	705	
Total.....	1,648,045	168,444	

Senator FONG. You have given us a very fine statement, and I particularly like that statement made by you on page 7,

Ideally, our immigration policy should constitute only one part of a larger population policy setting forth the desirability, if any, of future population growth, the size of that growth, and what component immigration should play in that growth.

Your statement has been very reasonable, and your group, Zero Population Growth, is not against immigration, but you want to have a realistic approach to the problem.

Miss WIRKEN. Yes, sir.

Senator FONG. I think that we should have a realistic approach to the whole problem of growth. We see, as you have pointed out in your statement here that all the other countries are increasing in population by leaps and bounds. I think the population of the United States now is 5 percent of the population of the world.

We know there are other countries with tremendous numbers of people who don't look with friendship toward this country, and that, too, should be taken into consideration when we think of population. We should determine whether, if there is a conflict, we could stand up against such overwhelming odds in number of population. Has your group given some thought to that problem?

Miss WIRKEN. We have to a certain extent, and I don't think that we have ever felt that national security was a cause, or a motivation for our country to keep growing.

Senator FONG. I think that is a very serious consideration that should not be overlooked. I'm afraid that, with such a small population as we have, some day we may be facing a problem. Then, we may wish we had a little larger population; that is one policy. That should have some very profound research, and I'm wondering whether you shouldn't give that some thought.

Miss WIRKEN. I suggest that we look into it further. We have talked to Gen. Maxwell Taylor, regarding the population issue and he is very active in what is called the Population Crisis Committee.

His views are very similar to our own. Unfortunately, as the Senator realizes, in our days of modern technology, we rely much more on our bombers and our missiles than we do on our manpower to conduct a war.

Senator FONG. But we still have conventional war. And, then there is the problem of production and manpower need.

I don't advocate that we be unlimited in our growth, I know that we have to have a limited growth.

Miss WIRKEN. I would also like to point out that we are not against immigration, and we also are not unconcerned about the plight of aliens who are not allowed to come to the United States and are required to stay in their native countries. We think that by letting them come here we relieve the pressure on them to do something about their own population growth and economic development. In addition to working on immigration legislation, our organization is also working on the foreign assistance legislation, directing more aid to less developed countries so that they can come to grips with their population and economic problems. So, our approach is a twofold approach, it is not an isolationist policy.

Senator FONG. We are very, very lucky in that we do not have such a big population, while we do have such a tremendous country. I believe in 1974 we, the United States and Canada, exported 91 million tons of grain to the world. The next largest exporting area in the world was Australia and New Zealand, and these two countries only exported 6 million tons of grain, in relation to our and Canada's export of 91 million tons.

I have also learned this very amazing fact of how dense the populations of some other countries is. I don't wish to see our country as densely populated. It is said that Bangladesh with a population of 18 million people is one of the most densely populated countries in the world. When we relate the density of Bangladesh to the United States, we would have a density in the United States like Bangladesh's if we had all of the people in the world, which is presently 4 billion; and we still would have to add another 2 billion people. In other words, the United States would have a population of over 6 billion people.

To put it another way, if all the people of the United States were put in the State of Wisconsin, it would have the density of Bangladesh.

That shows how big this country is, and how it can really support a large population. But these problems are things to be researched, and I think some group should be looking at the problem as a whole to see where we go from here.

Miss WIRKEN. Absolutely.

Senator FONG. What is the policy of our growth, and how many immigrants can we afford; and where will we be in the year 2000, 2030. I think your group is doing a very, very fine human service for the country.

Miss WIRKEN. Thank you.

I would like to point out that we have spent the past year working on a population policy for the country. We have long advocated one, but have never been able to produce a model. We hope in the next few months to complete the details of this model, and we would be very privileged to share it with you.

Senator FONG. We would be very happy to have that. Thank you for coming before us, thank you very much.

Miss WIRKEN. Thank you.

Senator FONG. The committee will meet tomorrow at 10:30. We will adjourn until tomorrow at 10:30.

[Whereupon, at 11:50 a.m., the subcommittee adjourned, to reconvene at 10:30 a.m., Thursday, April 1, 1976.]

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

THURSDAY, APRIL 1, 1976

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:35 a.m., in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland and Fong.

Also present: Senator Montoya; Ed Loughran, staff director; Sidney Rawitz, special counsel; Mark Hazard, professional staff member.

Senator EASTLAND. The committee will come to order. Let's have order, please.

This morning the subcommittee will hear from representatives of three organizations who are deeply concerned with the legislation we are considering: The U.S. Catholic Conference, the American Farm Bureau Federation, and the National Congress of Hispanic American Citizens.

The Chair is privileged to recognize the distinguished Senator from New Mexico, my good friend Joe Montoya. Senator Montoya and I have served in the Congress since 1957. He is a devoted servant of his State and a valuable Senator of the United States; it is an honor to have him introduce our first witness.

Senator MONTOYA. Thank you very much, Mr. Chairman, for the kind words.

I'm honored to be present today to introduce to the committee Archbishop Robert Fortune Sanchez of New Mexico. Archbishop Sanchez is a man in whom New Mexicans have great pride. He is a native of Segura, N. Mex. and is the first Spanish-surnamed Archbishop in the United States, as well as the first native-born southwesterner to be given that high responsibility.

He is here to testify before you on illegal aliens and the legislation which is pending in the Congress. He is probably one of the most knowledgeable persons in the Nation on this very difficult problem.

I am very happy to welcome him to Washington and to introduce him to this committee, knowing fully well that his interest in human beings, and his accomplishments in social work are so well known in New Mexico and the Southwest that I'm sure whatever he imparts to you by way of testimony this morning will be a great contribution

to your considerations and deliberations on the very important legislation.

Mr. EASTLAND. Your Excellency, it is a distinct privilege to extend to you a warm and cordial welcome to this hearing.

The Archdiocese of Santa Fe is one of the oldest sees of the Roman Catholic Church in this Nation. Your predecessors introduced Christianity to the Southwest long before the American Revolution. My colleagues in the Senate have told me of your great personal concern for your church and the people of God everywhere. We look forward to your testimony, which we know will be helpful to our deliberations.

Senator Fong?

Senator FONG. I have nothing to add.

Senator EASTLAND. Archbishop Sanchez, we are now pleased to have you proceed with your statement.

STATEMENT OF ARCHBISHOP ROBERT F. SANCHEZ, D.D., U.S. CATHOLIC CONFERENCE

Archbishop SANCHEZ. Thank you. I would like to begin by thanking Senator Montoya for his very fine introduction.

Honorable Chairman, members of this distinguished subcommittee, it is my pleasure this morning to appear before you to give testimony on a very important problem. Before entering my testimony I beg your patience to share a light thought with me.

Recently I was told a story, as I waited in the dentist's office to undergo my personal extraction. I was told a story of a young boy who refused to cooperate with his dentist. In order to encourage the youngster to open his mouth, so as to accomplish the extraction, the dentist told his assistant, "When I nod to you, take this hat-pin and jab the boy in the bottom."

So, the right moment arrived, the dentist nodded his head, and the nurse jabbed the youngster. Of course he screamed, opening his mouth, and the doctor was able to extract the tooth.

The dentist beamed down at the boy and said, "There, son, that wasn't too bad now, was it?"

The boy said, "No, sir, not at all, but I didn't realize it had such deep roots."

[Laughter.]

Archbishop SANCHEZ. It occurs to me that perhaps the issue that is before us this morning is similar to this. We would like it to be "not too bad," and yet, we are discovering with testimony that it does have deep roots.

I have with me today Monsignor George C. Higgins, secretary for research; John E. McCarthy, director of the Migration and Refugee Services, and Paul Sedillo, Jr., director of the Secretariat for the Spanish Speaking, all members of the U.S. Catholic Conference staff, and who will be available to answer any questions which may be posed.

There are before this country in its Bicentennial year many serious problems which have been created by the present U.S. immigration policies. Among the most serious is the presence of an untold number of so-called "illegal aliens" with all the attendant social, economic and moral problems faced by them and their families, as well as the

lack of uniformity between the Eastern and Western Hemispheric systems of selecting immigrants. The lack of a preference system for Western Hemisphere applicants has resulted in a waiting period of some 29 months for persons chargeable to the numerical ceiling and has contributed substantially to unlawful immigration. The church is vitally concerned with both the re-unification of the family as well as the preservation of the family unit. With these thoughts in mind, we wish to address ourselves to some of the specific proposals, Mr. Chairman, of your bill S. 3074.

Section 12 provides for civil penalties for employers, their agents, or representatives of labor organizations who knowingly employ, or continue to employ, or refer for employment aliens not authorized to work. A \$500 fine per alien is provided for first offense; subsequent offenses will be fined from \$500 to \$1,000 per alien. If, despite civil penalties, the employer persists in violating the statute, the Attorney General may seek an injunction which may eventually result in contempt proceedings possibly leading to criminal penalties. Employers are not deemed to have violated this provision if they have made bona fide inquiries in writing, in accordance with regulations to be prescribed by the Attorney General, as to whether the prospective employee is a citizen, or an alien authorized to work.

In our opinion, this provision is objectionable from several points of view. In the first place, neither Congress nor the administration has demonstrated that there is adequate information as to the scope of the illegal alien problem or of the possible effects of this type of provision on lawful alien residents and citizens. The Government has no idea how many illegal aliens are really in the country. Estimates range from 2 to 12 million. They really do not know whether the illegals who are here are holding jobs which either citizens or lawful residents would be willing to accept. They can only guess at the additional costs being created by the alleged increased need for public services or the alleged amount of money being sent out of the country by illegals.

That the Federal Government's information about illegal aliens is inadequate is demonstrated by the fact that in both fiscal years 1975 and 1976, the Immigration and Naturalization Service has sought special appropriations of \$1 million from Congress to conduct a study of the problem. In a document submitted to the Congress justifying the need for this study it is stated:

Without knowing the actual scope of the problem, it is not possible to attack it effectively. It is, therefore, mandatory that I&N.S. assess the illegal alien situation to determine not only the magnitude, but also the characteristics, mode, and locations, of entry, area of residence, and extent of impact of the illegal alien population.

On October 8, 1975, the Congress concurred by passing legislation to appropriate these funds and the INS has just begun to initiate its study of the illegal alien problem and it is our understanding that they do not expect to complete it for another year.

In addition, President Ford has appointed a special Cabinet committee to study the matter. This committee has just begun a serious evaluation of the illegal alien problem and does not expect any substantive recommendations before this summer. Consequently, there seems to be little doubt that the Government itself recognizes its lack

of basic information. Therefore, neither the Congress nor the administration should initiate major new policies in regard to illegal aliens prior to conducting comprehensive and objective studies of this matter.

Senator EASTLAND. Does the Church know how many illegal aliens are in the country?

Archbishop SANCHEZ. I would have to request an answer from Mr. McCarthy.

Mr. MCCARTHY. No. The Immigration Service at the present time, according to their figures, is effecting the apprehension and removal of about 1 million persons a year; they say they get 1 in 3, or 1 in 4. The assumption is that the figure of 8 million may be a philosophical figure. The research people got in touch with us, and they just have a guess, like everybody else; they don't know what they are talking about.

Senator EASTLAND. Please proceed.

Archbishop SANCHEZ. Assuming that such studies demonstrate the illegal alien problem is of such magnitude as to justify some sort of legislative remedy of this nature, the solution proposed by this bill is seriously defective. In attempting to solve an economic problem, this proposal could create a civil rights problem of considerable magnitude.

By providing sanctions against any employer who hires an illegal alien, this legislation would create a situation that assuredly will lead to discrimination against any person belonging to a minority group whose legal status might be called into question. Lawful resident aliens and minority group citizens could be denied employment simply because employers will not want to run the risk of inadvertently violating the law.

Moreover, the effect of this provision would be a screening by the employer of all the employees after this law is enacted. The dismissal of untold numbers of workers from their jobs would cause unbelievable havoc among their families and in the communities where they live. It would be physically impossible for the Immigration Service to move such large numbers of people. General Chapman, Commissioner of the Immigration and Naturalization Service, in his recent appearance before this subcommittee conceded the Service does not possess such capability. Moreover, it is unconscionable that our Government should even consider separating families by forcing a mass exodus or deportation of possibly millions of men, women, and children.

Senator EASTLAND. I agree with you.

Archbishop SANCHEZ. Thank you very kindly.

In our view the Federal Government should deal with the problem of the future influx of illegal aliens separately from the problem of those already residing in this country. Those who are already here are here because the Government has been both unwilling and unable to enforce its own immigration laws. Most of these people have established families, part of whom are American citizens with all of the rights of citizenship.

There is only one just and humane solution to this important aspect of the problem which would be consistent with the tradition and ideals of a country which has been known as the "Nation of immigrants," that is, to show once again our generosity by allowing these people to become lawful residents. Consequently, we have advocated that a mean-

ingful amnesty provision be incorporated into this legislation. Such a provision would allow people who have already been in the country for a period of time, particularly those who have family ties here, to adjust their status. We do not, however, advocate amnesty for criminals, procurers, and other immoral persons, subversives, violators of the narcotic laws, or smugglers of aliens.

Specifically, we endorse the proposal contained in S. 561, introduced by Senator Edward M. Kennedy, that any sanctions which might be imposed upon employers be applied prospectively. This could be accomplished by deleting the suggested wording in section 274(b) (1) " * * * to employ, continue to employ, * * *" and substituting " * * * to hire and employ after the effective date of this act, * * * "

Second, should an across-the-board type of amnesty be granted—with a necessary residency cutoff date for eligibility, a number of problems would be solved.

Mr. Chairman, as you and the other members of the subcommittee are aware, Public Law 92-603, which was enacted on October 30, 1972, requires the Social Security Administration to screen all applicants for social security cards as to their eligibility to take up employment. If amnesty were granted, for example, to all who are in the United States today, or as of January 1, 1973, then the social security card would become the proof of the right by the holder to take up employment regardless of the date of issuance of the card. Thus, neither the employer nor the job applicant would be confronted with the problem of discrimination in hiring practices as regards alienage and this use of the card would prevent the recurrence of any mass influx of aliens seeking unlawful employment in the future.

As a complement to any grant of amnesty, the beneficiaries should be permitted to adjust status without leaving the country and such adjustments should not be charged against existing immigration ceilings.

As regards section 11 which moves up to July 1, 1968, the eligibility date for registry of entry under section 249 of the act, we endorse this proposal as a normal updating measure. We do not in any way, however, view this proposal as one of granting amnesty. Based on the Immigration Service's own estimate, less than 5 percent of illegal aliens allegedly in the United States would be benefited.

With reference to the proposal for a preference system for the Western Hemisphere, little need be said as to its necessity. There should be a uniform preference system applicable to both hemispheres. We note, however, Mr. Chairman, an absence in your proposal of any change in the categories of persons eligible for refugee status under section 203(a) (7). We would favor the definition of refugee contained in United Nations protocol on refugees which could be applied to refugees from any part of the world.

Recognition of the special status—economic, military and cultural—which exists between the United States and its contiguous neighbors to the north and south should be reflected in our immigration policies. To achieve this objective we propose that Canada and Mexico be allocated up to 35,000 visas each on an annual basis, but within the overall numerical ceiling of 120,000 for the Western Hemisphere.

Thought might also be given at this time to the establishment of a worldwide ceiling on immigration to be instituted after a transition

period of from 3 to 5 years. Such a transition period would permit Western Hemisphere applicants to adjust to the preference system and enable the Congress to review the operation of the new system with a view to making such adjustments as may become desirable based on experience with the new system.

We also strongly urge that special immigrant status be accorded not only to ministers of religion as in the present law, but also to other types of religious functionaries such as nuns and brothers. Such persons contribute invaluable service to charitable, nonprofit institutions including hospitals, nursing homes, day care centers, schools, et cetera, whose staffing needs cannot be filled from within the United States due to the decline in religious vocations domestically.

The proposal to amend section 245 to extend the adjustment of status privilege to natives of the Western Hemisphere is welcomed. The bar to adjustment of persons who have taken up unauthorized employment, however, is not favored. Experience has shown that unusual hardships may result, for example, in the case of refugees who incidentally should not be barred from adjustment for that reason or by the manner of entry into the United States.

Section 9 tightens the criteria for deportability of certain persons who become public charges within 5 years of entry regardless of whether they are required to repay expenses or have been asked to repay. Such a penalty may deter aliens from seeking medical help to their detriment and to that of the general public—as in the case of mental illness or serious contagious diseases. We feel, however as a general principle that no alien should face deportation unless he has refused to pay after the demand has been made.

The labor certification requirement in its present form is cumbersome, costly, and unwieldy to apply. A return to the system in effect prior to 1965 or to the system proposed by the Department of Labor in its recent testimony is preferable and to our minds would afford adequate protection to American labor.

In conclusion, we would like to address ourselves to the proposed change for the admission of temporary workers.

Section 2 of S. 3074 amends section 101(15)(H)(ii) to permit the admission temporarily of aliens (a) for work no longer required to be temporary in nature; (b) who meet labor certification requirements as spelled out in section 212 (a)(14) and (c) with admission up to 1 year with possible extension of 1 additional year. The Secretary of Labor must produce qualified domestic workers within 60 days of the request—20 days in the case of agricultural workers—or issue a certification for the importation of foreign workers. Any employer who questions the qualifications of the workers referred can obtain a prompt review by the Secretary of Labor.

The U.S. Catholic Conference strongly opposes this section of S. 3074. We are in complete agreement with the position taken on this matter by the national AFL-CIO and by the U.S. Department of Labor in separate statements presented earlier in these hearings. It is our understanding, incidentally, that the Department of Labor's opposition to section 2 represents the official position of the executive branch as such, inasmuch as the Department of Justice and the Department of State have already testified that on this matter they defer to the Department of Labor.

We are compelled to state respectfully that the arguments against the bracero program—arguments which persuaded the Congress to put an end to the program in 1964—apply with even greater force to the recruitment proposal outlined in section 2 of S. 3074.

Under the bracero program, foreign workers were not to be recruited for employment in the United States unless the Department of Labor could certify that:

Sufficient domestic workers who were able, willing, and qualified were not available at the time and place needed to perform the work for which such workers were being recruited.

The employment of such workers would not adversely affect the wages and working conditions of domestic agricultural workers.

Reasonable efforts had been made to attract domestic workers at wages and standard hours of work and working conditions comparable to those offered to foreign workers.

Under the provisions of section 2 of S. 3074, the last of these requirements is omitted. The employer would not be required to make any kind of effort, reasonable or otherwise, to recruit domestic workers. The full burden of recruitment of domestic workers would fall upon the Department of Labor and would be carried out at the expense of the American taxpayer.

It is true that under section 2 the Department of Labor would be required to determine that the employment of foreign workers will not adversely affect the wages and working conditions of domestic workers similarly employed.

Experience under the bracero program clearly demonstrates, however, that this is a meaningless condition. The record shows that, under that program, the importation of foreign workers had a seriously adverse effect on domestic labor standards. In making this judgment, we are relying on a mass of evidence accumulated by a three-man committee appointed in 1959 by the then Secretary of Labor, the late James P. Mitchell, to investigate the bracero program. Msgr. George Higgins, secretary for research of the U.S. Catholic Conference, who is with me this morning, was a member of that committee.

The Mitchell committee found that the bracero program—which guaranteed growers, at no administrative expense to themselves, an unlimited supply of cheap and docile labor—was having a disastrous effect on the American labor force. Accordingly, it recommended that the program be phased out as rapidly as possible.

The report of the Mitchell committee, which is on file at the Department of Labor, made it abundantly clear that the bracero program had seriously hurt American citizens. The injury done to domestic farmworkers was evident no matter from what angle the committee viewed the situation. Despite the efforts of the Department of Labor to require employers to recruit qualified U.S. workers, the Mitchell consultants found many indications that domestic farmworkers were losing out to foreign labor. So strong were the preferences of some growers for a captive labor force that in some areas almost all of the seasonal work in certain occupations was performed by foreign workers. Even those domestic workers who were employed found the duration of their jobs shortened because the availability of foreign workers, particularly at harvest time, had compressed the work season.

Where foreign workers were used in large numbers, wage rates were prevented from rising to levels they would have attained if no foreign workers had been admitted. The very knowledge on the part of growers and workers of the availability of foreign workers weakened the domestic workers' bargaining position. Statistics compiled by the Mitchell consultants showed that wage rates in occupations and areas employing foreign workers had lagged behind the rising wage level for domestic farm workers generally. They also showed that users of foreign labor often paid their domestic workers less than employers who did not use foreign workers.

Faced with these considerations, the Mitchell consultants found it impossible to recommend the continuation of the bracero program. They concluded that the renewal of the program under Public Law 78 would postpone the adoption of necessary reforms and tend to increase rather than diminish domestic labor shortages.

There is no reason to think that the situation would be any better under the proposal outlined in section 1 of S. 3074. To the contrary, there is every reason to anticipate that, with unemployment running in the neighborhood of 8 percent, recruitment of alien workers for specific jobs in specific localities would have an even more adverse effect on domestic standards than it had in the 1950's and 1960's under the bracero program when the unemployment rate was much lower.

We are compelled to add respectfully that there is a glaring inconsistency in S. 3074's whole approach to the illegal alien problem. On the one hand, it calls for sanctions against the employment of illegals, presumably, among other reasons, because they take jobs away from American workers, thus adding to our already critical unemployment problem. On the other hand, section 2 would facilitate the importation of foreign workers for those occupations and localities in which there is an alleged shortage of domestic labor.

We use the word alleged in this context advisedly. The fact is that, at the present rate of unemployment, there would be no shortage of workers willing and able to perform the jobs in question if they were offered adequate wages and working conditions. Unless employers are prepared to make the kind of recruitment efforts and job offers that can reasonably be expected to recruit and retain domestic workers, how can a true test of the availability of domestic labor be made?

In short, if employers and growers in a given occupation or locality claim to be short of domestic labor, when millions of American workers are walking the streets, that is a problem of their own making. It is completely unreasonable on their part to expect the Government to bail them out at the expense of our own domestic labor force—and, in our judgment, it would be unconscionable for the Government to oblige them.

Mr. Chairman, I do hope you will not feel our remarks have been too critical. They are made in the spirit of constructive criticism in areas where the welfare and lives of so many thousands of God's children are presently being affected and will be affected in years to come by legislation which may be enacted as a result of these deliberations. May I again commend you, Mr. Chairman, and the other members of the subcommittee, including Senators Kennedy and Fong who have introduced legislative proposals in this area, for your serious

concern which has been manifested throughout the course of these hearings.

I, in turn, am indeed grateful for the opportunity to have been able to share our concerns with you. Thank you.

Senator FONG. Archbishop, you are against the importation of seasonal labor?

Archbishop SANCHEZ. The importation of labor—could you clarify the question, Senator Fong?

Senator FONG. I was just wondering as to what is your position on seasonal labor.

Archbishop SANCHEZ. We would be against the importing of foreign workers if there is domestic labor available.

Senator FONG. Yes; this is the problem we have, when is domestic labor available, and when is it not available; and will these domestic workers take the jobs? I was just wondering, what are your thoughts on that?

Archbishop SANCHEZ. I feel that the Department of Labor would have to make it their concern to make that judgment. They certainly have the information before them, as to the availability of laborers, the type of laborers available, and where they are available at. I feel they could make an honest and just judgment in that regard.

But we would not want to prejudice against any domestic laborers in this country.

Senator FONG. There are quite a few places where we have a surplus of labor and other places we may not have a surplus of labor. It is difficult, sometimes, to rotate these laborers from one geographical area in the country to another; and because of this situation, we find that there is a lack of labor for certain kinds of jobs to be performed in certain localities.

Under those circumstances, would you feel that we should have some seasonal labor in this kind of situation?

Archbishop SANCHEZ. When there is no alternative, I think our Government has to take the proper steps. But I think that the salaries paid these people should not prejudice against the conditions of our local, domestic workers, so that they in no way will be denied equal rights to raise their own salaries and working conditions because of the presence of foreign workers.

Senator FONG. Do you feel that there is a certain group of people that refuse to work in certain jobs? For example, we see so many ads for employees, and yet, we find that the unemployment rate is 8 or 9 percent in the community. For example, there were some statistics on a section of Hawaii where the unemployment rate was 9, almost 10 percent; and there were 1,200 jobs there that were advertised for, and they were not being filled.

How do you account for a situation like that?

Archbishop SANCHEZ. It appears to me that is a real technical problem. Monsignor Higgins works in our staff on this day in and day out. I will ask him, if you don't mind, to share his thoughts on that type of a problem.

Monsignor HIGGINS. I obviously would not be prepared to comment on the specific case you gave, Senator, because, while I visited Hawaii and enjoyed it very much, I don't know the economics of the State.

But in general answer to your question, as to why there is an alleged shortage of labor in a given situation, I think there are all sorts of factors that would have to be considered. We would want to know what the wage rates are that are being offered; we would want to know what the conditions are.

I spent the last 7 years working on the farm labor problem and, before that, worked very closely on the bracero, studying the bracero program. I have heard hundreds of allegations, when I was studying the bracero program, that there was a shortage of farm labor. I see no evidence of shortage of farm labor if conditions are good.

We had the experience, when we were studying the bracero program, of interrogating recruiters of workers in the Southwest, who were hired by associations of growers and employers to go out and recruit. They had to make some showing before they could ask for the importation of workers that they had adequately recruited. We found—and we received very many direct, honest answers from these people, with no holds barred—that their recruitment was very perfunctory; that the wage rates they were offering were exceedingly low. And in that condition, I suppose, they could argue that there was a shortage of labor.

But, once the bracero program was stopped, somehow or other they found labor to do the work. So, I don't think anyone, not even Solomon, can take any specific case without looking into all of the factors.

But, if I may go back for a moment, Senator, I gather you are making a distinction between bringing in workers for temporary jobs—

Senator FONG. Yes.

Monsignor HIGGINS [continuing]. And section 2, which would bring them in for permanent jobs. We do bring in some workers under temporary arrangements, the British West Indians to cut the cane in Florida. It's no secret, of course, that the Farm Workers Union is strongly opposed to that, they say they could get people to cut the cane; there is nothing intrinsic about cutting cane that makes it a job that only British West Indian workers can do. It may have something to do with wage rates and other conditions. That's a separate issue.

The larger concern, I think, of our testimony, of the archbishop's testimony was to changing the law so that they can take jobs which are not temporary, and restore some variation, a lateral variation of the bracero program.

The whole problem of a shortage of labor with eight percent, or 7.6 percent unemployment is a very difficult question.

I often think of the example of miners. I can't think, personally, of a harder job in the world than mining coal. We find people to do it—we find plenty of people to do it. We wouldn't find them if we paid them \$2.50 an hour. There would be a great shortage of mineworkers if we were paying \$2.50 an hour. But with adequate wages, with union protection, conditions of work, there is no shortage of miners; and yet, it is a far more difficult type of work than any of the jobs, I presume, that are being offered in your State, which are going begging.

So, the whole problem of recruitment involves wages, union protec-

tion, or some other protection, legal protection of work, recruitment efforts, etc cetera.

Senator FONG. So, you feel if we pay enough wages, we don't need any temporary workers.

Monsignor HIGGINS. I won't say that we would never need them. My sympathy is with those who say we ought to be phasing out the employment of foreign workers, temporary jobs; and of course strongly oppose changing the law to allow foreign workers to take jobs which are not temporary.

Senator FONG. Archbishop, do you think the amnesty program should be such that it should take care of almost every alien here now?

Archbishop SANCHEZ. As I mentioned in my testimony, Senator, the amnesty program would include all people who are presently here. However, we would exclude those who come under a criminality type of status for themselves, they have procured, etc., we would exclude them. But the rest we would include, yes.

Senator FONG. So, there would be almost no deportation of illegal aliens unless it comes within those categories.

Archbishop SANCHEZ. That is our position.

Senator FONG. And under those circumstances, then, would you then have the employers being liable for prospective violations in hiring illegal aliens?

Archbishop SANCHEZ. Yes; provided it would be done in such a manner that it would not include any discrimination. Methods would have to be found which would exclude any possibility for discrimination.

Senator FONG. Yes; the civil rights law should apply there.

Archbishop SANCHEZ. Absolutely.

Senator FONG. I was a little afraid of that; also introduced an amendment to that effect.

Archbishop SANCHEZ. We appreciate that.

Senator FONG. How would you hold an employer responsible for the hiring of an illegal alien? Suppose, let's say we give blanket amnesty to everyone who is here now. How would you go about holding an employer liable from here-on-after if he employed an illegal alien; would you require him to look at the social security card before he does?

Archbishop SANCHEZ. We propose that as one possible solution. It is simply a proposal, a suggestion. We certainly are not limiting the solution to that particular method. If that would prove to be adequate, we would encourage it. We feel there would have to be some sort of check of that nature in order to screen the applicants, which could not be discriminatory in any way against local domestics, or those who have recently acquired citizenship in this country.

Senator FONG. Do you have any objection to having a person's photograph on his social security card?

Archbishop SANCHEZ. I believe that objections have been made to this.

Senator FONG. Yes.

Archbishop SANCHEZ. The reasons given for it, I would have to support.

Senator FONG. I have no further questions. Thank you.

Senator EASTLAND. Thank you. You have been a very fine witness.

Archbishop SANCHEZ. Thank you, Senator.

Senator FONG. I have some amendments I have offered to this bill. I would hope that you would look at them, and would submit some statement relative to those amendments.

Archbishop SANCHEZ. We will, certainly.

Senator FONG. Thank you.

Archbishop SANCHEZ. Thank you once again, and have a good day.

Senator EASTLAND. Thank you.

We will now have the American Farm Bureau Federation. Identify yourself and your colleague, please.

STATEMENT OF JOHN C. DATT, DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. DATT. My name is John Datt, I am the director of the Washington Office for the American Farm Bureau Federation, Senator Eastland, and I have with me Mr. C. H. Fields who is the assistant director for national affairs here in the Washington office. Mr. Fields works in this particular area a great deal more than I do, and I would ask if he could help me in presenting our statement, and in terms of answering any technical or other questions the committee might have.

We appreciate this opportunity to present the views of the American Farm Bureau Federation on the problem of illegal aliens.

The Farm Bureau is the largest general farm organization in the United States, with a membership of 2.5 million families in 49 States and Puerto Rico. It is a voluntary, nongovernmental organization, representing farmers and ranchers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

The voting delegates of the member State farm bureaus to the 57th annual meeting of the American Farm Bureau Federation in January 1976, adopted a comprehensive policy on the illegal alien problem, parts of which we quote:

We continue to oppose legislation that would put the burden of proof on employers as to whether a person is an illegal alien. We feel that the enforcement of such a law would place an unwarranted burden for law enforcement on employers, would lead to discriminatory practices against minority groups, and would prove to be unworkable and ineffective in solving the problem of illegal aliens entering this country.

Instead of shifting the burden of enforcement to employers, we favor legislation that would make it illegal for any public agency or public official to approve or provide public services to illegal aliens. Tightening up the procedures involved in the issuance of social security cards and requiring that those who apply for welfare, food stamps, and other such social services show proof of their legal status as citizens or legal aliens, would be more effective in locating such aliens and in discouraging their entry than other plans that have been advanced.

We favor reconsideration of a contract labor program under agreement between the United States and other countries, which would provide for a legal and orderly entry of needed workers, with due safeguards to the rights and welfare of the workers.

We recognize the seriousness of the illegal alien problem. As long as the present disparity between wages and working and living conditions in this country and in nearby foreign countries continues to exist,

the tide of illegal immigration is likely to continue and even increase. We believe that the Congress should enact legislation to alleviate this problem.

We appreciate the fact that S. 3074 seeks to outlaw the employment of illegal aliens and, at the same time, provide a method for the orderly entry of alien workers needed in certain areas of employment. We do not favor the passage of this bill as presently written, but we consider it far superior to most of the other bills which deal with this subject. We shall recommend certain amendments to increase its effectiveness and to make it more acceptable to farmers and ranchers.

Section 2 of the bill provides for the temporary entry of aliens for period not in excess of 1 year when the Secretary of Labor certifies to the Attorney General that sufficient domestic workers "who are able, willing, and qualified" are not available "at the time and place needed," and the employment of such aliens will not adversely affect the wages and working conditions of workers similarly employed. This section spells out the circumstances under which the Secretary may refer workers to employers who need them or give his approval to the entry of aliens to provide the necessary labor.

While the need for farm labor in general has been drastically reduced over the years due to mechanization, it must be recognized that certain segments of agricultural production require large numbers of workers on a seasonal basis. The production of such crops as fruits, vegetables, ornamentals, and certain field crops creates substantial seasonal demands for hand labor. Seasonal workers often are not available from the domestic work force, in part because welfare and other governmental programs, as administered, discourage the unemployed from seeking seasonal work; in other words, there is no incentive to work. Unreasonable Government restrictions on the employment of young people also prevent our youth from seeking gainful employment in agriculture during their vacation.

Unfortunately, many people, including some in the Department of Labor, have the mistaken notion that virtually anyone is capable of doing farmwork. Many farm jobs can be performed only by people who have had experience, or are skilled, in such work and who have the necessary physical capabilities. Agriculture is a highly competitive business that operates on a very narrow profit margin. It is only through rapid increases in productivity that farmers can continue to produce the food and fiber needed by our own people and millions of others throughout the world.

It is our opinion that, if the Government were able to locate the illegal aliens in this country, send them back to their native lands, and prevent their reentry, the production of crops in many important production areas would suffer severe consequences. That is why section 2 of this bill is essential.

The terms "able, willing, and qualified" are important. It is not sufficient just to refer any available persons to an agricultural employer. Farmwork requires people who are capable of performing it in an efficient manner.

We note that the chairman in his explanation of the bill in the Congressional Record of March 4, 1976, stated that the availability of workers capable of filling the jobs in question will be determined "with

reference to the locality in which the work is to be performed," although we do not find that language in the bill. We suggest that the language in section 2 be clarified so as to provide more definite guidelines as to how the Department is to interpret the phrase "at the time and place needed." In the past, farm employers have been required to pay for recruitment and transportation costs over long distances, only to be provided with workers who were looking only for a trip north or east and who were either incapable or unwilling to perform the work for which they had been referred. The language might be amended to include the term "within a reasonable distance of the place of employment," preferably within a certain specified radius, such as 300 miles.

We also recommend that the language of section 2 be changed to base the timing procedure, for referral of domestic workers by the Department or certification for entry of aliens, on the date the employer designates as the time he needs the workers. Such language should provide a reasonable time in advance of need for the Department of Labor to produce the workers who are able, willing, and qualified. During this time, the employer should be required to make a reasonable effort to recruit the workers he needs. If the recruitment efforts of both the employer and the Department fail to produce the workers needed prior to the 20-day period in advance of the date the employer has indicated his need for them, the certification of aliens would be required.

As we understand it, section 11 provides an amnesty procedure for aliens who entered this country prior to July 1, 1968. We agree that if the bill should prove effective in causing an exodus of aliens, an amnesty procedure would be desirable, but we have no way of judging whether the proposed base date is the proper one.

Section 12 would make it unlawful to employ an illegal alien. While we appreciate the fact that the bill does not provide criminal penalties, this section would produce considerable difficulty for employers. We believe that too much emphasis has been placed on this one approach to the solution of the illegal entry problems.

The chairman's remarks in the Congressional Record include the following statement:

An employer who acted in good faith, after making a bona fide inquiry concerning prospective employees, could not be held liable.

However, we are not convinced that the language of the bill is that simple. As we understand it, the Attorney General would be authorized to promulgate regulations and to provide forms that must be followed and used by an employer when hiring anyone. If the bill spelled out more definitely that the employer's responsibility in this regard is to obtain certain information from the prospective employee and have the employer sign a form, our fears would be considerably lessened. Unless this procedure is spelled out in more detail, we believe that the Attorney General would have wide latitude in requiring documentation, such as birth certificates or other documents, to prove citizenship or other legal status.

The circumstances under which many seasonal workers in agriculture are recruited and employed must be understood. Most farmers do not employ personnel managers. There is a tremendous turnover

of personnel during a few hectic weeks of work that must be performed within the limits of nature. Many workers have limited education, some cannot read or write, and many are not proficient in the English language.

These people recognize the opportunities offered in this country. They are willing to work hard to improve their lives and the lives of their families. Many are willing to shut their eyes to laws that are designed to prevent them from gaining access to a better life. Employers are not in a position to judge whether documents produced by workers are valid or not.

We are pleased that section 12 also makes it illegal for a labor organization to refer an illegal alien for employment. We suggest that this language be strengthened to make it illegal for a labor organization to accept an illegal alien as a member.

We are also pleased that section 13 would require the Secretary of Health, Education, and Welfare to disclose to the Attorney General the name and most recent address of any illegal alien who is receiving public assistance. Again, we urge that this provision be strengthened to require that every public agency providing welfare or assistance be required to make the same inquiry as is required of employers, following the procedure required by the Attorney General, and be forbidden to authorize, or provide public assistance to an illegal alien.

In addition to making the changes in the language of the bill which we have recommended, we believe that the Congress should take a much broader approach to the problem. We support a reform of the procedure for issuing social security cards, such as recommended in H.R. 3737 by Congressman Sisk of California, and a tightening up of the issuance of visas and tourist permits, student permits, and other such temporary entry permits. We also favor the imposition of increased penalties on smugglers of illegal aliens and the enactment of penalties on illegal aliens when they are apprehended and deported.

One final thing, we raise the question as to whether this bill would preempt State jurisdiction in this area of law. The recent ruling of the Supreme Court regarding the California Act raises the question of whether the States would be left free to enact legislation and write regulations going beyond the requirements of this bill. We suggest that the committee give consideration to this matter.

We appreciate this opportunity to present the Farm Bureau's recommendation on this important issue.

Thank you.

Senator FONG. Mr. Datt, you don't feel that we should impose upon the employer any of the burdens of trying to ferret out illegal aliens?

Mr. DATT. As we indicated in our statement, we feel that this is an unfair thing to be placed on an employer.

Senator FONG. Do you concede that the alien comes here primarily for employment?

Mr. DATT. Yes, I believe so.

Senator FONG. In the great majority of the cases.

Mr. DATT. Yes; the great majority.

Senator FONG. And if we don't stop them at the gate there, where they secure employment, we won't be able to stop them.

Mr. DATT. I think it would be very difficult. Maybe Mr. Fields wants to comment on that because he is much closer to this area than I am.

Mr. FIELDS. I would say that we don't propose that there be no procedure required of the employer. For example, if we had a system of issuing social security cards, where they were checked to find out whether they were illegal before they were issued, we think it would be reasonable to have the employer see the social security card; or to secure certain other information, and make inquiry.

But, if they have to produce a sheaf of documents, what we fear is that the employer won't know whether they're valid, or not, and we won't really achieve anything. We don't want to get in an excessive role of law enforcement, as an employer.

Senator FONG. Now, you don't object to looking at the social security card?

Mr. FIELDS. No; I think that is what is anticipated in Congressman Fisk's bill.

Senator FONG. And you accept that.

Mr. FIELDS. Yes.

Senator FONG. If a man came to you and asked for a job without a social security card, you would be willing not to hire him?

Mr. FIELDS. I think that would be reasonable.

Senator FONG. That would be a reasonable thing.

Mr. FIELDS. Yes.

Senator FONG. You would like to have an employee sign a statement that he is a citizen, and as far as you are concerned, that would absolve you?

Mr. FIELDS. Well, I think we would be willing to ask him where he was born, what date, and so forth, until we get the social security thing fixed, some reasonable approach. What we know is, in the case of the Farm Labor Contractor Act that was passed a couple of years ago, regulations came out by the Department of Labor, they are requiring documentation. Every person that shows up has to have a birth certificate, or other documents, and so forth. You know, this gets to be a problem under the conditions under which we are hiring these people, the pressure on the temporary jobs, and so forth. It gets to be a problem.

Mr. DATT. I think, Senator, this is where you would run into the problem of discrimination, an employer is faced with having to verify a whole series of documents. He will simply say, "Well, if I have to do that, I won't bother employing anyone at all."

Senator FONG. If he is a minority, he will not hire him?

Mr. DATT. I think essentially that is a very distinct possibility.

Senator FONG. Now, if he had just to present a social security card, that would be all right, as far as you are concerned.

Mr. FIELDS. I think so.

Mr. DATT. We would be willing to agree with some system like that.

Senator FONG. I don't see anything in the bill before us which really puts the burden on you, if you really were not willful in hiring an illegal alien, that is, if you did not know he was an illegal alien.

Mr. FIELDS. Well, the catch is, we don't know what the Attorney General is going to require under the regulatory authority given.

Senator FONG. You think we should spell it out?

Mr. FIELDS. That's what we recommend.

Senator FONG. If we spell it out in a definitive manner, say, he has to present a social security card, you won't fear that?

Mr. FIELDS. I might say, Senator, that our experience in dealing with administrative agencies, writing all the regulations that come out of there daily, has not been too good.

Senator FONG. I don't blame you, there are so many rules and regulations, every businessman is confused.

Mr. DATT. That's correct.

Senator FONG. Now, if we allow the temporary workers to enter, do you think the Government should pay for them to be transported to the place of work?

Mr. FIELDS. Oh, no, I don't think any employer would request that. What we have recommended is that there be some reasonable distance that you would have to recruit workers. I don't think it would be reasonable that somebody in New Jersey should have to go to New Mexico to recruit workers, and pay for transportation—some reasonable distance.

Senator FONG. Are you doing that now?

Mr. FIELDS. We are. Of course, in the case of foreign workers we have to. Right now the Department of Labor has no standard as to how far you have to go to recruit. There have been long distances involved where people have paid transportation from, say, Texas to New Jersey; they bring a busload up, and 3 days later there are no workers.

Senator FONG. I see. And who pays for that?

Mr. FIELDS. The employer. The Government does not pay for transportation that I know of; and I don't think this bill anticipates that.

Senator FONG. Now, say you, as a farmer, need 200 workers. How do you go about that?

Mr. FIELDS. Well, I'm not a farmer.

Senator FONG. How does a farmer do it?

Mr. FIELDS. Under the present law, the program, for example, where the Department is certifying, we bring in British West Indies workers. They require a reasonable effort on the part of the employer to do recruitment. They will accept various things—advertisements in papers; putting out fliers; sending out word to State employment services, various ways that they can show they have made an effort. You know, it is a broad range of things; that's what they do now. How far is it practical to go? That of course is another question.

Senator FONG. Suppose you bring in workers from the West Indies, do you pay for their passage?

Mr. FIELDS. Oh, yes. Even in the Puerto Rican program, passage both ways.

Senator FONG. If they quit you after 1 day, what happens?

Mr. FIELDS. Well, in most cases you advance the transportation. So, they get the ride up, and you are stuck.

Senator FONG. Have there been quite a few cases?

Mr. FIELDS. Yes; there certainly have, thousands of them.

Senator FONG. Well, it's like the immigration program, then, something like that. They come in for a certain job, and within 2 years, 57 percent of them changed occupations.

Mr. FIELDS. Of course, in agriculture we have a term for that, we call them "skipouts." That is a problem, even with Puerto Rico. It's not so much a problem in the case of the people from the British West Indies because it's not so easy for them to stay here. The Puerto Ricans, it pays for them to come up here, they are citizens, they can go where they want; that's a separate problem.

And that is true with any long distances, someone might think he might be better off on the east coast than in the Southwest, he'd like to come here anyway; and he might like for someone to pay his transportation.

Senator FONG. The archbishop from New Mexico and his associates said that if we paid our domestic workers wages that they would work for, we could get this type of employment.

Mr. FIELDS. I think that's an opinion, a speculative statement; almost all the evidence indicates that almost regardless of what the wages are that are offered—and we have experienced that recently with the apple people in the East, Hudson Valley, where they have offered good wages and conditions.

The real problem, Senator, is not so much the wages and working conditions—and of course everybody would like to have more, including Senators and lobbyists—but the real problem is the seasonal, the temporary nature of these jobs. You cannot make a career of the job. No one can build a future doing this work, it's a temporary job, a few weeks. That's the essential problem, and I might say that no one has been smart enough to solve that "temporary" problem, that seasonal problem.

Senator FONG. You feel that is what employees are looking for, permanent jobs.

Mr. FIELDS. I don't think these people are stupid. They may be poor, but they are not stupid; there is no future in temporary jobs.

Senator FONG. And this is a situation which crops up every season.

Mr. FIELDS. Absolutely, and there is nothing the farmer can do about it, it's just the seasonal nature of the thing. Frankly, no one has a solution for this.

Mr. DATT. I might say also, Senator, that those things happened as a result of, in recent years there has been an increase in mechanization. As a result of that, there has been a substantial decline, in some areas, in the number of these workers. So, these folks become a problem for other folks in society to deal with. Where at one time they provided them at least some form of employment, they now have become a different problem as far as society is concerned because agriculture has increased mechanization because it has to get away from dependence and is continuing to move in that direction.

Senator FONG. There is some objection to having a temporary worker stay more than 1 year. The bill says he could stay for 2 years, if certain conditions arise. The objection to that is that if he stays 2 years, he almost always gets permanent roots. Do you have any comment on that?

Mr. FIELDS. I think our only concern is on the temporary, the seasonal job, I don't think we would object.

Senator FONG. One season?

MR. FIELDS. I don't think we have a concern about more permanent jobs. We can recruit domestic workers for the year-round jobs.

Senator FONG. Thank you very much.

MR. DATT. Thank you very much, Senator, for the opportunity to present our statement.

Senator FONG. Mr. Manuel D. Fierro, president of the National Congress of Hispanic-American Citizens. Would you come forward?

If you wish, Mr. Fierro, your statement will be incorporated in full into the record at this time. You may highlight it, if you wish, or you may read it in its entirety.

STATEMENT OF MANUEL D. FIERRO, PRESIDENT, NATIONAL CONGRESS OF HISPANIC-AMERICAN CITIZENS

MR. FIERRO. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Manuel D. Fierro, I am here representing the views of the National Congress of Hispanic-American Citizens, a national nonpartisan citizens lobby for the Spanish speaking. Accompanying me is Mr. Manuel Lopez, president of the Mexican-American Political Association, from Los Angeles, Calif.

On behalf of our national board of trustees and the 125 participating national, state, and local Spanish-speaking organizations, we want to thank you for the opportunity to appear before you today to express our views regarding S. 3074, the Immigration and Nationality Act of 1976.

Before turning to specific considerations in the pending legislation, I would like to state that while the objective of S. 3074 in reducing the high rates of unemployment in this country is an extremely important one to which a high priority should be given; and while we are all aware of the complexities of the undocumented worker problem and its effect on our country and in particular on our community, however, attempts to solve this country's serious economic and unemployment problems cannot and must not be made at the expense of the civil and constitutional rights of our nation's Spanish-speaking community.

It is quite clear to us that the only group that profits from the influx of undocumented workers into this country and the group which is the major stimulus for the illegals' movement across the border are the big farmers, industrialists, and businessmen who employ them. Exploitation of this vast supply of cheap labor is a time-honored practice in this country and particularly in the Southwest. As a result, employers of undocumented workers have been able to maintain low wages and poor working conditions, break strikes and labor organizations among citizens employees, discharged workers with impunity, and manipulated the immigration laws to bilk both the illegals and the domestic work force. These employers are not just innocent beneficiaries of the illegal immigration, they are habitual exploiters of the undocumented workers.

As long as the United States continues to offer wages which are generally higher than those in most other countries, or at least as long as aliens continue to believe that to be true, the poverty in coun-

tries like Mexico will continue to push aliens into the United States, and there is little that the Government can do to stem the flow. Efforts to reduce the influx of illegals have not proven unsuccessful.

Consequently, it is not surprising that a bill such as S. 3074, which seeks to close off employment opportunities to undocumented workers, has received such wide publicity and support.

Against such background we are asked to support legislation like Senate bill 3074, a bill which would make it unlawful for any employer, no matter what the size of the work force, to employ or continue to employ an illegal alien. The purpose for this bill is to deny illegal aliens employment and thus create job opportunities for our citizens. In all candor, we do not know precisely what kind of positions and in what numbers they would open up if all illegal aliens were by some magic suddenly denied or expelled from the jobs. Through the long history of this legislation we have never seen accurate statistics on the number of illegal aliens who are employed, what types of job they hold, whether citizens are available to replace them and other related information, the INS and Census Bureau themselves admit that the facts of the matter are unknown.

But, the absence of hard data on this subject is not the principal objection we have to this measure. Senate bill 3074 provides an open invitation to employers and referral agents to discriminate against citizens and legal residents aliens who, by reason of their accent, surname, or physical appearance might be thought by an employer to be illegal aliens. Additionally, employers' attempts to protect themselves against the various sanctions as outlined in this legislation will inevitably result in employers hiring less or no Spanish-speaking applicants in order to minimize the risk of hiring illegal aliens. There is no doubt in our minds that Mexican Americans and other national origin persons as well as legal aliens authorized to work will be the victims of discriminatory hiring practices. The provision now in S. 3074, immunizing an employer who makes a bona fide inquiry, by obtaining a signed statement, may reduce, but will not eliminate the net result that this statute will abet discrimination against American citizens on the basis of national origin. On the other hand, an illegal alien, often illiterate in English and Spanish and badly in need of work, would probably sign the statements anyway, even if he knew what they meant.

Senate bill 3074 does not provide any guidance or a uniform system for accurately identifying the citizenship or alien status of an employee or prospective employee. It is this discretionary license which is going to lead to serious civil and constitutional rights abuses against our Spanish-speaking community. An alternative approach to this problem and which we strongly suggest to this committee would be for the inclusion of some type of provision which would assure that if an employer is going to require documentation of proof of citizenship, that they apply the same standards to all applicants regardless of national origin. In other words, a tamper-proof type of social security card is not inconsistent with social security regulations which require—but are not enforced—that any applicant for a social security card prove that he is a citizen or that he has permission from INS to be employed. In our judgment the objectives of this and similar legis-

lation can only be accomplished in a nondiscriminatory manner if such a provision is adopted that will provide for a uniform system that will accurately identify the citizenship or alien status of all persons seeking employment in this country.

Furthermore, if this measure is passed, it is very likely that employers will impose a citizenship requirement themselves as a qualification for employment. In view of the Supreme Court decision in *Espinoza v. Farah*, employers may legally discriminate against non-citizens who are lawfully in this country without violating the equal employment opportunity provisions of the Civil Rights Act. Yet, this bill does not attempt to overturn the decision in *Farah*, nor does it provide any protections for persons lawfully here.

Another area of major concern to us is the inevitable question of how to deal with the illegal aliens currently residing in the United States. The provisions proposed in S. 3074 and in H.R. 8713 are inadequate and at best, will benefit only a few. This Nation is a Nation of immigrants and the motivations that brought many of your forefathers to these shores are the same motivations that have brought our present population of undocumented workers to this country. Additionally, these families who are already here, are here also because the Government has been both unwilling and unable to enforce its own immigration laws properly.

Many of these families have established their roots in this country, contributed to the growth of our communities and established themselves as law-abiding residents in this country. To cut these families from their meager economic sustenance and to force upon them the great hardship of emigrating or to attempt some sort of mass deportation effort would be both inhumane and immoral. Can this country so easily turn its back on those who seek a better life, on those escaping religious, economic, or political suppression? To do so, would be to renounce a fundamental principle which has guided this Nation from the beginning. We cannot in good conscience support any legislation which will make America the land of the rich, relegating the poor and hopeless to the other nations of the world.

Consequently, we strongly recommend to this committee that a more meaningful adjustment of status provision be adopted into any legislation dealing with the illegal alien question. Such a provision should allow for an illegal alien and his family who have been in this country for a period of no less than 3 years to adjust their status to that of an alien lawfully admitted for permanent residence. This adjustment of status should be made outside the numerical limitations and without labor certification.

While we support the provisions in Senate bill 3074, equalizing Eastern- and Western-Hemisphere immigration with the same preference system for both, nevertheless, we believe that the country limitation for Mexico should be much greater than the 20,000 limitation on other countries. But, it is not surprising that this legislation does not provide for increasing the numerical ceiling for such a country as Mexico, while equalizing the preference system. The greater number of illegal aliens are from our own hemisphere which is not surprising in light of this country's history of discriminatory immigration practices toward Western Hemisphere countries. There was a time when the

doctrine of the good neighbor governed this country's policy toward these nations. But, that is no longer the case and the change in attitude is still reflected in the ways our laws and suggested legislation treat immigrants from Western Hemisphere nations.

Insofar as the provisions in Senate bill 3074 concerning the certification of temporary foreign labor are concerned, we can only conclude that this is a vestige of the past and form of indentured servitude and we are totally opposed to it. Have we forgotten the bracero program and the massive importations of alien workers into this country? If this is a compromise in order to get a bill passed by this committee, it is totally unacceptable.

In conclusion, Mr. Chairman and members of the committee, we do not believe that this legislation in its present form will be effective in dealing with the illegal alien problem much less protect our Nation's Spanish-speaking community's civil and constitutional rights. The solutions to the problems we have outlined lie in quite other directions. We suspect that this measure is more the product of economic fears than of sound legislation policy. There are more effective, humane and moral ways in reducing the flow of illegal aliens into this country. Unfortunately, S. 3074 is not one of them and we cannot support it in its present form.

Mr. Chairman, I would also like for Mr. Manuel Lopez, who has a brief statement, to read it.

Senator FONG. Please, proceed.

STATEMENT OF MANUEL LOPEZ, PRESIDENT, MEXICAN AMERICAN POLITICAL ORGANIZATION

Mr. LOPEZ. Mr. Chairman and members of the subcommittee, the Mexican American Political Association and I are extremely pleased to have the opportunity to testify before this honorable committee on S. 3074 which proposes to amend the Immigration and Nationality Act and is referred to as the "Immigration and Nationality Act Amendments of 1976."

The concern of the Mexican American Political Association as to the impact of S. 3074 is not only with how it affects what you refer to as illegal aliens and we in the Mexican American community refer to as undocumented citizens, but also as to how S. 3074 affects the Mexican American community.

One of the most serious faults that the Mexican American community finds with S. 3074 is that section that provides for sanctions against employers who hire individuals without proper immigration documents. The first to be scrutinized for employment purposes under S. 3074 are quite obviously going to be the "Mexican-looking" types of individuals whether or not they are United States citizens, legal residents, or undocumented. The Mexican American community as is evidenced by resolution—and, Mr. Chairman, I will leave a copy of the resolutions for filing with the clerk.

Senator FONG. They will be received.

Mr. LOPEZ. The Mexican American community, as is evidenced by resolutions passed in Los Angeles, Calif., at the national issues conference sponsored in November of 1975 by the Mexican American

Political Association, Lulac, the American G.I. Forum, Chicana Action Center, and the Association of Mexican-American Educators consider legislation providing for sanctions against employers who hire the undocumented person as an extreme indignity and condemn such proposals as being racist and not in the spirit of the great tradition of protecting the human rights of persons in the United States of America.

The Mexican American community is quite united on the issue of being against any proposal which will administer sanctions to employers who hire the undocumented as it not only affects the 5.2 million estimated undocumented persons, but also the entire Mexican American community by subjecting its people to an immigration screening process for employment purposes.

At a time when we in the United States are celebrating the 200th birthday of this great Nation and the great success of our form of government, let us not regress by passing legislation which will have discriminatory consequences against Mexican Americans.

Further, strenuous objections are raised by Mexican Americans as to the prospects of having employers converted into "mini-immigration officers" when they seek to comply with S. 3074 in not hiring the undocumented. This type of overbearing legislation can be classified as a further governmental intrusion into the already highly regulated private sector of the economy which has more racial implications than economic considerations.

The Mexican American community is not convinced that any substantial economic purpose is served by S. 3074 in providing for sanctions against employers in that the people that are going to be ferreted out being "illegal" are doing jobs that no one else finds appealing in the personal service industry such as restaurants, hotels, maintenance jobs, domestic help, and some in unskilled jobs. Quite to the contrary, the Mexican American undocumented, especially in the Southwestern part of the United States, are paying taxes if they own or rent realty, as consumers they pay sales taxes and get little in return for their taxes. You might say that there exists a "taxation without representation" and the undocumented are not a drain on this country.

Further, the consensus of the Mexican American community is that a program which will allow employers to import labor for the sake of working alone such as was permitted in the past under the "bracero program" is a negative proposal in that it smacks of slave labor when persons are on United States soil strictly to work and be beholden to the employer that brought them here. The Statue of Liberty and the Lincoln Memorial are reminders that the United States is a country of immigrants and not of slaves.

The Mexican-American community believes that rather than a deportation and subhuman proposal to treat the condition of the undocumented persons in the United States that a positive and humanitarian approach should be taken to provide relief for the 5.2 million Mexican Americans undocumented by providing for a legalization of their status in the United States by parole or through the use of the permanent legal residence. Some people including my-

self have used the term "amnesty" which is satisfactory but perhaps legalization of status would be more appropriate.

For all intents and purposes, the undocumented person has been intertwined in the Mexican American community in that they live in the same communities and cities where one finds a high concentration of Mexican American, U.S. citizens, and legal permanent residents. The undocumented Mexican American does everything by way of contributing to this Nation through taxes as consumers, property taxpayers and through income taxes. The undocumented however are "invisible citizens" when it comes to receiving benefits in return for their contribution. The Los Angeles Region Five United Way Study did a study on the question of undocumented persons, and the type of services they received in the central Los Angeles region; and, Mr. Chairman, I would offer this also for filing, and for your perusal.

Senator FONG. This will be received.

Mr. LOPEZ. In Los Angeles County people with communicable diseases sometimes shy away from health services for fear of being apprehended by the Immigration Service. The undocumented are denied employment benefits in California, notwithstanding the establishment of a valid fund account by the employer. School children in the past have been denied an education in some instances because their parents did not have a "green card" or permanent residence visa. The undocumented do not avail themselves of police services for fear of being arrested by the police on an immigration hold. For example, in Los Angeles County an individual was arrested strictly on an immigration problem and put in jail. The tradition often exists that when an individual is arrested for immigration purposes by the police, they are mixed in with the criminal process; they are booked following all the criminal procedures; they are asked by legal counsel to sign a voluntary departure form, and they are shipped off on a bus to Mexico.

So, I really feel the enforcement aspects of S. 3074 and the Rodino-type bill that we had in the House, and in the California Senate, are extremely deleterious to the constitutional rights of Mexican Americans.

Undocumented persons, through figures projected by the chief administrative officer in Los Angeles County substantially overpay and underreceive services. That is reflected, Mr. Chairman, by the Region Five United Way Study.

The undocumented are making valuable contributions to our society by performing work that no one else wants, by paying taxes and in many cases providing children who have performed well in the armed services of the United States and yet are leading the life of a second-class citizen.

Gentlemen, for the sake of the Mexican Americans who are United States citizens, legal residents and those that are undocumented, let us build a monument of law just as great as the Statue of Liberty or the Lincoln Memorial by enacting a just immigration law that will provide for the legalization of the undocumented and not one that will intrude and interfere with a community that has long established traditions, culture, and ancestral presence in the Southwestern United States, dating back as far as 1540. Thank you.

Senator FONG. I can understand your concern relative to the non-employment of minority persons if the rules and regulations were such that we would make it onerous for the employer to hire persons whom he thinks may be illegal aliens, or what you call "undocumented persons."

Mr. LOPEZ. That's a less inflammatory term.

Senator FONG. I have introduced an amendment which provides that strict adherence must be made to the civil rights law, if the bill is passed.

Mr. FIERRO. Mr. Chairman, there is an amendment in the House bill that gives the Department of Justice jurisdiction over national origin discrimination. I think we take the position, what's happening in providing these outlets is: This provision would only be providing a remedy to something that is going to bring about greater discrimination; the remedy is not going to solve the problem of discrimination.

Senator FONG. I think we could do something here which will prevent discrimination. The question is, how do we do it. I think something could be done. Suppose we provided for the showing of a social security card, for example. That would then be sufficient evidence to enable the employer to employ the holder. Would that eliminate all of the fears you have?

Mr. LOPEZ. Actually, Mr. Chairman, we find the social security type screening process to be the least offensive. We in the Mexican American community do not like the internal checks on our people because we find that our people have been harassed by the police and stopped strictly for immigration purposes. And if we have the employer looking at Mexican Americans—we just can't escape from being classified as Mexican Americans because of our cosmetic appearance, oftentimes the complexion of our skins; that kind of scrutiny is unacceptable. But we do find the social security card to be the least offensive, as long as it is required of anyone, be it from Canada, or any other nation where you do have a heavy influx of workers, to be scrutinized right across the board. But we object to internal scrutiny.

We would much prefer to have a beefing up of the border patrol because it is our contention that the border is a problem. You see people walking through there day and night, close to San Diego; and I understand that all along that border, along the Rio Grande and down to Brownsville people cross relatively unmolested. We would like to have a higher concentration of border control people—that is strictly a job for the border patrolman, rather than having people intrude on our communities, waiting outside of the church service, stopping them when they come out of the church service; or authorizing the police to go around stopping people that look Mexican. So, we find that a border-type patrol would be more acceptable to us. That is the logical place that is recognized in international law to have control of your frontiers. But the internal scrutiny we find objectionable because it makes a lot of innocent people in the process, a lot of citizens—

Senator FONG. Well, the Mexican American is not the only group being interrogated; that is not the only group that the immigration officials are looking at. There are others that have come here as tourists and then disappear into our communities.

Mr. LOPEZ. That is correct. Actually, some of them are able to assimilate a lot better, from Western Germany, or even the Eastern European bloc, they can hide out in Chicago, or one of these Eastern metropolitan centers a lot easier than a Mexican American because of the outright physical characteristics.

Senator FONG. But we must recognize that the great majority of the illegal aliens are Mexicans.

Mr. LOPEZ. Yes.

Senator FONG. But there are other illegal aliens who have jumped ship, or who have overstayed their visa period and are integrated in the community.

You stated here that there are approximately 5.2 million Mexican Americans undocumented.

Mr. LOPEZ. Yes; that is based on General Chapman's indication that there are about 8.5 million total undocumented persons, and about 5½ million are Mexican Americans. That is probably correct, judging from what's in the State of California, the entire Southwest, and even up in Chicago.

Senator FONG. Now, assuming we do adjust the status of these undocumented persons in the United States, aside from the use of the border patrol, which you state should be augmented, how could we prevent the recurrence of the presence of illegal aliens?

Mr. LOPEZ. Mr. Chairman, I studied up the Hague Academy International Law sometime back, and the rage of Europe is the Economic Common Market. I think we should set up a Western Hemispheric Common Market with Canada, the United States, Mexico, and perhaps other Central American countries down to the Panama Canal, to participate. I think it would be a lot better to build a paper factory in the interior of Mexico where the individuals can live in their environmental ambient, fresh air and water, and with laws that they know, rather than bringing these people to the overcongested metropolitan cities. For example, it just doesn't make sense to bring people to an overcrowded Chicago, or Los Angeles, or New York to work. I think the solution merits a more international type consideration where you could include Canada, the United States, and Mexico, and other countries, so that we can have that type of effort.

Mr. FIERRO. Mr. Chairman, recognizing the free zone that exists right now between the United States and Mexico, at the present time multinational corporations are in the 10-mile free zone. They are also drawing in Mexicans, for example, in the Southwest, they are drawing to the border Mexicans from the interior of Mexico because of the incentive of jobs. They don't pay taxes to the United States or Mexico, but they draw also from the interior of Mexico. And the people are coming to the free zone looking for jobs, and they are not available—so, they cross over, they have no alternative.

We have to look, as Mr. Lopez indicated, to the economic assistance of a country such as Mexico. I think as long as the incentive of a job is there, and as long as they think there are higher wages, even if you put up a 10-foot fence, the incentive is too great not to get over that 10-foot fence. So, as long as that economic stability is not reached in Mexico and they have high unemployment, that isn't going to change.

Senator FONG. We know that. It seems from your two statements

here that you are very strongly opposed to a bill which would ferret out undocumented persons.

Mr. LOPEZ. We are quite united in that.

Senator FONG. You don't want us to really go after them.

Mr. LOPEZ. No; the people on the firing line are going to be the foreign looking, the Mexican-Americans, we consider the severe intrusion on our community. And it is not only our organization, the Mexican-American Political Association, but we also have Lulac, the American GI Forum, and all these other organizations; and even Mr. Chades, whom I talked to Friday last, is against this type of procedure to screen out the undocumented in our community.

Senator FONG. And yet, you do not propose that we allow these illegal aliens to come in.

Mr. LOPEZ. I'm not advocating an open border. In fact, quite to the contrary, I think that the proper place to do it is down at the border by deterring the entrance on a physical basis. And also with this economic program, which would also have an educational program, indicating that it is not any Disneyland to come to Los Angeles, or Chicago, and live the life of an invisible citizen where you are holed up in your apartment; you can't come out and shop during the day because if you are out during the normal working hours when the INS is out arresting people, you are liable to be caught and sent through this whole deportation process.

So, I think we have a responsibility to inform the citizens of Mexico that if you come up here after this amnesty program goes into effect, that you are subject to being arrested. And what happens, quite to the contrary, while during World War II we encouraged the migration of Mexicans to this country to help the war effort by having people work in the fields, we also have an implied invitation for Mexicans to come and work here when no one else wants to do the job; for example, in the garment industry and in all these personal services.

You have the biggest classified ads in the world, word of mouth going down, saying, "Come up to Los Angeles, and you can find a job here." So, if we do have these jobs, I think we should be realistic about them, integrate these people, let them come in as normal people, the way we have always done. We have brought in refugees from Hungary, political refugees; refugees from Cuba, that are political refugees; refugees from Vietnam. There is really no difference when we have refugees from hunger. And if we have people that are refugees from hunger, I think we have a responsibility.

Senator FONG. I think half of the world could be classified as refugees from hunger.

Mr. LOPEZ. I'm not saying that. But if we are bringing these people in, if industry is providing these jobs, that we do have a responsibility to let these people live as normal human beings, and not to have to hide out and live an invisible-type life.

Senator FONG. As long as we have conditions here that are better than conditions elsewhere, even though, as Mr. Fierro said, if you built a 12-foot fence to keep them out, they would still come in. Something must be done to ferret out these illegal aliens. We have to do something, and now the question is, how do we do it?

Mr. FIERRO. There is a difference between ferreting them out and having a law passed that deals with stopping the flow or curbing the flow.

We would like to see some legislation that deals with the illegal aliens because it is a problem in the community. You know, the jobs that they take are our jobs; in some instances, there are diseases, all kinds of things that are going on that affect our community, so we are concerned with that. We feel we have a responsibility, first, to the U.S. citizens today that are here in this country; but by the same token because of the laxity of this Government and because of the laxity of the immigration laws, the people that are here today illegally, or undocumented, we have a responsibility for doing something to keeping them here.

Senator FONG. That's the reason we have this bill before us. There is laxity in enforcement of the immigration law. We have to try to have some teeth in our law. That is why we are exploring what we must do in this matter. We have to do something; we can't continue to have illegal aliens come in.

Mr. LOPEZ. Mr. Chairman, a more humanitarian approach should be taken.

Senator FONG. We also want to have a humanitarian approach.

Mr. LOPEZ. But as far as going into our communities, looking for people they suspect are illegal aliens, or undocumented, our Mexican-American community does not want that.

Senator FONG. We have nothing to do with that here. This bill does not go into that phase. We are going into the employment angle, and how to stop it at the employment stage. And this bill is to take care of all aliens, not only Mexican-Americans.

I understand the Mexican-Americans are the most numerous illegal aliens here, and I can understand your concern.

I have to be at my office, I'm already 15 minutes late, so I will terminate this. If you have any further statements to make, will you please submit them for the record.

Mr. LOPEZ. Thank you very much, we appreciate your patience, Mr. Chairman.

Senator FONG. Thank you for giving us your side.

Mr. LOPEZ. If there are any further inquiries you may have in the future, we are available by whatever means of communication, if you so desire.

Senator FONG. Thank you very much.

[Whereupon, at 12:15 p.m., the subcommittee adjourned, subject to the call of the Chair.]

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

WEDNESDAY, APRIL 7, 1976

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m. in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland and Fong.

Also present: Ed Loughran, staff director; Sidney Rawitz, special counsel; and Mark Hazard, professional staff member.

Senator EASTLAND. The committee will come to order. The Chair warmly welcomes, as the first witness this morning, the distinguished Senator from Florida, Senator Stone.

The subcommittee is delighted to receive your testimony on S. 3074. You may proceed.

STATEMENT OF HON. RICHARD STONE, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator STONE. Thank you, Senator Eastland and Senator Fong.

First, let me express my appreciation for being able to cosponsor Senator Eastland's bill, S. 3074, which does justice, and it is appropriate that the bill be a product of the Judiciary Committee.

I am particularly gratified at the provision in the bill which would for the first time remove Cuban refugees from their impact on the hemispheric quota, and which, therefore, would allow these very valuable would-be citizens of the United States to become citizens in the 7-year period, until it would amount to, effectively, a 10-year period.

I would suggest one possible addition to the bill, and I prepared it in a form of a draft amendment.

Senator EASTLAND. Do you want to submit it for the record?

Senator STONE. Yes, sir, I will put it into the record.

Senator EASTLAND. It will be admitted.

Senator STONE. Thank you, Mr. Chairman.

What this proposal would do—that for those individuals conditionally admitted under section 203(a) (7), those are people that have fled communism or a national disaster. But, for those people who have resided in the country at least 10 years and they are over 50 years in age, they would be able to become a citizen without the stringent English-speaking requirement.

The younger people who come here from whatever country do find it possible, reasonably speaking, to speak, write, and read English. But when an older person comes, he finds it relatively much more difficult, and that is why there is already a provision in the law for older people who have lived here 20 years or more not to have to pass that rigid English-speaking requirement.

But in our area, for example, in Florida, we have hundreds of thousands of refugees from Castro communism, and some of the older individuals find it difficult to pass the rigid requirement; they can communicate in English, and they do.

They pay their taxes. They have a far lower crime rate than the general population. They work hard, and they will take any work in order to make and produce. They are excellent citizens. But they find that they are not able to get that most prized standing of all, the U.S. citizenship.

And so, with this one simple change, and that change restricted only to those who come here under section 203(a) (7), as opposed to generally, I would hope that the committee might see their way clear to accept the 10-year waiver for such people over 50 years of age, as opposed to the 20 year.

Again, it is a pleasure and an honor to cosponsor a bill of this fairness and justice. I thank the chairman, and I thank the Senator.

Senator EASTLAND. I think that we will take that amendment. It is very worthy.

Senator SCOTT. That is great.

Senator FONG. Very good.

Senator SCOTT. Thank you very much, and I will put this amendment into the record. Thank you so much, Mr. Chairman and Senator.

[The material referred to follows:]

[S. 3074, 94th Cong., 2d sess.]

AMENDMENT intended to be proposed by Mr. Stone, to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes

viz: On page 16, strike out lines 13 through 19, and insert in lieu thereof the following:

SEC. 15. Section 312 of the Immigration and Nationality Act (8 U.S.C. 1423) is amended by striking out "who, on the effective date of this Act, is over 60 years of age and has been living in the United States for periods totaling at least 20 years" and inserting in lieu thereof "who, on the effective date of the Immigration and Nationality Act Amendments of 1976, is over 50 years of age and has been living in the United States for periods totaling at least 20 years, or who was conditionally admitted to the United States under section 203(a) (7) and is over 50 years of age and has been living in the United States for periods totaling at least 10 years."

Senator EASTLAND. The next witness will be Mr. Fred W. Burrows, executive vice president of International Apple Institute.

STATEMENT OF FRED W. BURROWS, EXECUTIVE VICE PRESIDENT, INTERNATIONAL APPLE INSTITUTE

Mr. BURROWS. In behalf of our membership encompassing 13,000 commercial apple and winter pear growers and about 600 of the major shippers, processors, distributors, and brokers, we welcome and appreciate this opportunity to present our views regarding S. 3074.

Sections 2 and 12 of S. 3074 are the parts involving alien agricultural workers. Therefore, we will limit our comments to sections 2 and 12.

We warmly commend the chairman for introducing S. 3074. For apple and pear growers, S. 3074, in our judgment, provides a sound, legal, logical, orderly procedure for orcharding operations to secure very much needed able, willing and qualified supplementary alien workers, if such domestic workers are not available, or are not willing to work in the orchards.

The IAI strongly supports the passage of sections 2 and 12. The apple and pear industry critically needs seasonal supplementary alien workers, but we want them on a legal, orderly basis.

While the bill will not result in the finding and the deportation of all the illegal aliens presently in the United States, it could result in a considerable, gradual reduction of such aliens. Further, and most important, S. 3074 would substantially curtail the entry and employment of new illegal aliens.

Before commenting on the bill, let's take a look at the labor picture confronting the applegrower. The same is true for the peargrower.

Historically, the applegrower has recruited and used local and migrant domestic workers to fill his permanent year around jobs and his seasonal labor needs. His labor needs encompass the orchard operations—that is, producing and picking a crop—as well as his packing and storing operations.

Incidentally, Mr. Chairman, with controlled atmosphere, apples are now stored and packed over a 12-month period.

The grower's permanent help mostly involves local domestics. His much heavier temporary, seasonal needs—notably reharvesting—are filled by qualified and willing locals and domestic migrants, and if after reasonable recruitment efforts, same are not available, he can request certification by the U.S. Department of Labor relative to the importation of legal, temporary aliens. The grower may recruit domestic seasonal workers on his own, through a farm labor co-op, and/or the State and Federal employment service.

Local domestic labor willing and qualified to perform temporary seasonal work in the orchards has become practically nonexistent. We doubt that 5 percent of such needed work is done by local domestics.

Further, over the past 10 years, the supply of willing, qualified domestic migrants has been gradually "drying up." For apples, the "drying up" has been drastic the last 2-3 years. Some of the reasons for this are:

One, the special unemployment assistance program, SUA as it is commonly known, for agricultural workers. For instance, a Florida migrant will work in the citrus groves until April, move to the peach orchards in the Southeast, and then possibly to vegetables on the Eastern Shore. He might then even go to apples in North Carolina or Virginia, New York or New England, and then with the first rain, if he has qualified for SUA, he returns to Florida, sits under an orange tree and draws benefits. This is one of the reasons.

Two, extensive welfare programs.

Three, laziness, or unwillingness, due in part to the SUA and welfare programs.

Four, the stricter, more severe amended Crew Leader Act.

Another critical factor is the declining quality of domestic migrant harvest workers and their capacity to fail to show up initially; to show up, stay 2, 3 or 7 days and then disappear; or to be unwilling to take advantage of the good per bushel picking rates and thereby earn good to excellent money. Too many are satisfied to be paid the agricultural minimum wage, which, as you know, is presently \$2 per hour.

In a substantial number of cases growers will provide the cost of transporting migrant workers from the Southern supply States to the orchards—say from Florida to Milton, N.Y.—and then have many of the workers disappear after only working a short period of time.

And, Mr. Chairman, if the subcommittee desires, we can supply statistics and numbers of workers included and how long they stay.

Senator EASTLAND. Yes, I would appreciate it if you would.

Mr. BURROWS. This is not only unproductive but extremely costly to the growers.

In November, 1974 the IAI initiated the development of the Farm Labor Executive Committee, FLEC. FLEC encompasses apple growers in 10 Eastern States—that is, New England, New York, Virginia, West Virginia and Maryland—who have used supplementary BWI's to help in the harvesting of their crops. The purpose of FLEC was, and is, to educate the U.S. Department of Labor of the growers labor needs and problems, and improve the recruitment procedures of all parties involved—that is, growers, farm labor co-ops, State employment services and the U.S. Department of Labor.

Since February, 1975, FLEC has had constant, continuous, discussions, conferences and contacts with the U.S. Department of Labor, the Puerto Rican Government and the employment services in several supply States. Considerable progress and education has been achieved. The U.S. Department of Labor has agreed to a workable definition of the term "qualified apple picker"; it also has agreed to provide growers a decision re certification by August 1; has instituted a trial system re early recruitment of domestics in supply States; et cetera.

There are other factors, but these are just some examples.

Now for just a word on the importance to growers, workers, the consumers and the economy of the apple industry of having an adequate labor force of able, willing and qualified harvest workers at the time and place needed.

With the national apple crop ranging from 145 to 180 million bushels we have to market the crop over a 12-month period. This necessitates picking the different varieties at the proper time and moving the fruit into storage promptly to insure maximum cold and controlled atmosphere storage life.

For example, Red Delicious, our maior variety—close to 60 million bushels in 1975—should be harvested 135 to 142 days after bloom for optimum to good storage life. Fruit picked 142 to 147 days after bloom is not suitable for controlled atmosphere storage and should be promptly placed in cold storage and marketed by February 1 at the latest. Late picked fruit—let's say fruit picked really 145 days after harvest—should be marketed in the fall and early winter months, by December 15. The critical need to harvest all varieties at the proper maturity to ensure good to optimum storage life is evident. This requires timely, able, willing and qualified workers.

And it should also be evidenced, that, if we do not pick that fruit on time, it gets out of condition or it may drop, and that affects the packinghouse workers, and even retail clerks are going to suffer.

Senator FONG. Where do they get farm labor in the Northwest?

Mr. BURROWS. Part of it is a stream that comes up from California. They also have a considerable quantity of Mexicans living in the area. I am not saying whether they are legal or illegal, but they picked 52 million bushels of apples last year. They picked 44 million bushels of apples the year before, and they have done a better job than they used to do 10 to 15 years ago when they picked 20 million bushels of apples, but they are starting to feel the pinch there, too, on harvest labor. They also use the employment service and interstate clearance orders. There is also a regular stream of labor, farm labor, that comes up from California after they finish the harvest in that State.

Senator FONG. Those are of Mexican descent?

Mr. BURROWS. Very heavy Mexican descent.

Yes, sir, there are some Mexicans in the East and Middle West but not very many.

In the East and Midwest, Florida, Mississippi, and Alabama, migrants have been doing the picking and, as I have indicated, they are trucked up.

For example, if the picking rates are 40 cents a bushel and if the man has BWI's then he has to pay all workers the adverse effect rate.

If the worker only picked 4 bushels in 1 hour and he has earned 4 times 40 cents per bushel, or \$1.60 an hour, the employer would have to make up that difference between that \$1.60 and the adverse effect rate.

Several witnesses have indicated that the alien workers has an adverse effect on the wages and working and housing conditions of U.S. workers. This is definitely not true relative to the legal imported BWI's used in the apple harvest.

Rather the opposite is true. Growers using the BWI's must provide all their U.S. workers with at least the same wage rates, housing and working conditions as those provided the aliens. Further, they must pay all their workers—U.S. domestics and alien—at least the adverse effect rates, established by the U.S. Department of Labor. These guaranteed rates in 1975 ranged from \$2.34 per hour in Maryland to \$2.54 in Vermont compared to the 1975 agricultural minimum wage of \$1.80 per hour. The W-H law would require growers not using the BWI's to pay their U.S. workers only the lower \$1.80 rate.

Most applepickers work on a piece rate basis, and in 1975 those rates ranged from 27 cents to about 45 cents per bushel. A good picker, working on a piece rate basis, can earn considerably above the adverse effect rates and the agricultural minimum. Growers using BWI's must pay a picker at least the adverse effect rate even though he does not pick enough bushels to justify the adverse effect rate.

Also, there have been some inferences that the number of legal BWI's who go a.w.o.l. is significant. A check of the official statistics will show this is definitely not true as far as numbers or percentages are concerned. If a BWI goes a.w.o.l. and is caught, the employer is charged the cost of apprehension, detention and deportation by the

I. & N.S.; or if the alien is not caught he is charged \$200. You can be assured that the grower makes sure the BWI gets on the plane back to Jamaica.

Now let's take a look at sections 2 and 12 of S. 3074.

Under the current law nonimmigrant alien workers, known as H-2's, such as the BWI's, may be imported for employment in the United States only if the jobs are temporary in nature and if unemployed persons capable of performing such jobs cannot be found in this country.

Actually, the U.S. Department of Labor has been somewhat practical and has mostly limited their referrals of migrants to eastern growers to migrants located in the southern supply States and occasionally as far west as Texas.

By regulation, a grower—an employer—desirous of importing H-2's is required to obtain a certification of unavailability from the Department of Labor. The Attorney General then approves or denies the employer's petition—actually the Attorney General merely rubber-stamps the Department of Labor's decision.

Section 2 of S. 3074 proposes to amend the act by deleting the language that restricts H-2 workers to employment in jobs or services that are temporary. The amendment in section 2 would allow an alien to come in for a period not to exceed 1 year and allows the Attorney General, upon determination and certification of the Department of Labor, to extend that period an additional year in the aggregate. Further, it brings the Secretary of Labor solidly into the picture by making his certification a statutory prerequisite, not a mere creature of regulation.

Strong opposition has been expressed relative to the two years "visit" by aliens. We don't object to the language proposed. However, to reduce or possibly eliminate this opposition and still meet the needs of the fruit industry, we suggest the language which reads, "who is coming to the United States for a period not in excess of 1 year * * *," be changed to read, "who is coming on a seasonal basis temporarily to the United States for a period not in excess of 6 months," and allow the Attorney General to extend the period an additional maximum of 6 months if the Department of Labor so determines. In our judgment, the maximum period of 1 year would more than meet the seasonal labor needs of the fruit industry.

Section 2 would require the Department of Labor to act on an agricultural employer's request for certification within 20 days of filing. When the Department of Labor is unwilling to certify based on a finding that willing, qualified domestic workers are available, the Department of Labor is required to refer such domestic workers to the employer at the place of employment.

We support this proposal, although some agricultural groups would prefer the Department of Labor to act relative to certification 20 days prior to the date the employer needs the worker at the worksite.

Section 2 further provides that the U.S. Department of Labor shall certify for the importation of aliens when "sufficient domestic workers who are available, willing, and qualified are not available at the time and place needed to perform the work * * *." The chairman in the Congressional Record refers to "time and place" as the "locality" in

which the work is to be performed, this in contrast to the current law which carries the term "in this country."

This is an important change. As we read it, the change could eliminate the employer's current responsibility to provide the cost of transportation of migrants from the supply States to the worksite.

We strongly support a system to protect the grower relative to providing cost of transportation and, at the same time, securing a reliable, able, willing, and qualified work force.

At the same time, we doubt that complete abolishment of providing cost of transportation will get the job done, and that job is, namely, securing a good, reliable migrant work force to get the food off the trees.

Also, in effect, this change would limit the employer's required recruitment efforts to qualify for certification to "the time and place needed to perform the work"—or "locality" in the chairman's words in the Congressional Record.

This sounds wonderful, and we cannot oppose it. However, we recognize that the fruit industry will need every available, able, willing, and qualified domestic worker, as well as an increased number of aliens to get the job done.

In our judgment, we must be practical. This change—that is, re "locality"—could substantially reduce—possibly eliminate—the recruitment responsibilities of the State and Federal Employment Services, including interstate clearance orders and recruitment, and the fruit growers need—and will need—all the sound recruitment efforts possible.

Section 12 of S. 3074 makes it unlawful for any employer or any person acting as an agent for an employer, or any person who for a fee refers an alien for employment, or any labor union party who refers an alien for employment, to knowingly employ, continue to employ, or refer for employment any illegal alien.

A violation is not established unless the Government proves that the employer, agent or referrer acted "knowingly." For a violation, that is for each illegal alien, an employer will be faced with a civil penalty of up to \$500 for the first offense and \$500 to \$1,000 for subsequent violations.

An employer, agent or referrer shall not be deemed to have violated section 12 if he has made a bona fide inquiry whether a person hereafter employed or referred by him is a citizen or a legal alien.

Evidence, establishing that the employer, agent or referrer has obtained from the person employed or referred by him a signed statement in writing in conformity with regulations prescribed by the Attorney General that such person is a citizen or a legal alien, shall be prima facie proof that such employer, agent or referrer has made a bona fide inquiry.

The Attorney General, as the bill indicates, would prepare the forms for the employers et al. re are obtaining the written statements.

We strongly support section 12.

In closing, we would note that S. 3074 would make another important change in present practices. For example, presently the Department of Labor certifies an alien to pick apples. He cannot pick other fruit or work in the grower's packing house or storage. If he does, the grower

loses his certification and his aliens. S. 3074 does not place any such limitations re the work of the alien.

We appreciate the opportunity of presenting our views on S. 3074. Thank you.

Senator FONG. Mr. Burrows, you worked out an agreement with the Department of Labor—

Mr. BURROWS. Yes, that is, Farm Labor Executive Committee did.

Senator FONG [continuing]. To give apple growers certification by August 1 of each year.

How much time does the labor team ask for in advance of August 1 to be able to process the request?

Mr. BURROWS. To do that, to certify, this past year I would say the work orders were put in in May or June and went to the local office, and then the regional office, and then referred to the supply States, and then, even as late as in the middle of August, they required that the growers go down to Florida and do some local recruiting down there.

Now, this past year, in 1975, while they agreed to make a decision by August 1, there was only one State in which they complied with that agreement and it was not really their fault.

In other words, as you know, the Department of Labor has been sued or taken into court by certain groups on this certification situation. The regulation calls for the employer—if he wants certification—to request certification.

In previous years, if a grower put a work order in for 100 people and he could only get 50 domestic migrants and his work order was 50 short, it was almost an automatic situation that the Department of Labor would go ahead and certify, if there were no other workers available, domestically.

But now due to the legal cases that have been coming up, the growers have to request certification and in 1975 this resulted in a delay of 10 to 15 or 20 days in the Department of Labor making decisions re certification.

So I would say that, if work orders are put in by June 1 or June 15, that the Department of Labor can do the interstate clearance orders and search into the supply States as to the relative supplies of domestic migrants and make a decision by August 1 of this year.

What the Department of Labor has done this year is to require the employer to have his order in by January 30 to allow early positive recruitment of migrant workers in the Southern supply States before those workers leave these States and proceed north for other agricultural work.

In essence the Department of Labor has said, you put your work order in by January 30; we will put it into interstate clearance systems. We will arrange interviews and recruiting places in Florida (this is going to be about April 15). The grower who wants to recruit migrants in Florida will go down there, sit down, the Department of Labor will have put out notices, will have contacted those crew leaders and migrants to come in, they will have specified times they will bring these people in and say, "Here is the work order, this guy, Joe Jones up in New Hampshire needs the workers, do you want the job or not?" The crew leader can then decide where he wants to work and for whom. Now after they do this and they agree to the terms of the work orders and so forth, then the Department of Labor and

Florida and the employment services will keep track of the crew leader and the crew after they leave Florida relative to their future availability to pick apples for the specific employer. If the crew leader says, "No, I do not want the job," he is taken off the list and he is not considered as "available."

Senator FONG. My question was, how long does it take to get a certification?

Mr. BURROWS. How long does it take? In other words, the actual physical process?

Senator FONG. Yes; when do you have to file your request and when do you get a certification from the Department of Labor?

Mr. BURROWS. Three weeks time.

Senator FONG. Have you been able to get that in 2 weeks time?

Mr. BURROWS. Yes.

Senator FONG. You have been? Then there has been no delay in that respect?

Mr. BURROWS. There has been delay. In 1974 there was the interim certification procedure. There were about 4,100 workers requested to harvest apples in the 10 States and they initially certified 25 percent about late August. They delayed and it created considerable problems. So they certified the 25 percent and then said, "OK, we will take a look and send monitors up and see if you guys have done a good recruitment job." Then they evaluated and certified another 25 percent and then another 10 days later they certified the full 50 percent although in New England they did not certify all that were requested. You can't pick apples properly under those conditions.

Senator FONG. We grow pineapples.

Mr. BURROWS. This interim certification created a real serious situation with the apple growers. They had a crop on the trees ready to be picked. If not picked on time they get overripe. If you get 25 percent of the workers that you have requested and the other 75 percent come in at the last minute or after the fruit is ready to pick you have problems and possible serious losses.

Senator FONG. What percentage of your requests are granted?

Mr. BURROWS. What percent are granted?

Senator FONG. What is the percentage of certifications granted?

Mr. BURROWS. Actually, it has been, I would say 90 percent of the workers requested. But, you have to do reasonable recruitment efforts for local and domestic.

Senator FONG. You do not have any trouble as far as getting the requests granted, is that correct?

Mr. BURROWS. Well, we have had to bring in Congress quite a few times in the past.

Senator FONG. What I am trying to get at is when you put in your request, does the Department of Labor grant that request or do they refuse you that request, and if they do refuse you, what percentage of requests are refused?

Mr. BURROWS. Let us say that they have delayed or that they have reduced the number of workers requested.

Senator FONG. You mean you ask for 100 and they give you 50? Then, what do you do for additional help? Do you ask for a reevaluation of your needs?

Mr. BURROWS. For example, let's just take this last year. One grower in New Hampshire requested 32 BWI's. He had made reasonable recruitment efforts for U.S. workers and they were not available. The Department certified 32. So, the 32 arrived or were on their way. All of sudden they found 32 workers down in Texas. They went to this grower and said, "You have got to go and get them." So, the grower reluctantly agreed to give up his certified workers—they were not lost, they were placed with other growers in New Hampshire. But, what happened was that of those 32 workers only about 15 of them finally showed up. The poor grower, who had been certified for the 32 BWI's, had only 15 workers to pick his crop. So, he had to request an additional evaluation of his labor needs.

Senator FONG. Under those circumstances, what is your remedy? If you have a certification for 32 BWI's does the Department say we have 32 over here?

Mr. BURROWS. We do not have one.

Senator FONG. You do not have one?

Mr. BURROWS. No, we do not have a remedy. Even after you are certified you have to accept available qualified U.S. workers, the Farm Labor Executive Committee is working with the Department of Labor on this problem right now.

Legally, if a grower gets certified for 100 BWI's and gets the 100 BWI's in on September 1 and then on September 5 the Department of Labor finds 50 or 60 down in Florida that are available willing, available, and qualified; he has to take those 50 or 60. Now, the grower is not unwilling to take those workers. Sure it means an awful lot of rigmarole and confusion and everything else. However, he has filled his housing. Housing is a major factor in this.

If you have your BWI's and then the Department of Labor forces you to take 50 or 60 domestic latecomers, you are faced with a serious housing problem. You have to get rid of 50 or 60 BWI's or keep them and somehow find additional housing. You need all the labor you can secure, but, you do not have any housing.

The Farm Labor Executive Committee is working with the Department of Labor on this. Hopefully, we can persuade the Department not to refer additional domestic migrants once the BWI's have been certified and are on their way to the jobsite.

Senator FONG. When the worker comes in by way of certification and he is sent to a job when he is through, does he go back?

Mr. BURROWS. They go back to Jamaica; yes, sir.

Senator FONG. And then when another farm needs them, they may bring those same people back?

Mr. BURROWS. In other words, as far as apples are concerned, those that come in for apples stay and then go back.

Senator FONG. Now, if there is work for them to do, let us say a vegetable farm, will they allow them to work on the vegetable farm instead of going back?

Mr. BURROWS. No. He goes back, and the employer pays \$240 for transporting each worker back to Jamaica.

Senator FONG. Well, thank you very much.

Mr. BURROWS. Thank you, very much.

Senator FONG. The subcommittee will now hear from Mr. David Carliner, chairman of the Washington Legislative Committee and member of the National Board of Directors.

Mr. Carliner, will you proceed? Have you submitted a statement?

Mr. CARLINER. No, Senator Fong, I have not. I would like to speak, if I may, without burdening you, without reading a statement, and speak of the issues generally. Then I would like, later, if it was necessary, to submit an additional statement.

Senator FONG. If you desire, you may submit a written statement.

Mr. CARLINER. Thank you very much.

STATEMENT OF DAVID CARLINER, CHAIRMAN OF THE WASHINGTON LEGISLATIVE COMMITTEE AND MEMBER OF THE NATIONAL BOARD OF DIRECTORS OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. CARLINER. I would like to say, I appear here on behalf of the National Organization of the American Civil Liberties Union. I am chairman of the Washington Legislative Committee. I am a member of the National Board; although I was at one time chairman of the Washington affiliate, I am no longer; and I do not speak on behalf of the chapter in connection with this matter, and of course, I therefore speak in the name of the National Organization.

I would like to say, Mr. Chairman, that I appreciate, first, the opportunity to appear before you. We think that the Senate Judiciary Committee, which obviously has had a concern with immigration matters from time to time, when immigration bills were first introduced, is performing a very useful and necessary function. I would like also, on behalf of the organization, to commend both you and Senator Eastland for sponsoring legislation which is seeking to relieve much of the inequities that now exist in the immigration laws.

In regard to the first issue, the relief of inequities in the law, we, in the American Civil Liberties Union today, favor strongly the proposals to eliminate the disparity in treatment between the natives of the Eastern Hemisphere and the neighbors of the Western Hemisphere. As Senator Eastland's introduction indicates that it is unfair and discriminatory to make distinction and we therefore support the legislation to eliminate the distinctions. In supporting we note one variance and we do not have any policy position on this issue, we simply call it to your attention. As you know, of course, the present laws provide that natives of the Western Hemisphere are eligible to apply for immigration visas if they have a child born in the United States who is, by that birth, a citizen of the United States regardless of the age of that child. History has established many natives of the Western Hemisphere in the countries coming to the United States as citizens and the various types of nonimmigrant status upon the strength of a 1-day-old child or a child who is 20 years, 11 months, and 29 days old is eligible to apply for an immigration visa based upon that birth. This opportunity, as you know, is not available to the natives of the Eastern Hemisphere. The legislation proposes to take away their right from the natives of the Western Hemisphere in order to make this opportunity equal to

both hemispheres. We believe that a strong policy consideration can be made for giving it to the natives of the Eastern Hemisphere. If having a child, one or more, born in the United States is a factor which is relevant in determining whether the parent should be a permanent resident, we would suggest that it is just as relevant for natives of the Eastern Hemisphere as it is for natives of the Western Hemisphere. So, it is a policy question and in the spirit of generosity and in the spirit of having unification of families, which is a major consideration for Congress. We think that you may very well consider the possibility of giving this benefit to natives of the Eastern Hemisphere rather than taking it away from natives of the Western Hemisphere.

With regard to the other provisions of the bill which I support, I would like to focus on two additional ones. First is section 245 of the Immigration Nationality Act. You are aware, of course, of the adjustment of status within the United States to natives of the Western Hemisphere. We think that it is very commendable and appropriate that discrimination against natives of the Western Hemisphere be eliminated. Quite obviously, to go back home to Argentina, it's as far for a native to go back to England. And, the present law, as you know, the native of England can apply, if he is eligible, for permanent residence. But, the native of Argentina must go back to his own country. There is no need to burden immigration and traffic for this purpose; it can very quickly be removed.

The proposed legislation removes the bar with regard to crewmen. The discrimination against crewmen, as you are aware, is historically that it was easy for a crewman to get into the United States because of the nature of their occupation and upon the assumption that crewmen were more likely to violate our immigration laws than other types of nonimmigrants. Their history reflects, obviously, they too must go through clearances and they go through special control procedures when they arrive. They must get a landing permit, and I think that the Immigration and Naturalization Service may very well consider this so that this consideration no longer applies. The notion that crewmen are any less honorable than other types of nonimmigrants I think is also somewhat specious. I am not here to speak of the United States, but we do know that there are literally millions of people that come to the United States as visitors. I do not know the exact statistics, but there are at least 1 million a year who come in as tourists, as business visitors, as students, and other types of visitors, and they frequently form attachment. Sometimes they form the attachment before they have come here. All that I am saying is that the ability for other visitors to misuse our immigration laws is just as great as it is for crewmen. I lay some stress on this because I know that Mr. Eagleburger who testified before this committee, and I believe I am not certain about this, also continues to oppose the grant of adjustment to the status of crewmen. I would suggest that there is no proper basis for making this occupational discrimination on the face of the studies; it is clearly occupational.

There is another consideration, but I know that the evidence shows that it is also in effect, rational and ethnically discriminatory because of the nature of the shipping, the kind of work being a crewman involves. Most people who are crewmen come from so-called relatively undeveloped countries of northwestern Europe.

At one time there was a large number of crewmen coming here from Italy and Greece who formed attachment to the United States; generally males who married women who are living in the United States.

At the present time that has diminished to a certain few. At the present time, from foreign countries and from the Asian countries, from Taiwan and from Hong Kong, and the effect of discrimination here. I am not saying it is written in the terms of the statute, but the effect of it is to discriminate against Chinese persons and to some extent against African persons.

I think that, because the committee is sensitive to the effect of legislation as well as the precise language of this, that there is an additional reason for the committee to adhere to the language of the statutes involving crewmen, to adjust their status in the United States.

I would hope that the State Department particularly would be sensitive to this issue. As the committee is aware, discrimination was a major factor in the immigration issue with Asian countries. Although this is a relatively minor issue, I would hope that the committee would adhere to the language of Senator Eastland's bill.

There is a further provision in the bill which we think is very commendable, mainly the amendment to 249 which changes the eligibility for registry from the present date of 1948 to 1968.

This is, in effect, a statute of limitations. I know somewhere it is called amnesty. It permits aliens if they are persons who have not engaged in any criminal or subversive conduct to become permanent residents of the United States.

Now, the 8 years behind the figure 7 is a Biblical figure for various purposes. It is used in various types of situations; if a spouse has disappeared, you can get a divorce and get a new spouse. If you disappear from your own country by a fallacy, you are abandoned in that country and entitled to become a resident of a new country.

So I think that for Biblical, historical, and factual reasons, that if a person who has lived here 7 years and the immigration has not gotten around to deporting him and he has become assimilated in our society, he is presumed performing a useful function in our country. That is the reasoning there.

They are contemplating allowing such a person to change his status and become a permanent resident of the United States.

There are a number of other provisions in the bill that bear on immigration procedures and policies as to which the American Civil Liberties Union has no view as an organization. I therefore will not address myself to those particular questions.

The major issue in terms of the public policy and the attention that it is getting, namely, the situation of the aliens who are illegally in the United States is one that concerns the American Civil Liberties Union very much.

I should say you know, Senators, it is a terrible one for us. Our organization exists, and we speak, and I am here to speak only as to those questions which bear upon the rights which people have as a matter of civil liberty.

I would not sit here before you and say with any integrity that an employer of the United States has a civil liberty to employ a person in the United States who is here illegally.

Senator FONG. In regards to that, is there any problem with the use of a, what do you call it, a green card or alien registration card, or a social security card?

But, regardless of what you call it, is there any reason why the Civil Liberties Union would object to an alien holding that card to show that he is legally here?

Mr. CARLINER. Yes; Senator Fong, that is one of the major reasons that we are opposed to that provision in this legislation and to comparable provisions in the bill, which another Congressman has sponsored in the House of Representatives.

We feel this is a major issue. That is why the American Civil Liberties Union is brought to this question. We think whatever decision is used to identify a person, he must carry with him his birth certificate, or his national certification, or his parents.

If that is how he becomes a citizen, or if social security cards or any other kind of document tends to become a mandatory requirement here to persons who look to be aliens in order to obtain an essential with which to live, namely, that is the job, that is the first step to a police state.

Senator FONG. Do you object to aliens being registered? Would you ask aliens to be registered?

Mr. CARLINER. Well, sir, I believe that it does require a distinction.

The statute, as you know, the alien who registered in 1940, today requires that this person who is an alien carry some identification in order to establish his right to be here.

I believe that the American Civil Liberties Union—that makes this an improper classification between aliens and citizens.

I must concede in saying this to you that, since Congress has a right in adopting resolutions to make responsible classification between different types of people, and this case has never been to the U.S. Supreme Court, but, as an attorney, I can well see that a court may well believe that it is a reasonable classification to distinguish between persons who are citizens and persons who are aliens.

I think it is a policy matter. It sets up discrimination between two kinds of human beings walking down the street, one who happens to be born here.

Senator FONG. We have a problem with illegal aliens. It is claimed that approximately 8 million illegal aliens are here. How are you going to stop them from coming if anyone can have a job here?

And, whether an alien is illegal or legally here, is the problem that this committee faces.

Now, what kind of an identification would you give him? If you do not give him any identification, you leave it to him to say whether he is a citizen or not, or whether he is legally here as an alien or not. You have no teeth in the whole situation.

Mr. CARLINER. Senator, I am very sensitive to this problem. I would like to discuss it, but what I would like to do, if I may, to put this particular problem in a larger context, and in the larger context to reflect the anxiety of the American Civil Liberties Union in regard to the concepts of the legislation, apart from its implementation.

We have been told over the past number of years that the problem of illegal aliens is a problem here because of unemployment in the United States.

We have had unemployment, whatever the specific percentages are, now defined and which the administration wishes to believe; but I gather the rate is officially 7.8 percent, approximately 8 million people, we are told, who would otherwise be in the labor force working or unemployed. And it is because of this particular phenomenon that the publicity, the speeches that have been made all over the country that illegal aliens are doing the work for \$1.00 an hour or less or more—I do not know.

On this, I would like to say, with respect to those who make the issue, and with respect and concern to the committee, that this is, I believe, what is properly termed, making the aliens a scapegoat for economic problems relating to unemployment; although I am not an economist, it is my understanding.

Senator FONG. Well, we do not look at it only from the unemployment angle. Whether or not we should allow illegal aliens to come in, this is the problem. And if, we have an economic problem, should we not bring them in legally or expand the immigration rate? To allow them to stay here illegally, whether they or we have an economic problem or not, I do not think is the question.

Mr. CARLINER. Well, I think it is a very fair question, Senator. If I may, I do not want to burden your record and your time for hearing me with this issue, but I would like to say, very similarly on this, that the concern which the Nation has and its proper and legitimate concern, the concern with the Congress of the United States in the nature of unemployment from the United States.

on this, that the concern which the Nation has, and its proper and Also, in part from a system allowing people to come to the United States illegally, and to remain in the United States illegally.

But the statement of that later mentioned, it seems to me, Senator, reflects, in a large part, upon the other problems and concerns about the unemployment.

We have unemployment not because of illegal aliens. I concede and I have to refer to the economists on this basis of the management of our economic system.

Either we have an easy money policy, which I am told has been curbed by the administration in order to offset inflation and the control of easy money has lead to a recession.

Some people say that the tax policy or unrelated issues are the reasons for unemployment.

National corporations, American corporations, are now manufacturing, and previously have been manufacturing merchandise in Taiwan.

Senator FONG. We are not here to argue economics.

Mr. CARLINER. Yes, I am here to call attention to these factors which cause unemployment, and if they cause unemployment why pick on the illegal alien as a factor of unemployment in the United States?

I think that simply focusing on the alien as a cause, as an effective cure for unemployment is making him the scapegoat for carelessness.

I would think that this is not only as a matter of demonstrable facts and an improper thing to do.

This is a focus of prejudice that the Supreme Court said that the courts should be zealous to protect their rights. I would suggest that

also Congress should be. I need not say to you, of all Senators, that history presented, yes, the same argument against the Chinese and the Japanese along the west coast that are now being used against Mexicans and other people of Spanish origin.

That disposes of my contention on that issue.

Senator FONG. I introduced quite a few amendments to the bill introduced by the chairman.

I would like to have you look at them from your standpoint and give us any comments you may wish.

Mr. CARLINER. All right, sir. I noticed that you did introduce the amendments to the bill within the last few days. But I would, if I may, submit in writing my comments on this.

Now, in regard to the second issue, which is a complete and separate issue, regardless of the economic factors involved, whether it is a matter of policy and a matter of priority of the United States to tolerate that we should have a ceiling of 170,000 coming here and 120,000 Western Hemisphere and x number of thousands of people coming here over their quota; whether we should just blink our eyes to the fact that Mexican border is an open sea to additions of illegal aliens to the United States.

As the committee has observed and as Senator Eastland has said, it is the opportunity of jobs and the opportunity south of the border which draws people here.

I think if you review the economic data regarding migration, it indicates that people come here when there are jobs to fill, and they do not come here when there are no jobs to fill.

If you are in the midst of a deep depression, they would just as soon be unemployed in their homeland.

Senator FONG. I am not so sure.

Mr. CARLINER. Well, I added that clause especially if they are not going to get jobs.

That raises another issue that I would like to discuss. But, in any event, we have imposed—I do not know whether there is a demographic saying 120,000 every year.

We are permitting 50,000 or 60,000 current refugees to be charged against that quota and there it serves to benefit. I am not complaining about the favor to the Cubans.

What I am trying to say, Senator, is the fact that economic movement and mobility seem to indicate I cannot say this definitely, about 150,000 people would come, as distinguished from 120,000 people, and if we have a need, if we can absorb 150,000 people in here, perhaps the solution is not to have an arbitrary limitation, but we should increase it.

May I give an analogy? In a 1965 study, the quota for 600 million people was 100 a year. It was a flow from China and India and these other countries. The quota for England, the United Kingdom, was 75,000 a year. But we had no illegal aliens from the United Kingdom that would fit within the 75,000 quota. We had an enormous amount because, with 100 a year, the people who wanted to make it here had to violate our laws to get here. So, in effect, we were causing people to violate the law by having what was not only an arbitrary limitation upon the Chinese people, but an offensive and insulting limitation. I am not going to say that limitation is that extreme. But what I am

saying is, and I think that the data would show this, that from the time that people started to immigrate to the United States, not quite as early as Cortez, but from 1940 on there has been a continuous flow of Mexicans to this country which increases and slows with the state of our economy and, to some extent, with their economy.

I would suggest that this is the major issue that I wish to bring to your attention, that before legislation we should have more information.

One of the documents that I would like to leave with the committee is something that I was fortunate to get is the minutes of a very high level meeting held by the Attorney General, January 21, 1976. It had to do with the implementation of the council on illegal aliens which the President announced he was going to do more than a year ago.

Whether there were any meetings in 1975, I do not know. The only visible activity was almost more than a year later. At that meeting there were present the Secretary of Labor, and the high official of the Naturalization Service in addition to the Attorney General and the Under Secretary of State.

And at that meeting, Mr. Dunlop, who was then the Secretary of Labor, addressed himself to the question regarding the need for people in the United States.

He said that—well, let me read it.

The participants were asked to contribute their views regarding the number of illegal aliens in the United States.

Secretary Dunlop started by saying that he "sees the issue as a long range one which poses the question of how the Government must meet and organize itself to know more than it knows now about illegal aliens."

He proposed that an international approach must be made or there will be no progress.

The question is further complicated by great apathy on the part of the employers and unions and by the possibility that there was a certain societal need for a constant flow of immigrant workers to do the menial work.

Now, this is not only the Secretary of Labor saying that but it happens to be a professor at Harvard University who appears to bring additional expertise to his judgment on this.

He also stated, if I may, because I think it is so important, they set up a special task force on the economic and labor impact of illegal aliens.

This task force is instructed to complete its report by June 1, 1976. I must say, parenthetically, that it is my understanding that they will not be able to complete a report by that date. They do not have the economic data to provide the information. But these are the problems that they are discussing, Senator, as I indicated earlier.

There are indications that illegal aliens serve an essential function for which Americans are unavailable, thus contributing to our economy and country.

Analysis and consensus on the economic impact of illegal aliens are critical. This task force would analyze the economic impact of illegal aliens from two vantage points:

A. The labor market economic sector and the geographical distribution and their effect on native workers;

B. The fiscal effect of illegal aliens on public expenditures and balances of payment.

Now, I put all of this into the record, Senator, because I am suggesting that there just is not enough data to make the conclusion that the number of aliens who come here from the Western Hemisphere is the right number; that the data may indicate that there may be a need, not argumentatively, but theoretically, that we need more menial workers to come to the United States.

This is a pattern but, as you know, Northern Korea has had the same pattern.

What I would like to say in conclusion is that the method which you have indicated earlier for illegal aliens strikes such a major change in our way of dealing with human beings, and they infringe upon the rights of privacy, the right of civil liberty to travel from one place to another, the person to feel that he is free, even if they are needed to implement the legislation.

Senator FONG. A form identifying the employability of a person is to be used only for the purpose of employment. We do not ask anyone to carry it everywhere. We would only ask that when you apply for a job you show it.

Mr. CARLINER. Well, if the effect of it were limited only to illegal aliens, because illegal aliens do not have the right to be here in the first place—he obviously does not have the right to work. But, as you have heard from other groups, and I do not have to repeat the testimony—

Senator FONG. What I am saying is that when an employer employs an individual, he could say "May I see your social security card." Do you feel that is asking too much?

Mr. CARLINER. Well, I cannot say honestly that is asking too much. But, the social security card does not answer the question if you are going to take him one step down the road.

Senator FONG. An illegal alien cannot legally get a social security card.

Mr. CARLINER. He can come here as a visa visitor.

Senator FONG. A visitor cannot get a social security card unless he has a special permit to work.

Mr. CARLINER. That is not correct. If I may take the liberty of correction, because it is a matter of record that not only you and I may register under the Social Security Act, as well as persons who come to the United States. If an alien comes here as a tourist to Dallas Airport on a given day, he is carrying \$2,000, \$5,000, \$100 with him. He does not want to have the cash in his possession. He wants to put it into a bank. He can go to the social security office and show his passport and visa and, if it has not expired, and if that document shows that he is still legally in the United States, he can get a social security card for purposes of establishing an account in the bank which enforces the tax laws because we want to know about the money that people make in the United States.

So he gets his social security card. If his visa for remaining in the United States expires on April 7, 1976, and he is still here 6 months

from now, then he is here illegally. He can go to an employer and get employed for a job when he shows the employer his social security card. So that is a particular route that he may follow.

Senator FONG. Well, it is possible to mark the social security card to show just for the purpose of making deposits. We give him a certain kind of card which is different from other cards.

Mr. CARLINER. The social security administration has not cared to issue different kinds of cards and state what they do.

Senator FONG. This is what we are trying to explore and see whether we are really stepping on civil liberties of individuals were we to do something like require different kinds of social security cards.

Mr. CARLINER. I am trying to be as meticulous as I possibly can be in talking about specific ways of handling this, although I have some questions about it. Merely to ask for a social security card would not necessarily involve a violation of civil liberties.

In order to obtain a social security card, you do not have to be a citizen, and you do not have to be a permanent resident alien.

Senator FONG. If you apply for work, I think that they could require it.

Mr. CARLINER. If they say that they are applying for work.

Senator FONG. Well, we could have a different card.

Mr. CARLINER. Well, if you have different cards for each then, of course, I think you will have a problem. That does not answer your question on a policy ground. But you will have a problem in getting the effect. The average employer is not going to know what one card means, and if they see a social security card they do not read it.

Senator FONG. If it says, "Not eligible for employment?"

Mr. CARLINER. Well, if all of that is there, it may very well be that it would be a way of effecting it.

But, getting back to the first principle, Senator, if I may—

Senator FONG. We are trying to stop the illegal immigration from—most come here because there is work here.

Now, if they have a lot of money, that is different. But the great majority comes here because there is work here, and we can stop them at the gate, and then we will really tackle this problem.

Mr. CARLINER. Well, getting back to the first proposition that I was making that, if you are trying to keep them from coming here because they are working, then before you address yourself to adopting legislation designed to meet that purpose, I think it is incumbent to make it clear that the illegal aliens and employment of aliens in the United States is a factor which causes unemployment and which is adverse to our society, and I suggest—

Senator FONG. I do not think that we need to do that.

Mr. CARLINER. Well, if you do not need to do that, then why stop people simply from working?

Senator FONG. Well, if we say that illegal aliens are necessary to our society, then we had better open the gates.

Mr. CARLINER. Well, you are not going to say that illegal aliens are necessary to your society. But, before you adopt legislation, and if your reason is related—

Senator FONG. Our reason is to keep the illegal aliens out.

Mr. CARLINER. So your goal is to keep them out. It does not necessarily have to do, as you indicated earlier, with the fact that illegal

aliens are taking jobs away from Americans. But, if you are concerned with the integrity of our law enforcement, I would suggest not simply to deny them jobs, but to deny them a place to sleep at night.

And it happens in European countries that you cannot stay in a hotel or a roominghouse unless you produce a passport or some kind of a document that you are legally in the country.

Well, I put it to you, Senator, where you had to produce that kind of a document in order to get a place to sleep at night.

Now, I can see that that is much more obvious and much more far reaching, and it just gives us a police state.

Senator FONG. In Communist countries, you can marry, but they do not give you a place to stay. That is how they keep you from being married.

Mr. CARLINER. Now, I hold this up as a horrible example because it would cause any of us to shy away. But, I am not saying that we are not denying them a place to sleep or a place to buy groceries or food, but it is a first step.

I do not think that logically you can distinguish between one and the other. All I am saying is that, assuming that it were necessary to say to aliens that were walking across the Mexican border that they should be denied the right to work and that the employer who employs them can be prosecuted civilly, or whatever way, for employing them.

I am saying before we take such a drastic step, we never had this in our country before, and we have had illegal aliens coming in ever since laws were adopted to make it illegal for aliens to come here. Before that we had the advice of the English.

I think that, since the Senate of the United States has a great sense of history, that before it adopts that, that we should read our history and we should hear the information that the Department of Labor is going to get by June 1, 1976, or some date, because the legislation is so profound on the impact that it is going to have on our society.

The least you could do is to know what he is doing or why he is doing it.

Senator FONG. Thank you for helping us with this matter.

Mr. CARLINER. There is one final word I would like to say. It has been said before, but I want to make sure that my thought on this is clear. It is not only my thought, but the thought of the Civil Liberties Union, that the impact is not going to be on the illegal aliens.

And you heard, from very authoritative sources, from the U.S. Commission on Civil Rights, which is charged with enforcing laws.

Again, the impact is going to be on people who lock doors.

Senator FONG. That is addressed by one of my amendments.

Mr. CARLINER. Well, if you amend it, that will not take care of it. As we know, laws are passed, and the people who are out on the stand, and people who are employing people, do not always behave with the finesse that this law requires.

I suggest to you, sir, that, regardless of what the law of Congress prohibits, this kind of discrimination of an employee is going to exist when an employer has to ask for his qualifications.

Sesator FONG. We understand.

Mr. CARLINER. And then the other one isn't that, regardless of what the law says, of course, with less resistance——

Senator FONG. He is not going to take a chance.

Mr. CARLINER. And I think that, since he is not going to take a chance, why should the Congress of the United States take that chance?

Senator FONG. Thank you.

Our next witness is Charles Gordon, who is the former General Counsel of Immigration and Naturalization Service, and an outstanding authority on immigration law.

You have submitted a prepared statement, and this will be incorporated into the record as if you have given it in full. Will you highlight your statement? Regretfully, we do not have time to have you read your full statement. I am sorry that we kept you waiting so long.

[The statement of Charles Gordon follows:]

STATEMENT OF CHARLES GORDON

Mr. Chairman and members of the committee; I am Charles Gordon, a member of the law firm of Carliner & Gordon in Washington, D.C.

I am chairman of the Committee on Immigration and Nationality of the Section of Administrative Law of the American Bar Association.

It may also be of interest to the committee that I was formerly General Counsel of the Immigration and Naturalization Service, retiring from that position in 1974; that I am coauthor of Gordon and Rosenfield, *Immigration Law and Procedure*, the leading treatise in this field; and that I am an adjunct professor of law, teaching a course in immigration and nationality at the Georgetown University Law Center and at summer sessions of the University of San Diego Law School in Guadalajara, Mexico, and Paris, France.

I had hoped to present the views of the American Bar Association to your Committee. However, the internal procedures of the ABA for approval of my presentation on its behalf will not be completed for another week or so. Therefore, in the light of the time limitations of your hearings, I am appearing to express my own views, speaking for the ABA only in instances where the ABA has previously adopted a position. I should like your indulgence to incorporate in your hearing record a statement in the near future regarding the position adopted by the ABA on other aspects of S. 3074.

1. SANCTIONS FOR THE UNLAWFUL EMPLOYMENT OF ALIENS

A major feature of S. 3074 and the Rodino Bill, H.R. 8713, is their imposition of sanctions on American employers who knowingly employ aliens who are in the United States illegally. This proposal has emerged from the concern expressed by the Administration over the growing number of illegal aliens in the United States. Public utterances by the present Commissioner of Immigration and Naturalization General Leonard F. Chapman, Jr. have estimated that there are millions of illegals in this country. While some may feel that General Chapman's estimates are excessive, all agree that the number of illegals is considerable.

To cope with this problem, the Administration has proposed the enactment of legislation imposing sanctions on employers who knowingly employ illegal aliens. The underlying theory of this legislation is that since illegals come to this country in quest of jobs, sanctions on those who knowingly employ them would curtail their job opportunities and thus would discourage illegal entries. Direct enforcement efforts to stop illegal entries concededly have been ineffective. It is the Administration's belief that it could deal more effectively with this problem by the indirect device of penalizing the employer, thus drying up job opportunities and eliminating the inducement to illegal entry.

Many knowledgeable observers have grave doubts regarding the need and effectiveness of this legislation. In the past, the responsible government agencies regrettably have never undertaken an authoritative study on this issue. While several studies are currently being conducted, as yet there are no persuasive data to demonstrate the need for this legislation. In the absence of such data, we believe, on the basis of our experience and observations, that in most instances the illegal aliens are performing work for which American workers cannot be obtained.

Moreover, I find much cause for concern in the objections of those who contend that this legislation would provoke widespread discrimination against the foreign born. Faced with possible sanctions, employers may choose not to hire persons of Latin, Asian or African ancestry, even though such potential employees may be lawful residents or even American citizens. From another point of view, I find merit in the view that this legislation may impose excessive burdens on employers, in requiring them to act as law enforcement officers and to assume the burden of making difficult determinations regarding the immigration and citizenship status of applicants for employment.

Consequently, the Section of Administrative Law of the American Bar Association has recommended that the Association oppose the enactment of any such legislation at this time. We ask your Committee for permission to incorporate in your hearing record the action of the Board of Governors of the ABA next week on this recommendation. I must confess some embarrassment in presenting such opposition. Until June, 1974, I was General Counsel of the Immigration and Naturalization Service, and in that capacity I presented the administration's view on several occasions in favor of such legislation. In my present embarrassment I derive some comfort from the example of Justice Jackson of the United States Supreme Court. In *McGrath v. Kristensen*, 340 U.S. 162 (1950), Justice Jackson wrote the court's opinion, which was contrary to an opinion he had issued as Attorney General. The learned Justice observed that, in examining his earlier utterance, he found it singularly unpersuasive. Like Justice Jackson, I too, find the view different from the other side of the bridge. Consequently, I join my colleagues in the American Bar Association in opposing the enactment of the so-called sanctions legislation at this time.

2. AMENDED PROVISIONS DEALING WITH ADJUSTMENT OF STATUS

Since 1952, the immigration laws have prescribed a procedure known as adjustment of status, set forth in Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255. This procedure authorizes the acquisition of permanent residence status by certain categories of aliens who are in the United States in temporary or irregular status. It is a very useful device, invoked by tens of thousands of aliens each year. See 2 Gordon and Rosenfield, *Immigration Law and Procedure* § 7.7.

Section 10 of S-3074 makes a number of changes in these statutory provisions. Some of these changes are beneficial and others are restrictive. In other respects the existing statutory pattern is retained.

a. *Extension of Eligibility to Natives of Western Hemisphere Countries*

A major amelioratory change allows natives of the Western Hemisphere to apply for adjustment of status. I endorse this change. The preclusion of adjustment of status for natives of the Western Hemisphere originated in a 1965 statutory amendment aimed at what was described as a "recurring problem" in enforcement. H. Rep. No. 745 (p. 22), S. Rep. 748 (p. 24), 89th Cong., 1st Sess. I fully agree with the Committee Report of H.R. 8713 that this "disqualification has created many hardships and often leads to unnecessary expense by requiring aliens to return to their country of origin to obtain an immigrant visa from a U.S. consular official." H. Rep. 94-506 (p. 12). The restoration of equality of treatment for natives of the Western Hemisphere would remedy an irrational and unjust discrimination, which bears most heavily on the families of American citizens. I strongly support the proposal of S-3074 to end this discrimination.

b. *The Exclusion of Aliens Who entered As Crewmen*

Section 10 would end the present exclusion of alien crewmen from the benefits of adjustment of status under Section 245. This exclusion had its basis in the historical view that crewmen presented a unique and large-scale enforcement problem that warranted special treatment. I am of the opinion that the present exclusion of crewmen has at times led to harsh results, especially in the case of aliens who originally entered as crewmen but have established family ties and long residence in the United States. I believe that the exclusion of alien crewmen from the benefits of Section 245 should be removed in order to allow the Attorney General to exercise his discretion with respect to crewmen on a case-by-case basis. Therefore, I support the provision of Section 10 of the present Bill which eliminates the blanket preclusion of adjustment of status for aliens who entered the United States as alien crewmen.

c. Exclusion of Aliens Who Have Accepted Unauthorized Employment

Section 10 of the Bill adds a new exclusion from the benefits of adjustment of status under Section 245 for any alien, other than an immediate relative of an American citizen as defined in Section 201(b) of the Act 8 U.S.C. 1151(b), who hereafter accepts unauthorized employment prior to filing an application for adjustment of status. The exclusion would apply to a class of aliens who are eligible for adjustment of status under present law.

I believe the enactment of this new preclusion would be unwise and unnecessary. In order to be eligible for Section 245 relief, an alien must establish that he had satisfied the labor certification requirements of Section 212(a)(14) of the Act, 8 U.S.C. 1182(a)(14), or that he is exempt from such requirements. Consequently, the adverse effect upon American labor caused by an alien who once accepted unauthorized employment, but who has now established eligibility under Section 212(a)(14), may well be minimal.

The legislative history of the Rodino Bill indicates that the drafters believed that the bar to adjustment of status would deter many nonimmigrants from violating the conditions of their admission by obtaining unauthorized employment. However, I question the basis for this view. In the first place, the "deterrent" argument assumes that most nonimmigrants will be aware of the Section 245 consequences of accepting unauthorized employment. In my view, this assumption of knowledge on the alien's part is questionable. In the second place, it is my view that many nonimmigrants engaging in illegal employment do so out of economic necessity. Consequently, it is not likely that this class of aliens would be deterred by the preclusion proposed in this legislation.

On the other hand, that preclusion could cause great hardship in individual cases. Acceptance of unauthorized employment is not a ground of inadmissibility to the United States. Therefore, the primary effect of the proposed preclusion would be to penalize admissible aliens by forcing them to go abroad in order to obtain immigrant visas. This would cause the very "unnecessary expense" for these aliens referred to by the House Committee as the primary purpose for permitting adjustment of status for Western Hemisphere natives.

In exercising his discretion under the present version of Section 245, the Attorney General is able to consider the nature and circumstances surrounding an alien's employment as a possible adverse factor which must be outweighed by equities in the case, before relief will be granted. See *Matter of Arai*, 13 Immigration and Naturalization Dec. 494 (BIA 1970). I believe the present case-by-case approach is desirable and allows for sufficient protection of American labor.

For the foregoing reasons, I believe that the blanket exclusion of benefits for those who accept unauthorized employment would cause undue hardship in many cases. Consequently, I oppose enactment of that provision.

3. RELIEF FROM DEPORTABILITY OF EXCLUDABILITY

The Rodino Bill and S-3074 both contain amnesty provisions to facilitate the acquisition of lawful status by certain illegal aliens. These provisions manifestly represent an attempt to satisfy those who have contended that the sanctions provisions would deal too harshly with aliens who have established roots and family ties during extended residence in the United States.

These humanitarian dispensations are commendable. In my view, the approach adopted in S-3054 is superior to that in the House version, which provides only a one-shot benefit, to be solicited within a year after enactment of the statute, under confusing conditions. Section 11 of S. 3054 properly designs the amnesty benefits as a continuing aspect of the basic statute, by advancing the cutoff eligibility date for the so-called "registry" relief from June 30, 1948 to July 1, 1968. This proposal will provide needed relief for many deserving aliens. However, we think it unwise to fix a specific date for the commencement of the alien's presence in the United States, since this creates the need for subsequent amendments to move forward the eligibility date for relief. See 2 Gordon and Rosenfield, *Immigration Law and Procedure* § 7.6. It is preferable, in my view, to specify a fixed eligibility period, e.g. 5 years or 7 years, of U.S. residence. Such fixed eligibility periods appear in the statutory provisions dealing with suspension of deportation. Sec. 244, IN Act, 8 U.S.C. 1254.

While we support the proposal to advance the eligibility date for registry as a step in the right direction, the American Bar Association suggests the desir-

ability for an overall improvement of the statutory provisions dealing with relief from deportation. In many respects these remedial provisions overlap; in others, they leave gaps in the Attorney General's authority. I can state that in proposing such improvements I speak for the American Bar Association, on the basis of resolutions approved by its House of Delegates at the August, 1975 Convention of the Association in Montreal, Canada.

During much of their history, the immigration laws were cast in inflexible terms, and afforded little room for the exercise of discretion. Mounting hardships, eventually persuaded Congress to allow the amelioration of such hardships. A major breakthrough occurred in the Alien Registration Act of 1940, 54 Stat. 570, which authorized the Attorney General to suspend deportation of certain deportable aliens whose deportation would result in hardship to their families. However, their deportability could not be obliterated until the Attorney General's action was ratified by Congress.

In the years after 1940 other discretionary remedies have been provided to permit discretionary waiver of deportability in some situations. The principal remedy today is known as adjustment of status, dealt with in S-3074 and previously discussed by me, which enables the Attorney General, in his discretion, to grant permanent residence status to certain aliens in the United States whose original temporary entry was lawful and who are otherwise admissible to the United States. Sec. 245, IN Act, 8 U.S.C. 1255. Another statutory remedy is known as registry, also dealt with in S-3074 and previously discussed by me, which authorizes the grant of permanent residence to certain aliens who have resided in the United States since 1948. Sec. 249, IN Act, 8 U.S.C. 1259. There are no requirements of congressional approval of such discretionary actions of the Attorney General. However, few grounds of deportation can be waived in such proceedings, since adjustments of status may be sought only by aliens who entered lawfully and registry may not be granted for many categories of deportable aliens.

The enlarged opportunities for adjustment of status and registry proposed in S-3074 doubtless will be helpful, but there will still be large areas in which no adequate statutory provision for relief will be available. Confronted with such situations, the Immigration and Naturalization Service has devised a so-called nonpriority program, recently renamed the deferred action program, which indefinitely postpones deportation proceedings or action in cases of humanitarian concern or excessive hardship. In addition, affected persons often have sought intervention by Congress through private relief legislation, an unsatisfactory device seeking to engage the attention of Congress in individual cases.

We believe that the flexibility of the deportation provisions of the immigration laws is undesirable and that the opportunities for amelioration are inadequate. While the administrative nonpriority or deferred action device is a commendable exercise of prosecutive discretion, it was developed in the absence of direct statutory sanction. Moreover, we believe it inappropriate for Congress to be involved in the adjudication of individual cases through private relief bills and suspension of deportation.

Consequently, the American Bar Association favors a complete revision of the provisions of the immigration law dealing with relief from deportation. We recommend that the Attorney General be given discretionary authority to waive any ground of deportation, without the need for soliciting Congressional approval, for the following classes of aliens in the United States:

(a) The spouse, or child of an American citizen or of an alien lawfully admitted to the United States for permanent residence.

(b) An alien who has resided in the United States for at least 3 years.

(c) An alien whose deportation would result in exceptional hardship to himself or to close family members in the United States, in addition to those designated in "a."

(d) An alien whose services or abilities would be beneficial to the United States.

(e) Refugees.

Even less satisfactory are the statutory provisions authorizing the Attorney General to afford relief to aliens who are subject to exclusion from the United States. The present law sets forth thirty-one categories of aliens who are barred from entry and many of these categories can be divided into numerous sub-categories. Sec. 212 (a), IN Act, 8 U.S.C. 1182 (a). Very often these perpetual grounds for exclusion cause family separations and other hardships in particular situations. Yet the law provides little authority to ameliorate excessive severities.

It is true, of course, that there is a wide area of discretion to permit temporary entry, either through waiver or parole. Sec. 212 (d) (3), (4), (5), IN Act, 8 U.S.C. 1182 (d) (3), (4), and (5). However, the opportunities to alleviate exclusion grounds for aliens seeking permanent entry are much more circumscribed. As originally enacted, the 1952 Act provided little comfort for such aliens. In later years there have been sporadic legislative efforts to deal with specific humanitarian situations. Thus, for aliens with close relatives who are citizens or lawful permanent aliens, the law now permits discretionary waivers of excludability for tuberculosis or past mental illness, for criminal violations or prostitution, and for fraud in seeking entry. Sec. 212 (g), (h), and (i), IN Act, 8 U.S.C. 1182 (g), (h), and (i). But in almost every other respect, the exclusionary provisions of the statute cannot be waived, and perpetually bar entry into the United States, irrespective of any hardships or humanitarian considerations that may be involved.

We believe the inflexibility of the provisions of the immigration laws in regard to the exclusion of aliens likewise is undesirable and the opportunities for amelioration are inadequate. Therefore, the American Bar association urges that the statute be amended to give the Attorney General discretionary authority to waive any ground of exclusion for the following classes of aliens seeking to enter the United States:

(a) The spouse, parent, or child of an American citizen or of an alien lawfully admitted to the United States for permanent residence.

(b) An alien who has resided in the United States for at least 3 years.

(c) An alien whose deportation would result in exceptional hardship to himself or to close family members in the United States, in addition to those designated in "a."

(d) An alien whose services or abilities would be beneficial to the United States.

(e) Refugees.

(f) An alien excludable for a past offense or condition when at least 3 years have elapsed since the occurrence of the offense or condition.

(g) An alien excludable for criminal misconduct for which a foreign government has issued a pardon or has expunged the conviction.

In this connection, we invite attention to another anachronism in the immigration laws. Although American Consuls are subordinate officials in the Department of State, a statutory provision, introduced in 1952, precludes the Secretary of State from reviewing the actions of consuls in granting or refusing visas. Sec. 104(a), IN Act, 8 U.S.C. 1104(a). This remarkable provision denies to a Cabinet Officer the authority to control the actions of subordinates. Since the visa is an indispensable document for those who wish to enter the United States, an erroneous or arbitrary refusal of a visa can have a devastating effect on the applicant and often also on his family in the United States. The grant of unreviewable authority to American consuls situated in distant countries is inconsistent with generally recognized precepts of sound administration and fair play. Therefore, the American Bar Association favors an amendment of the statute eliminating the unreviewability of the consul's decision, and establishing a right of appeal to a board of visa Appeals.

4. SAVINGS CLAUSE

Section 20 of S. 3074 properly provides a savings clause to preserve existing documents and proceedings. However, the savings clause does not specifically provide that pending applications are to be adjudicated under the law in effect when they were filed. Because of the widespread arrearages in handling immigration and visa applications, this omission may operate to terminate the benefits available under existing law to thousands of persons with pending applications. A similar omission in the 1965 legislation produced many difficulties, and required corrective legislation by Congress the following year. See *Matter of George*, II I&N 419 (BIA 1965); Section 3, Act of Nov. 2, 1966, 80 Stat. 1161. We urge that the savings clause be expanded to protect pending applications for immigration status.

5. OTHER NEEDED STATUTORY AMENDMENTS

In recent years the American Bar Association has proposed several other changes in the immigration laws. I do not wish to prolong this statement with a discussion of these additional proposals. However, since the Subcommittee is

considering extensive changes in the immigration laws, I wish to note the nature of our Association's proposals, without further discussion at this time. We hope your Committee will consider our proposals at an appropriate time:

- (a) Appointment of A.P.A. Hearing Officers to conduct immigration proceedings.
- (b) Statutory status for Board of Immigration Appeals.
- (c) Statute of limitations relating to alien deportation proceedings.
- (d) Statute of limitations on denaturalization.
- (e) Requiring signature on immigration forms by persons who prepare them.

ADDITIONAL PERSONAL VIEWS OF CHARLES GORDON

In the preceding portions of my statement I have spoken for the American Bar Association, urging positions officially adopted by that Association. In earlier portions of the statement I have discussed other sections of S. 3074 which are under active consideration by the American Bar Association, and on which that Association's official position will be communicated to your Committee shortly.

The American Bar Association has not yet passed on some of the major provisions of S. 3074. However, the staff of your Committee has suggested that I present my personal views on those provisions. I am happy to do so, with the reservation that in the balance of this statement I speak only for myself, and not for the American Bar Association.

In my view, the most important and necessary change embodied in the bill is the elimination, at long last, of the discriminatory treatment of immigrants from the Western Hemisphere. Essentially, this disparity of treatment was an historical accident. Before the 1965 Act there was no numerical limitation on immigration from the Western Hemisphere. The provision of the 1965 Act for such a limitation was a compromise, adopted during the last moments of legislative consideration and not incorporated into the basic 1952 Act. The result has been that immigrants from the Western Hemisphere have not been eligible for the statutory preferences, based on close family relationships and special skills, granted to all other immigrants. Consequently, qualified immigrants from the Western Hemisphere now have to wait over 2½ years before they can obtain visas to come to the United States.

Section 4 of S-3074 would correct this inequity by incorporating the numerical allotment for the Western Hemisphere into the basic statute, thus making the statutory preferences applicable to such immigrants. I am sure the Committee will find unanimous support for the elimination of the irrational discrimination against Western Hemisphere aliens. I am happy to support this long overdue revision, but I want to express two reservations regarding the Bills' proposal.

First, I can see no sound reason for continuing the separate quotas for the Eastern and Western Hemispheres since this bifurcation may suggest continued discrimination against the Western Hemisphere. The retention of separate quotas in fact would limit immigration opportunities from some Western Hemisphere countries, which currently generate the heaviest volume of prospective immigrants. Second, the Bill does not adopt the Administration proposal to make separate allocations of 35,000 visas to Canada and Mexico. I believe the Administration proposal properly recognizes the special position of our friendly neighbors and our special relationships to them. The failure to make such separate allocations will bear most heavily on Mexico, since the Bill would impose the 20,000 annual limitation on all countries, and thus would actually result in a reduction of over 50% in legal immigration from Mexico. In fact, Mexico is the only Western Hemisphere country for which the Bill would result in reduced immigration allotments. This restrictive impact on Mexico is unfortunate in a proposal intended to be generous. Moreover, by reducing opportunities for legal immigration from Mexico the Bill would augment the enormous pressures for illegal immigration from Mexico, which other provisions of the Bill seek to curtail.

I will comment only on two other provisions of S-3074. The first is the amendment of the so-called H-2 category of nonimmigrants to facilitate the entry of needed temporary workers. I have been aware, during my government service and thereafter, of the Chairman's belief that such a provision is a necessary component of any program to deal with illegal aliens.

Reliance on temporary labor from foreign countries, particularly in agriculture, was a significant feature of our immigration policy during the middle years of the twentieth century. The dominant expression of this program was the so-called bracero program, under which hundreds of thousands of legal temporary workers were brought from Mexico between 1949 and 1964. However, increasing opposition from organized labor finally persuaded Congress to terminate the Bracero Program at the end of 1964. Since 1964 virtually no temporary workers have been legally brought from Mexico. Although the H-2 provision of the general law permits the bringing of needed temporary workers from foreign countries, the Department of Labor has been reluctant to exercise such authority, apparently believing that sufficient American workers were available to perform the necessary work. Of interest, however, is the fact that while illegal immigration was negligible during much of the time when the Bracero Program was in effect, the totals of illegals apprehended have climbed precipitously every year since that program ended in 1964.

Section 2 of S-3074 proposes to vitalize the H-2 authority by several amendments. In the first place, it would eliminate the requirement that the workers be coming to jobs that are temporary in nature, although they could be admitted only for a maximum period of one year, with provision for subsequent one-year extensions. In the second place, the Secretary of Labor's responsibilities under this program are formalized by requiring notice and hearing before he can certify that foreign workers are needed and by requiring him to act on certification requests within limited periods of time. I support the amendments proposed in Section 2 of the Bill as an improvement of the present statutory provisions. However, I would suggest that authority be given to the Secretary of Labor to impose and enforce safeguards to assure proper housing, medical care, wage security, and other protective measures similar to those enjoyed by American workers. I have in mind the objections of the American labor movement to the Bracero Program and the safeguards I propose would seek to avoid their objection that the importation of foreign workers in the past has enabled some employers to undercut the wages and working conditions of American workers.

I also want to express my complete support of Section 17 of the Bill, which eliminates the charge against the Western Hemisphere quota of status adjustments granted to Cuban refugees. I have always believed that the administrative practice of charging such adjustments to the Western Hemisphere's numerical limitation rested on a misinterpretation of the legislative purpose. In my view, Congress wished to grant lawful status to Cuban refugees, without regard to the normal numerical limitations. The adoption of Section 17 would correct this administrative error, and would alleviate the excessive burden placed on the Western Hemisphere quota by the administrative practice.

In concluding this statement, I want to observe that while I have expressed some reservations, in general, I find S-3074 to be well-designed legislation.

This is the first time, in some years, that your Committee has considered amendments to the immigration laws. Since any legislation that emerges from your deliberations may accomplish major changes in those laws, I have taken the liberty of bringing to your attention a number of additional changes I regard as important.

I appreciate this opportunity to express my views.

STATEMENT OF CHARLES GORDON, FORMER GENERAL COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE

Mr. GORDON. I appreciate the opportunity to appear before you, and I will try to summarize the 25-page statement that I have submitted.

As you have said, I was formerly General Counsel of the Immigration and Naturalization Service. I am also chairman of the Committee on Immigration and Nationality of the Section of Administrative Law of the American Bar Association.

I had hoped to be able to speak here totally for the American Bar Association, but unfortunately, your time limitations and the internal

procedures of the American Bar Association don't mesh. They are in the process of approving or disapproving the things that we have recommended. But in the meantime, there has been consideration by our committee and by the American Bar Association's Section of Administrative Law of some of the major features of the pending legislation. In testifying here today, I hope to indicate the portions of my statement in which I speak only for myself, because I still have not gotten approval to speak for the American Bar Association.

I should like your indulgence to incorporate in your hearing record a statement in the near future, regarding the position adopted by the American Bar Association on other aspects of the legislation, if such action is forthcoming.

Senator FONG. You may submit that.

Mr. GORDON. Thank you.

Now, I think we will go immediately to the main issue, and that is the question of sanctions. That, of course, is a matter that has been of concern to the administration. I was part of the administration for many years, and I was involved in the formulation of much of this legislation. Of course, now I appear in a different capacity, and my point of view is somewhat different.

The pending bills, your bill and the House bill, both propose to impose sanction on employers who knowingly employ illegal aliens. S. 3074, unlike the House bill, would limit the sanction to civil penalties.

Now, our committee, the committee of which I am chairman, has considered this legislation, and the feeling of the committee was that this legislation should be opposed. That also was the recommendation of the Administrative Law Section of the American Bar Association. At this time, neither of us can speak officially for the American Bar Association. Our recommendation to oppose this legislation is now before the Board of Governors of the American Bar Association, and their action will be communicated to your committee.

Senator FONG. If you oppose it, what alternatives are there?

Mr. GORDON. There are alternatives. I think first we have to determine what the problem is, if there is a large enough problem to warrant such an extreme solution. Unfortunately, we have very little information as to the size of the problem. All we have are guesses. People tell us there are millions of illegal aliens in the United States, but there is no substantial evidence to support these estimates.

Senator FONG. Since you have been with the Immigration Service, does the figure 8 million sound reasonable to you?

Mr. GORDON. In my opinion, it is much too high.

Senator FONG. Two million?

Mr. GORDON. I am not in the business of producing statistics. However, I hope the Government will be able to develop more reliable information from the several studies now being made.

Senator FONG. They caught 700,000 illegal aliens last year. Now, as one who has worked for the Immigration Service, would you say that figure would be about 10 percent of the illegal aliens now in the country?

Mr. GORDON. Well, it is time that 700,000 were caught. Of those, 90 percent or more were Mexicans. Many of these are repeaters so you

cannot tell whether this is a true figure of the number of aliens actually involved. In my judgment, there is a figure somewhat lower than 700,000 which represents the number of apprehended Mexicans who have come in illegally. In other words, I do not believe the fact that 700,000 illegals from Mexico have been apprehended is a reliable index of the number of illegals actually in the United States. The published estimates are just guesses without any factual basis.

What we need are two things.

Senator FONG. But the Commissioner said that his Regional Directors arrived at that figure.

Mr. GORDON. They made guesses and he accommodated the guesses.

Senator FONG. And they came to a figure of 8 million.

Mr. GORDON. Everybody agrees that there is a problem, but no one can really tell us how big the problem is or what effect it may have on the economy or welfare of the United States. There are studies under way. There are several being conducted by the Government agencies; one is being conducted by a Presidential interdepartmental task force; another has been commissioned by Immigration and Naturalization Service; a third is being conducted under the auspices of the Department of Labor.

I think that we need to find out what is the size of the problem.

Senator FONG. How would you find out?

Mr. GORDON. Well, they have statistical ways of doing this.

Senator FONG. I was not too impressed with the statistics that they came up with.

Mr. GORDON. I leave that to the experts.

Senator FONG. I wish they were here.

Mr. GORDON. Well, I leave that to the people who are hired to make the study because they are paid to do it. Beyond that I cannot tell you what the number of illegals is. But let's start with the assumption that we have a big problem. I have no doubt that it is big and that there are many illegals in the United States. But before supporting any remedial measures, I think we should have some solid information regarding the effect the existence of these people has on the American economy. That, obviously, is an important factor in our approach to this problem, and it is information we do not have. Nobody has ever made a study to determine whether the people who are coming here illegally are doing work which American workers would perform.

Now, a lot of people say, and there may be some basis for such a belief, that the illegal aliens that come here are performing jobs which you cannot get Americans to do. I think that is undoubtedly true to some extent, but I would like to find out more about this situation before a measure so extreme as this is adopted. In my view, the proposed measures to cope with illegal aliens would result in a complete change in our philosophy and the way that we do business. If there is a serious enough problem, if they are taking away jobs from American workers, then I think that we ought to do something about it. But if they are not, if that is an imaginary problem, then I wonder whether such an extreme measure is warranted. And our committee feels that way for several reasons.

First, of course, the fact that there is not enough information. But, beyond that, our committee felt that the adoption of this measure

would lead, unquestionably, to discrimination against people with dark skin. We felt that it was a danger of provoking added discriminations against a large segment of our population including American citizens and aliens entitled to work.

Senator FONG. I felt that there was this danger so I have an amendment requiring official compliance with the Civil Rights Act.

Mr. GORDON. Well, I would like to study that, too.

Many of the lawyers in our group felt that this would place an intolerable burden on employers because they would also have to act in effect as enforcement officials and make determinations regarding citizenship status, immigration status, and so forth.

Therefore, at the present time, unless the current studies come up with something which we do not know of now, our group, still not representing the American Bar Association, feels that, at the present time, such legislation is not warranted. We would like to wait until there are studies giving us more information determining the size of the problem, and whether such measures are necessary.

Senator FONG. Your recommendation would be that we eliminate all of the sanctions from this bill, is that it?

Mr. GORDON. For the present time, until there is more information.

Senator FONG. Could we address ourselves to some of the other problems?

Mr. GORDON. I would be glad to address myself to the other provisions of S. 3074.

On adjustment of status. Again, I cannot speak for the American Bar Association because we have not come to an official position, but I must tell you that our committee has studied this provision, and the administrative law section has studied it, and our view is that in general the amendments made by, or proposed by, the bill are good amendments.

We have some reservations. There are, in our opinion, good and bad features of these amendments.

We favor elimination of the preclusion adjustment of statutes for aliens born in the Western Hemisphere, because that in itself is a discrimination without reason. It seems that this preclusion became law because of a historical accident—someone told the House committee in 1965 that there was a problem with nonimmigrants coming from the Western Hemisphere who violated their status. And lo and behold, there appeared a preclusion of adjustment of status for such aliens. There is no reason why they should not be treated like other people, and each case, as it appears in that category, should be treated on its own merits.

We strongly support the provision of the bill that would eliminate that provision.

We also support the proposal which would eliminate the preclusion of adjustment of status for aliens who enter as crewmen. We think that that, too, has outlived any usefulness that it had in the past. The theory was, as Mr. Carliner said, that crewmen presented a different problem, and therefore, we ought to adopt this measure to discourage violations by them.

But the fact is that the problem is much less than it was. There are some crewmen who desert. There is no doubt of that. There are some visitors who stay beyond their time. There are all sorts of violations of

the law. But there is no justification, in my view, for treating this one class of violators any differently from the others, for condemning the good with the bad, the deserving with the undeserving. Adjustment of status is a discretionary remedy, and the Attorney General can take into account any violations by the applicant, in determining whether relief should be granted. There is no reasonable justification, I believe, for denying this relief to all aliens who originally entered as crewmen, regardless of the family ties or other humanitarian considerations presented by their cases.

We therefore recommend, at least those of us who have acted so far, that each case should be treated on its own merits and that the absolute preclusion of adjustment of status for aliens who entered as crewmen be eliminated.

Now, there is one other feature of this proposal that I would like to address myself to, and that is the barring of adjustment of status of for those who take employment illegally. We are against it.

Senator FONG. That is really a rough sanction.

Mr. GORDON. We think that is another one of those meat-ax approaches which indiscriminately strike at the good and the bad. We think that approach is wrong. What does it accomplish?

First, the barring of residence benefits does not protect the American labor market. The American labor market is protected by provision for a labor certification, and if the applicant can get a labor certification, he should be eligible for adjustment of status.

Senator FONG. What percentage of the adjustment cases would be eliminated if you really had such a provision?

Mr. GORDON. Most of them.

Senator FONG. Fifty percent, seventy percent?

Mr. GORDON. Quite a large portion would be eliminated. I think 50 or 70 percent might be a reasonable estimate. But I am just guessing as you are. Many of such applicants have American citizen relatives, such as wives and children, and that is the basis on which they get an adjustment. We think that it is wrong to deny them benefits because they took jobs in order to support their families.

The fact that they took illegal employment can be taken into account, as it is now, as one of the elements in determining whether discretion shall be granted or denied. But again I say it is wrong to impose a blanket prohibition against granting adjustment of status, barring the good and the bad alike. I think that each case should be considered on its own merits.

Senator FONG. I am concerned about that section. I share your concern. I hope that something will be done about it in committee.

Mr. GORDON. Now, as to the amnesty provision, so called, or the provision in S. 3074 to advance the date for the so-called registry relief from 1948 to 1968. The House bill, as you know, has a provision somewhat similar but nowhere near as satisfactory.

This proposal in S. 3074 will provide needed relief for many deserving aliens; however, we think it unwise to fix a special date for the commencement of the alien's presence in the United States, since this creates the need for subsequent amendments to move forward the eligibility date for relief.

We favor the general approach in Senator Eastland's bill. We think that this is a step in the right direction. It would be reasonable to give

benefits to persons who have been here since 1968 to enable them to adjust their status and get permanent residence. However, we have a couple of reservations here, too.

First, we suggest that fixing a date, a cutoff date for seeking such relief, is not desirable as experience has demonstrated in the past—

Senator FONG. You want a running date?

Mr. GORDON. We would favor fixing a number of years of qualifying residence, 7 years, 5 years, 3 years, 10 years, whatever the committee decides, because otherwise amendments advancing the cutoff date are needed every few years. As Senator Eastland's statement points out, 20 years has elapsed since the last such amendment. So you have to wait until somebody gets behind such an amendment and pushes to advance it. Therefore we are suggesting that the measure include a provision for qualifying residence of a certain limited number of years, rather than a specific date.

Senator FONG. That would enable him, the alien, to stay if he succeeded in hiding out for 7 years.

Mr. GORDON. Well, it is like any other discretionary remedy.

Senator FONG. Because we do not have that running date, I do not know whether they could adjust. As you well know, there is a running date for suspension of deportation. There is a 7-year date for that.

Mr. GORDON. Mr. Chairman, the same argument was made when suspension of deportation was proposed. Some argued that allowing this relief would encourage people to hide out while qualifying for such benefits. But that is no reason, in my opinion, for denying the authority to grant relief in deserving cases. In exercising his discretionary authority the Attorney General would determine whether there is sufficient hardship, if there are sufficient humanitarian reasons that have arisen to warrant granting of relief.

Now those who are on the staff of your subcommittee, my fellow alumni from the Immigration Service, know that in the course of administration of the law, many situations of extreme hardship come up, and sometimes the law is so inflexible that the administrative authority cannot do anything. There is often no provision in the law that can help them.

Now, what has happened? Before the suspension of deportation provision was adopted, the administrative authorities with commendable humanitarian concern, said that they must do something about these cases, so they adopted a system of burying such cases where nobody could find them, until Congress acted. Now the same situation exists where many situations of extreme hardship have developed because of the inflexible provisions of the law again prompted by commendable humanitarian concern, the administrative authorities have developed a so-called nonpriority program, the name of which was recently changed to deferred action program, to bury cases involving excessive hardship in inactive files, because they cannot get relief under the present law. Sometimes it later becomes possible to provide relief in such cases because of a change in circumstances or in the law.

Senator FONG. Or in the regulations.

Mr. GORDON. Here I speak for the American Bar Association. We think that the way the law is set up now the opportunities for providing relief in deserving cases are fragmentary and inadequate. No-

where does it cover the whole waterfront. There are gaps in the law where the Attorney General cannot do anything. And the American Bar Association, in this instance acting officially, has proposed that there be a complete change in all of those provisions, eliminating the present fragmented provisions for discretionary relief, and replacing them with a single, comprehensive authorization to grant relief in deserving cases. We would propose that the Attorney General be given the authority to waive deportability for those who have close families here, those who have lived here for a prescribed number of years, and those whose services would be beneficial to the United States.

And then we also point out, again I speak for the American Bar Association, that there has been an even greater gap in the Attorney General's authority to act in the cases of people who seek to come to the United States for permanent residence.

Very often the law does not permit the Attorney General to alleviate situations of excessive hardship, even though the most excruciating humanitarian concerns are exposed, sometimes entailing the permanent separation of families.

Senator FONG. Do you think that the Secretary of State should have the right of review?

Mr. GORDON. Yes. This is the third thing. Again, I speak for the American Bar Association. We think that is a mistake in the law, in forbidding the Secretary of State to review erroneous decisions of consular officers.

Senator FONG. Will you allow an appeal to the court, or would you say that the Secretary's decision should be final?

Mr. GORDON. That is up to the Congress. If the Congress feels that they should not appeal to the court then it can make specific provisions to that effect in the statute.

Senator FONG. Well, I do feel that the concepts should not have the last word.

Mr. GORDON. I think that is an erroneous and improper situation.

Senator FONG. That is one of my amendments that I had put in.

Mr. GORDON. I share the Senator's concern and I certainly endorse that change. I think that is a preposterous situation, where the Secretary of State, with his enormous prestige and authority, cannot correct an erroneous or improper decision of a subordinate officer. And then, of course, as with the exclusion provision, the American Bar Association favors the change that you have proposed, to eliminate the statutory provision which forbids the Secretary of State to review a consular decision denying a visa.

Senator FONG. We should appreciate your suggestions. Would you look at the amendment that I have introduced and the bill that I have introduced and give us your comments on them?

Mr. GORDON. Let me just conclude what I started to say on this. I hope the committee gives the Attorney General the discretionary authority to waive grounds for exclusion. There should be authority to consider close family relationships and other situations involving excessive hardship.

Senator FONG. Given flexibility there, where we have not covered it, the Attorney General could use his discretion?

Mr. GORDON. Very definitely. And I hope that the committee will consider such an amendment.

Now, to get to another major concern, the Western Hemisphere quota. I believe the proposals to correct the present anomalous situation in regard to the Western Hemisphere are long overdue, and I hope the committee will give first priority to adopting this urgently needed amendment.

First, I can see no sound reason for continuing the separate quotas for the Eastern and Western Hemispheres, since this bifurcation may suggest continued discrimination against the Western Hemisphere. As I shall show, the retention of separate quotas, in fact, would limit immigration opportunities from Western Hemisphere countries, which currently generates the heaviest volume of prospective immigrants.

Second, the bill does not adopt the previous administration proposal to make separate allocations of 35,000 visas to Canada and Mexico. I believe such a proposal properly recognizes the special position of our friendly neighbors and our special relationships to them. I emphasize that the failure to make such separate allocations will bear most heavily on Mexico, since the bill would impose the 20,000 annual limitation on all countries, and thus would actually result in a reduction of over 50 percent in legal immigration from Mexico.

Senator FONG. The committee realizes that.

Mr. GORDON. Therefore, I have a couple of recommendations on the Western Hemisphere provision also. I speak for myself here, and I would like the record to show that. First, I do not think that there is any reason why there should be different quotas for Eastern and Western Hemispheres.

It happens that when the Western Hemisphere quota was adopted in 1965, this was something that happened at the last minute in the legislative process. It was a compromise, so they placed it outside the basic law. But now we are putting the Western Hemisphere quota into the basic law, and I hope that the committee will consider combining all numerical allocations into a single annual quota totaling 300,000 a year, or some such figure. But I do not see why there should be separate quotas.

In the second place, as I have indicated, I believe the way the House bill is drafted would result in discrimination against a single country. Unfortunately, this is the way the general formula would work in practice. The discrimination would be against Mexico. The administration has previously suggested that separate quotas be allowed for Canada and Mexico, 35,000 each. I support that. I think that, without such a special provision or similar provisions, what will happen is that a beneficial bill will become a detrimental bill for Mexico. I suggest that we do not want a situation where that happens because of the general 20,000 per country limitation, which would apply to Mexico and would actually reduce the present volume of immigration from Mexico from its current total of our 40,000 to 20,000, cutting in half the opportunities for legal immigration from Mexico.

To me, that does not make sense at this time when we are very concerned with the impact of illegal immigrants from Mexico. Reducing the opportunity for legal immigration would be directly opposed to our desire to discourage illegal immigration and would actually add to the enormous pressures for illegal immigration from Mexico.

My time has expired. I just want to say one more word and that is I enthusiastically support the provision for eliminating the charge against the Western Hemisphere quota of status adjustments granted to Cuban refugees. I have always believed that the administrative practice of charging such adjustments to the Western Hemisphere's numerical limitation rested on a misinterpretation of the legislative purpose. In my view, Congress wished to grant lawful status to Cuban refugees, without regard to the normal numerical limitations. The adoption of section 17 would correct this administrative error, and would alleviate the excessive burden placed on the Western Hemisphere quota by the administrative practice.

Thank you, Mr. Chairman.

Senator FONG. Thank you for helping us with this matter.

The committee is adjourned until 10:30 tomorrow morning.

[Whereupon, at 11:45 a.m., the subcommittee adjourned.]

Mr. Lincoln has written, I just want to say one more word and that is I enthusiastically support the provision for obtaining the status against the Western Hemisphere. I have always believed that the administrative of Cuban relations, I have always believed that the administrative practice of changing such adjustment to the Western Hemisphere's national limitation based on a misinterpretation of the legislative purpose. In my view, Congress wished to grant treaty status to Cuban refugees without resort to the normal national limitations. The enactment of section 11 would correct this administrative error and would eliminate the excessive burden placed on the Western Hemisphere by the administrative practice.

Thank you, Mr. Chairman.

Senator Ford: Thank you for helping us with this matter. The committee is adjourned until 10:30 tomorrow morning. [Mr. Ford rose at 11:45 a.m. the subcommittee adjourned.]

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

THURSDAY, APRIL 8, 1976

U.S. SENATE,
SUBCOMMITTEE OF IMMIGRATION AND NATURALIZATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:35 a.m., in room 2228, Dirksen Senate Office Building, James O. Eastland (chairman) presiding.

Present: Senators Eastland and Fong.

Also present: Ed Loughran, staff director; Sidney Rawitz, special counsel; Mark Hazard, professional staff member.

Senator Fong. This morning the subcommittee will hear from the Department of Health, Education, and Welfare. The Department is represented by the Honorable William A. Morrill, Assistant Secretary for Planning and Evaluation.

Mr. Morrill, please identify your colleagues and proceed with your statement.

STATEMENT OF DR. WILLIAM A. MORRILL

Dr. MORRILL. Mr. Chairman, I have with me Mr. Nicholas Norton on my left, from the Social Rehabilitation Service, the agency which oversees the public welfare programs; on my right Mr. Walter Rubinstein, from the Social Security Administration.

I have submitted and have prepared testimony. I can either read it, or, if the Chair would prefer, I would summarize the key points of it.

Senator Fong. Your statement will be received in the record in full. You may summarize it, if you wish.

Dr. MORRILL. Thank you, sir.

[The prepared statement of William A. Morrill follows:]

STATEMENT OF HON. WILLIAM A. MORRILL, ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and members of the subcommittee: I am William A. Morrill, Assistant Secretary for Planning and Evaluation at the Department of Health, Education and Welfare and I am pleased to appear before you today on behalf of Secretary David Mathews.

Accompanying me are Mr. Nicholas Norton of the Social and Rehabilitation Service and Mr. Walter D. Rubinstein of the Social Security Administration.

I would like to start with a very brief overview of the Department's involvement with this issue, and then discuss S. 3074 as it affects the Department.

The issues surrounding immigration and particularly illegal immigration should be seen from the perspective that they are neither new or susceptible to easy resolution. Efforts to cure problems surrounding controlled immigration can

potentially create new problems in the process of resolving old ones. Therefore, new actions need be approached with caution.

As the United States has grown economically and socially, it has attracted individuals from countries with fewer resources and less opportunities than our own. While we have a firm responsibility for protecting our citizens through sound immigration policy, we also should not overlook the contributions and needs of those who come here.

Our immigration policy must strike that sensitive balance between overburdening the Nation's resources, on the one hand, and denying appropriate assistance on the other.

As you know, population movement into the United States is primarily the responsibility of the Immigration and Naturalization Service within the Department of Justice. But since it is impossible to separate considerations regarding immigration policy from domestic issues relating to aliens, whether legal or illegal, HEW has become involved with immigration questions in a number of ways:

For example, as is required by statute, the Department's Supplemental Security Income program provides assistance only to citizens or aliens who are in this country legally.

In addition, the Supreme Court, in the 1971 landmark case of *Graham V. Richardson*, decided that State statutes which deny Federal or State supported welfare benefits to all aliens who have resided in the United States fewer than a specified number of years violate the equal protection clause of the Constitution. Pursuant to that decision, the Department does not permit States participating in the AFDC or Medicaid programs to discriminate against legal aliens.

There has recently been broad Executive Branch activity in this area. In January of 1975 the President established the Domestic Council Committee on Illegal Aliens. Chaired by the Attorney General, this committee has the task of developing, coordinating and presenting to the President relevant policy issues that cut across agency lines, and promoting policies for dealing with this problem. HEW Secretary Mathews is a member of this committee.

A second committee, which is chaired by the Department of State, is the Inter-Agency Committee for the Study of Problems Relating to Illegal Mexican Migration to the United States, and it is concerned with the international Mexican and American issues involved. This committee, to the extent that its dealings involve issues important to internal domestic policy formulation, serves as an advisory group to the Domestic Council Committee. However, the specific charge of this body is to focus its study on Mexican illegal immigrants and related problems. I serve, for the Secretary, as the Department's representative to this group.

I would like to discuss with you our concerns relating to this bill. We are specifically concerned with Sections 9 and 13 because they would have a direct bearing on the activities of the Department.

Under current law, an alien legally here who, within five years, becomes institutionalized at "public expense" due to mental illness, or becomes a "public charge", is subject to deportation unless the alien can show that his situation is attributable to causes arising after he arrived in the United States. The terms "public charge" and "public expense" have come to mean that the alien has become legally liable to repay an expense incurred, that demand for payment has been made, and that he has refused to pay. Section 9 of S. 3074 would eliminate these requirements which have given specific meaning to the terms "public expense" and "public charge".

This change would create major problems. First, the concepts of "public charge" and "public expense" would now become so vague as to provide little guidance regarding the types of publicly supported services to which an alien legally living here would be entitled without subjecting himself to possible deportation.

The concept "public charge", stripped of its administratively defined boundaries, may well be unconstitutionally vague. This vagueness would be compounded by the fact that the burden of proof would rest on the alien to show that the causes for his receiving public assistance arose after he entered the United States.

Second, enforcement of these provisions would require this Department to furnish the Immigration and Naturalization Service with detailed information on all aliens who, within five years of entry into the United States, received services or assistance under any of our direct or State programs.

Since the majority of our programs are administered through grants to the States, we do not maintain at the Federal level personal information on the recipient population. While at times we do generate tabulations on specific groups within the service population to review program impact information, our capacity is presently limited to aggregate data.

Aside from the difficulties involved, we feel that Federal collection and retention of personal information for this purpose would be inconsistent with recent Congressional actions in the field of privacy.

In addition to the operational problems I've outlined, it is important to remember that in some cases aliens may require aid just as any one of us might on occasion. As a matter of policy, the Department believes that it would be inequitable to make legal aliens face deportation in the event that they accept any public assistance since such legal aliens who work are obliged to pay taxes to support such public services.

If Section 9 is enacted, there is a good possibility that many aliens who need assistance would not seek it for fear of deportation. In addition to obvious personal consequences, there could also be negative repercussions for society at large in the event, for example, that a contagious disease were to go untreated or unreported.

I would like to move now to Section 13, the other part of this bill which is of direct interest to us.

This section would require that the Secretary of Health, Education, and Welfare provide to the Attorney General the name and most recent address of any alien who is not a permanent resident, a parolee, or a conditional entrant, and who is receiving assistance under the provisions of the Department's Supplemental Security Income (SSI), Medicaid or AFDC program.

We feel that this section duplicates existing law. Under 8 U.S.C. 1360(b) and (c), the Department is now required to furnish to the Immigration and Naturalization Service on request any information that may be contained in the Department's files relating to the identity and location of aliens residing in the United States.

In addition, the three programs cited do not qualify illegal aliens. All applicants are presently required to submit evidence of U.S. citizenship or qualifying alien status, or assistance is not provided.

Further, the Medicaid and AFDC programs are administered by the States. In any case, then, HEW does not collect or retain beneficiary identification data. This is the responsibility of State and local administering officials.

In summary, I would like to point out that both the Domestic Council and the State Department Interagency Committees are looking at this complex problem as part of their overall examination of the issues of immigration. The committees are scheduled to report to the President later this year and may be able to provide additional insights into this most difficult area.

At this time we would recommend against sections 9 and 13 for the reasons I have shared with you.

Mr. Chairman, this concludes my prepared testimony. I will be happy to answer any question you may have. Thank you.

Senator FONG. Now, going back to section 9, you said here that "public expense" is a difficult word to define; is that correct?

Dr. MORRILL. Yes, sir.

Senator FONG. Now, you are familiar with all of the programs your agency administers. Could you give us something that we could fit in there? You know what we are really trying to get at.

Dr. MORRILL. The definitions that have been used over time have been ones that we can administratively cope with.

Senator FONG. For example?

Dr. MORRILL. Under the current practice there is a series of steps where the individual who is liable to pay, it is demanded and then he refuses, that is a definition that we have coped with and can administer, we believe.

Senator FONG. What do you consider now as being a "public expense"?

Dr. MORRILL. Well, it applies largely to people who are either institutionalized and the demand is made that they repay, and they refuse; that triggers a whole set of actions. That is a fairly specific set of definitions, we have used that. We think that is probably satisfactory when taken in combination with the major assistance programs; that is, in the medicaid and welfare programs, where we screen out the illegals as part of the eligibility process. We have a screening, we think, which adequately deals with the high-cost items. When you get in the areas such as some of the indirect services programs, the public health ones, we doubt whether you would really want to try and get those included. The administrative problem, to go further than we have now, would almost be impossible for us.

Senator FONG. The old law uses the words "public charge," and then, according to what has evolved, if the Federal Government, after demand, is repaid for the expresses incurred as a result of the person's becoming a public charge, you have not been able to do anything about it. Here we are probably trying to use something like that definition. The words here, "institutionalized at public expense," you don't think that is definite enough?

Institutionalized at public expense; the word "institutionalized" defines it more narrowly.

Dr. MORRILL. That clearly would help in the direction of being clearer. I guess I would want to take a look at that and perhaps respond in more detail later, as to whether that covers all the situations. That clearly defines it more narrowly and therefore makes it more possible for us to administer.

Senator FONG. As I understand it, you have several hundred programs?

Dr. MORRILL. More than 370, sir.

Senator FONG. Any person can have some benefit out of a program, and you are afraid that would apply to all the programs.

Dr. MORRILL. Yes.

Senator FONG. If we used the word "institutionalized," that would narrow it down.

Dr. MORRILL. That would narrow it down, yes.

Senator FONG. So, within the concept of the words "institutionalized at public expense," would you see what you can come up with—some comments as to what your Department anticipates will be the results of the use of this language?

Dr. MORRILL. Yes, sir; and then, if we could respond for the record in somewhat more detail subsequently.

Senator FONG. We then would be able really to pin it down. I don't think we intend here not to give any services at all in the 300 programs. It's the big programs we are talking about, where the person becomes institutionalized and becomes a real public charge. I think those are the things we are thinking about. If you could help us on that, we would be grateful.

Dr. MORRILL. All right, sir.

Senator FONG. Now, we go to the other ways in which the Social Security Department is asked to submit data relative to illegal aliens. What are you doing now?

Dr. MORRILL. I will ask Mr. Rubinstein to talk about how the process works in the SSI program that Social Security administers.

Mr. RUBINSTEIN. Essentially, the program restricts entitlement to citizens, or aliens who are admitted for permanent residence.

Senator FONG. Is that applicable to social security and supplementary payments?

Mr. RUBINSTEIN. That's right. The SSI, the supplemental security income program, which is the general fund, the general revenue part of the program, is specifically restricted to those categories.

Senator FONG. You don't apply it to medicaid.

Mr. RUBINSTEIN. No; medicaid is not part of it.

Dr. MORRILL. If we could do the SSI program, in which you have a statutory requirement, then we could say what's happening in the State-administered programs, the welfare and medicaid.

Senator FONG. I don't think we are really talking about medicaid. Medicaid is really a temporary thing, isn't it? A man doesn't get medicaid permanently?

Dr. MORRILL. If he is a person on welfare, an AFDC case, he is also eligible for medicaid; if they are low income, a single-parent family, they may be eligible for receiving both welfare and medicaid, although their expenses are, as you say, when they are ill. They may be eligible for that program for whatever period they are on the welfare program.

Senator FONG. You have no list of those who are under welfare.

Dr. MORRILL. Those are maintained at the State level.

Senator FONG. Could you, for example, ask the States to designate those people who are on welfare and cannot show that they are legal aliens?

Dr. MORRILL. We have a regulatory requirement on the States that they serve only those, as in the case of SSI, it's a parallel requirement; they serve those who are here in a legal status and not those who are not. The way that is administered, the State must, as a part of its State plan, which is a massive plan of the State for how it runs the welfare and medicaid programs, it includes that requirement, and how they intend to carry that out. Then we provide them with assistance, and we oversee their performance of that. But the actual rolls, case roll records, are maintained at State, or in some cases county levels.

Senator FONG. You see, the problem here is not only whether you are an illegal alien who becomes a public charge or is institutionalized at public expense of welfare. We are also talking about illegal aliens. We are talking about aliens who come in and within 5 years become a public charge. With this in mind, you have to differentiate between the illegal alien and the legal alien who becomes a public charge within a 5-year period. You now don't make that distinction?

Dr. MORRILL. No. Legal aliens can be, and are served in welfare programs, like anyone else in the country. I think your definition of "institutionalized" would not apply to the average welfare case; they are not an institutionalized population, they are living at home, or what have you.

One of the questions, I think, you would be interested in, in terms of institutionalization, whether that applies to somebody who is temporarily hospitalized for illness, or a longtime care setting; would they be treated as institutionalized, and if they were, I think that would create some problems under that definition. As to whether an

elderly person who was an alien and became ill, and was put in a long-term care setting, a nursing home, for example, would they be liable for repayment.

Senator FONG. I think what we are trying to reach here is not the situation where after an alien is legally admitted and then he gets a disease—what we are concerned about is if he had the disease before he immigrated and is now institutionalized. It would be that type of disease we are talking about. Or, if he refuses to work, for example, and is goldbricking on the Government. These are the types of situations we are talking about.

For those aliens who are legally here, how would you be able to find out when he is institutionalized at public expense?

You see, you have those 5 years within which you are concerned about illegal aliens becoming public charges. Because of this, you have to differentiate between those aliens who have been here for 5 years, and those aliens who have not. How would you do it, if we asked you to do it?

Dr. MORRILL. Well, we would, as a part of the eligibility for the major programs, the two welfare programs, we would be checking on citizenship status as part of their initial eligibility.

To the extent that the term "institutionalized population" applied to the medicaid program for people who are in nursing homes, that could constitute an additional complicated administrative step for us, having also to determine with respect to that individual, the legal alien, whether that condition had occurred prior to their entry into the country, or subsequent to it. That might prove to be somewhat troublesome with a chronic condition which did not require any kind of hospitalization when he arrived, but subsequently would worsen, and did. Would the terms of that definition include them in that group, and if it did, I think that would create some problems for us.

Senator FONG. Now, if you were to require the State agencies to ascertain whether the alien has been here for 5 years or not, that wouldn't be difficult.

Dr. MORRILL. Let me ask Mr. Norton if he would want to comment on that.

Mr. NORTON. Presumably not, sir, but it would clearly add a significant administrative burden, there is no question about that.

Senator FONG. If the agency reports back to you that this alien is now institutionalized at public expense, and he has not been here for 5 years, you could have a set of rules and regulations to work that matter out in conformance with the law.

Mr. NORTON. Yes. Certainly, it is presumably perfectly feasible for regulations and procedures to be developed to carry out the law, if it is enacted: require, for example, that the State agency not only identify whether they had been in the country for more than 5 years at the time they first came to the State agency, but also if they had been in the country less than 5 years when they first came to the agency, and when the 5 years ran out, so that they would know whether the provisions in the law began to apply after the 5 years.

Senator FONG. Will you study that problem?

Dr. MORRILL. We will indeed.

Senator FONG. See how you can advise us in that matter, and make it specific so there is no question about it.

Dr. MORRILL. I might make, Senator, the general background point that if we seem to be concerned about the administrative burden as a general proposition, the welfare programs of the country that are already in the Department are getting terribly complex, they are confusing; and we tend to shy away about new, additional requirements.

Senator FONG. I understand.

Dr. MORRILL. Requirements that would add to that complexity.

Senator FONG. Well, if you required the States to proceed to obtain repayment of the money, and the States are not able to collect the money, then they could notify you. Would that, then, eliminate a lot of problems?

Dr. MORRILL. Yes; at the Federal level, but the burden at the State level is going to be there, in their processes, and adding to their cost of administration.

Senator FONG. That is the present law, isn't it, that the State should get the money back?

Dr. MORRILL. Yes; but the provision as it now stands, who is included in these concerns does not go to people who are, say, hospitalized in the long-term care, that would generally not be the case. I suppose we could get an instance or two now, under the present law. To the extent that this provision is broadened some, it may raise much more serious problems. We will look at that with some care.

Senator FONG. Study the two matters that we have discussed here. Then, if the committee wishes to cover the matters in the law, that we will be able to understand it more clearly.

Dr. MORRILL. We will do our best to draw out the implications as carefully as we can, for the committee.

Senator FONG. At this time, you are required to notify the Immigration Service of aliens who have applied for social security and who are not legal aliens; is that correct?

Dr. MORRILL. Let me ask Mr. Rubinstein to answer that specific question.

Mr. RUBINSTEIN. No; we are not at the present time notifying them. Let me explain how the situation operates.

When an individual comes in to file for a social security number, we ask him or her for identification, and evidence as to the individual's age, identity, and citizenship. If the person alleges that he or she is born in the United States, that evidence is almost invariably a birth certificate, or a baptismal certificate, which would now give no need for any evidence of citizenship.

Senator FONG. You ask for that, don't you?

Mr. RUBINSTEIN. Yes; now, that also would take care of the individual's age.

Senator FONG. Yes.

Mr. RUBINSTEIN. Now, if the individual alleges birth outside of the United States, we ask for evidence of either; if the person alleges citizenship, either the Immigration Service, the Department of State, or the appropriate court having given the citizenship. And if the individual does not have that, we will not issue a number.

But because of the Privacy Act, what we say to that individual is, we can give you a social security number if you will consent to our going to the Immigration Service to determine whether or not your allegation of citizenship is correct. If the individual agrees, we then refer the matter to the Immigration Service, and unless they notify us to stop the process, that this is not a legal alien, we will start our process going to give the person a social security number and social security card.

If the person says, "I don't want you to go to the Immigration Service," we don't go, under the Privacy Act. It has been our sense that we could not refer the matter to the Immigration Service, especially in view of the fact that the person alleges that he or she is a citizen, and is therefore covered under the Privacy Act. So, what we do is simply stop the process and refuse to issue that social security number; we will not issue a card in this particular case.

Senator FONG. Will the Immigration Service know that you have not issued a card to this person?

Mr. RUBINSTEIN. No. Again, we feel that it would be inappropriate to notify them because of the Privacy Act, which prevents us from simply furnishing information to the Immigration Service.

Senator FONG. Is there anything in the law that says you should notify the Immigration Service?

Mr. RUBINSTEIN. No; there is not.

Senator FONG. The Immigration Service has not had any reports from you?

Mr. RUBINSTEIN. Well, let me say that we did engage in a study when the act requiring age, identity, and citizenship was enacted. We, with the cooperation of the Immigration Service, decided to engage in a study of those people who said, "Don't go to Immigration," and we in effect abandoned their applications.

Senator FONG. That was not required by law.

Mr. RUBINSTEIN. No, but we did this study to see whether or not it was fruitful, there was a payoff. We accumulated some 23,000 cases, or some 20,000-odd cases in which people, when asked for the evidence, could not produce it.

Senator FONG. And you did not report them?

Mr. RUBINSTEIN. No, we took all those cases and did refer them to the Immigration Service.

Senator FONG. You did not issue a card.

Mr. RUBINSTEIN. We did not issue a card, no. Immigration Service went through about 2,900 of those 20,000-odd cases and found in fact that over half, 53 percent of that study, were actually legal aliens and entitled to work in this country.

As a result the Immigration Service came back to us and said, "This is a very poor source of paydirt for us," that they could not, in their strained position, afford the manpower to go into this area; they have more urgent use of the manpower.

So, they said, "Keep the papers from us, we really don't need them." Therefore, the net result today is that we don't refer these, which was kind of a joint decision made between us and them because it was really unproductive.

Senator FONG. Were the other 47 percent illegal aliens?

Mr. RUBINSTEIN. The other 47 percent were not found to be illegal, but were found, for various other reasons, to be nonproductive. For example, in many cases they found that when they went out to interrogate the individual on his status, they found they could not locate the individual, that he was a transient, and therefore the address given us was not a very good address. At this point I'm not really sure of all the other categories that INS found, but their ratio of apprehension of illegal aliens was so minuscule that they themselves determined that they could do better with the manpower they had by putting it into other areas.

Senator FONG. Now, I understand that if a person who is a noncitizen or a nonpermanent resident goes into a bank to deposit money, the bank says, "You get a social security card first", is that correct?

Mr. RUBINSTEIN. Yes. The Internal Revenue Law, the code, requires that every individual filing an income tax return, is purchasing stock, having a bank account, it requires the agency—whether it's the brokerage house, or the bank—to have on it his social security number. Now, the law itself does not refer to the social security number, it refers to a tax identification number. The regulations of the Internal Revenue Service, however, say that that tax identification number shall be the social security number.

Thus, an individual who opens a bank account must have a social security number, it is required, and the banks will demand that.

Senator FONG. Yes. Now, if that man came to you and said, "I want it for depositing money", you would give him a social security number?

Mr. RUBINSTEIN. Yes; but in this event, assuming that the individual does not show INS identification which permits him to work legally in this country, we will give him a number, but will annotate his earnings record at social security. Should an earnings report be put on that earnings record, it becomes an alert to us. We have, until very recently, provided the Immigration Service with information on all of those. The information which we have provided was the individual's social security number and the name and address of the employer who has reported the earnings to his account.

Senator FONG. From those facts you could tell whether this illegal alien is working.

Mr. RUBINSTEIN. That's right, and not simply the illegal alien, but for example an alien who was legally here, but for temporary purposes, and therefore without the right, legal right to work.

Senator FONG. I see. Now, if an illegal alien wanted to make a deposit and he wanted a social security card for deposit purposes only, would you give it to him?

Mr. RUBINSTEIN. An illegal alien? No. One of the requirements for the issuance of the social security card is that the individual will give us valid immigration documentation.

Senator FONG. Right.

Mr. RUBINSTEIN. Now, that documentation may show he is not eligible to work, but it's still valid, and to our knowledge he is legally in the country.

If, however, he cannot provide us with Immigration documentation showing he is a legal resident in this country, even though on a temporary basis, we will not issue the card, and will tell the individual, "You

will have to establish citizenship or the appropriate alien status; without that you'd better go back to the Immigration Service and get some kind of documentation for us." He will not get a card.

Senator FONG. I see. Are you still following the social security numbers of legally admitted aliens and temporary aliens to see whether they have other income? You are still doing that?

Mr. RUBINSTEIN. Yes, we still have that. The one thing I would point out at this time, again because we are in the midst of attempting to determine what the Privacy Act does to us, we have accumulated that; and recently we have not referred those to Immigration, although earlier we referred some 1,500 cases of that nature to the Immigration Service.

Senator FONG. However, if we should decide that you should refer this information to the Immigration Office, this would supersede the Privacy Act, would it not?

Mr. RUBINSTEIN. I would imagine it would, yes, sir.

Senator FONG. Thank you.

Would it be practical, and would it be good policy to mark a card, for example, not eligible for work?

Mr. RUBINSTEIN. We have kind of studied this and looked at it for a long period of time, and I think our own view is that it has a number of rather serious problems in terms of our own operations. Let me just lay out a few of them.

We don't know, in fact, the incidents of cases in which an alien's status changes, that is, once he is in this country temporarily, at what point, or when things change so that he becomes a permanent resident.

Senator FONG. Would that be too difficult to require him to come back?

Mr. RUBINSTEIN. Well, that is the point I'm getting to. He could come back, and we could set up some relationship with the Immigration Service to notify us. But, every time we do that, what it means is, it becomes another operation that we have in an operation which in itself is rather significant. We are giving out 9 million cards now.

Senator FONG. That determination of immigration status is really not in your province, but in that of the Immigration Service, is it not?

Mr. RUBINSTEIN. Yes.

Senator FONG. So, you are taking some of the work of the Immigration Service and calling it a burden to you.

Mr. RUBINSTEIN. Yes. Not simply as a burden to us, but I might indicate, at the present time, as a trust fund expense. The funds for that would be coming out of the social security trust funds, which, Lord knows, are a problem at this point.

Senator FONG. You do get general appropriations.

Mr. RUBINSTEIN. Yes; but the issuance of the social security card is an administrative operation which comes out of the trust fund.

I might indicate another thing, and that is our cards are issued by a computer, they are all done centrally. And in effect, to do that kind of thing, to issue separate cards, I am told by our computer people, would cause rather significant programming difficulties to assure that no person who is eligible to work gets one of these bad cards; and no person who is ineligible gets one of the good cards.

Further, I would indicate that our volume of duplicate cards, that is, people who lose their cards, misplace them, what have you, run

something between 3 and 4 million cases a year; we have to issue new ones. We have no systematic, computerized setup to assure that if we have a dual track, that is nonwork versus the work, that when a person asks for a duplicate, we assign the right kind of duplicate.

There is, however, another, rather serious problem aside from the mechanics that I think we need to recognize, and that is, under today's climate, people who go to work are seldom, if ever, asked to display their social security cards. In fact, what they are asked is, "What is your social security number". So, a notation on that card in and of itself, unless people were to look at that card, would really do little to stop an individual from working.

Senator FONG. Now, we are trying to look at it from the standpoint of the illegal alien problem. If we required something like such marking of social security cards, that could easily be done.

Mr. RUBINSTEIN. Now, if that is done, however, we run into the next problem, which is that if the alien has a card which is marked "no work" and wants to work, it becomes very clear to him and to the people who have preyed upon aliens for a long time that, "You'd better not use that card". We already have indications that there are people who are using erroneous numbers, fraudulent cards because of the fact that we have tightened up.

Senator FONG. What do you do with that information?

Mr. RUBINSTEIN. Well, we have accumulated data where we have found, for example, I am told by our investigatory staff, that they are encountering more and more situations of counterfeit social security cards. Now, these, of course, are turned over to the appropriate authorities.

Senator FONG. When you say "counterfeit", what do you mean? Do they take a number out of the air, or do they take somebody's number?

Mr. RUBINSTEIN. Well, either. The cards that we have come up with are cards which do not have a number on them, that is, they look exactly like our social security cards but are not numbered. The numbers are placed on them, and in fact, if they take a number out of the air, the odds are that it will be a good number and we will be unaware of the fact that there is a fraudulent use.

There are other indications of people who are in fact selling, giving, lending their own cards to people, saying to people, to illegal aliens, "Work in my name."

Senator FONG. So he gets a larger benefit?

Mr. RUBINSTEIN. I get a larger social security benefit. He, in fact, doesn't care about it because he's got a job, and he's got a legitimate card.

Senator FONG. You could have a difficult time because some people work three or four jobs.

Mr. RUBINSTEIN. That's right. And, you know, you really can't tell by looking at our records, in today's mobile society, that there is something wrong.

Senator FONG. Yes.

Mr. RUBINSTEIN. Teamsters, for example, work in one quarter for 10, or 12, or 14 employers. So, the mere fact that we have a posting for one individual for five employers who may be scattered throughout the United States really doesn't mean anything because people in our economy today actually do that. Actors, actresses may work on the

west coast one week and on the east coast the next week. So, the problems that we are encountering we may not even be aware of for 10 or 15 years.

Senator FONG. I can understand that.

Mr. RUBINSTEIN. And I think our concern is that when we give a person a card which he now knows he can't use, are we then opening the door up, in terms of our own social security operation, to tremendous administrative complexity in the future that may become really drastic.

Senator FONG. I appreciate that. It is a complex problem we are giving you.

Have you plans for a tamper-proof social security card?

Mr. RUBINSTEIN. We have looked into this at the time the supplemental security income program was enacted. The problem is a very, very significant cost. As I pointed out before, we have something like 3 or 4 million people who lose their cards, or who change their names, women who marry. What it would mean, we would have to replace those tamper-proof cards at the rate of about 3 to 4 million a year. We have already out in the public, we have issued some 225 to 230 million cards.

Senator FONG. When did you start really asking these applicants whether they are citizens or not?

Mr. RUBINSTEIN. March 17, or 19, 1974.

Senator FONG. In that case, for all the cards issued before that date you have no indication of the status of the holder.

Mr. RUBINSTEIN. No; there is no indication.

Senator FONG. Anybody, at that time, could get a card.

Mr. RUBINSTEIN. That's right.

Senator FONG. Only the illegal aliens who came in since that time, who wanted to work and wanted a social security card were unable to get one.

Mr. RUBINSTEIN. That's right, since March of 1974, mid-March. Now, I suppose if we wanted to go to a tamper-proof card, what it would probably do is to give immunity to every illegal alien who already had a card because it would be physically impossible—we have estimated something like one-half of a dollar, or so, to produce the cards, so, obviously, you would be talking about something like \$100 million.

But that wouldn't even be the largest cost, the largest cost would be going out and getting the public to come in so that we could change the card. I don't even think you could estimate it.

Senator FONG. Could you start such program from now on?

Mr. RUBINSTEIN. We could start from now, I suppose. The first thing that that does, it kind of validates everybody who went before, an illegal alien has a free passport, you know.

The second thing is that, even going from today would be, in the next year or two years a staggering expense. I would say a staggering expense not only because our current figures show that we give approximately 9 million cards a year, original cards, plus the 3 million, which is now 12 million, but because a large segment of the public, American citizens, would upon hearing that there are new, kind of nice social security cards, start inundating us, and we might well have—there is no way to even guess—but you might have 15, 20, 25 million people who want that new social security card.

Senator FONG. I understand that.

Mr. RUBINSTEIN. And those would not be, of course, the people that we want to look for.

Senator FONG. That leads me to the next question. Outside of civil liberties considerations, is there any objection to having a photograph on a social security card?

Mr. RUBINSTEIN. Well, for one thing, of course, it does increase the cost. And it's pretty much about the same kind of objection that the tamper-proof card has, in terms of those costs. The second thing is, I suppose, it would require us to have almost built-in reissuance of cards.

Senator FONG. Why?

Mr. RUBINSTEIN. Well, the picture would no longer be valid. See, in our particular situation the bulk, the large bulk of the population over age 18 has already received social security cards, primarily because they needed it for work, or because they filed an income tax.

The large body of people who as of today do not have social security cards are the young people, anywhere from age 1 to age 18, who have never been in a work situation and don't need it. Now, those are the people from whom a picture would probably have to be updated. That is, if you had a 12-year-old coming in today, at age 18, or 19, you know, he doesn't look the same.

So, my hunch is that if we started with a new system, to issue cards with pictures on them, not only would we have the costs, like the tamper-proof, but we would also have a tremendous reissuance problem. I might indicate also, those new people are the very ones who tend to lose their cards; and of course, in the case of a female, tend to get married and therefore require a new card because the name changes. So, in that area the more expensive card would have to be duplicated, or reissued that much more often.

Again, I suppose, you would have to weigh the value of that card in terms of what your committee is looking at, and what we in social security are looking at, as opposed to what we see as very high costs.

Senator FONG. What if you ask the applicant to pay for his card? You pay for a driver's license.

Mr. RUBINSTEIN. Yes. I honestly wouldn't want to commit an opinion on this, but obviously this is a brand-new thing. We have been in existence for 40 years, and I guess the social security card has been the kind of thing the American public took as natural, it was there. One might impose a charge, but I just wonder whether or not it's viable in terms of how people have looked at the social security card.

Dr. MORRILL. Senator, you could anticipate, I think, the kind of reaction, saying, you need this card to work in this society, and you are charging for it before they can get into the work situation, what's that all about. I think one could anticipate a very negative reaction.

Senator FONG. Could you talk to the point as what has been the criticism against a social security card as an identification card, from the civil liberties standpoint?

Dr. MORRILL. Well, let me take a crack at it, and Walter may want to say some additional things.

They worried about it, and there was a large study commissioned a few years ago when Secretary Richardson was serving at HEW. It re-

lates around the problem of the "universal identifier", and the social security card is probably the closest one to it, if in fact it is not already.

The use of that number could put one in the situation where the confidentiality, or the privacy of an individual could be invaded, not necessarily by the governmental use of that, but if this then became a common identifier for credit bureaus, and what have you; and that without protection of privacy, on how that was used, that were generally applicable, not only to the governmental side, but the nongovernmental one as well, that inappropriate invasion of privacy could occur.

I think that has been the source of our concern. In the use within the Government they tend to be proscribed in such a way that we can make use of the information for the purposes for which it was collected, or specified by law. But there is not much out there to protect the individual from what totally nonpublic entities could do with that information.

So, its general use as an identifier without those protections raises some serious civil liberties concerns, or privacy concerns. And also, the Privacy Act as a specific concern, with respect to governmental uses, it does not deal with society as a whole, where some serious invasion of privacy could well occur.

Walter, do you want to add anything more to that?

Mr. RUBINSTEIN. Yes. I would like to indicate, too, one of the problems, I think that the civil liberties theorists see—and I'm not sure they are far off—that the social security program, as it's set up, by its very nature is a very broad program which has data within its confines which is kind of staggering if one looks at a 1984 concept.

For example, we know when a person was born because we now ask for that before he gets his social security card; we know the person's name; we know every place that individual has ever worked because that's located in our files; we know whether a person was working continuously, or whether it was an off and on itinerary, that's in our files; we know whether a female was married, was perhaps divorced, changed her name two or three times. When a person becomes entitled to benefits, we know all of their medical background, if they are disabled, we have the medical history. We have the family composition of a social security beneficiary.

In fact, we have a record of an individual, it may not be perfect, but it's pretty close, from the time they are born until the end.

Now, people say, "What would happen if somebody could unlock that, what could the Government do, what could the private agencies do with that store of information" which is, you know, awfully comprehensive.

I think that is perhaps the concern when one recognizes that the social security number is really as close as possible to whatever you call a "universal identifier." Whether these concerns are real or not, they are there.

Senator FONG. So, you have more information than the FBI.

Mr. RUBINSTEIN. I think we have, Senator, in many ways more data. Senator FONG. And nobody asks you to burn the files.

Mr. RUBINSTEIN. No; and I would hope that nobody would ask us to burn them. But I think we would, on the other hand, as part of our existence, fight to the death that this ought not to be available without very, very rigid constraints, put on by the Congress.

Senator FONG. And rigid constraints have been put on it.

Mr. RUBINSTEIN. That's right.

Senator FONG. On occasion, I have been asked to help find a missing person, and you wouldn't give me any information.

Mr. RUBINSTEIN. That's true. Although we do have, for those kinds of circumstances, where there is a humanitarian concern, we will forward a letter.

Senator FONG. Yes; you will forward a letter.

Mr. RUBINSTEIN. We don't really want to use our confidentiality to the detriment of an individual. But on the other hand, you know, I might indicate that was regulation No. 1, which constrains our issuance of information. That was regulation No. 1, the first regulation put out in view of the concerns at that time; and it still is. It is perhaps our primary concern.

Senator FONG. Thank you. You have given us a very good insight into the social security problems that will be faced, and that your office faces when we put a lot of burdens on it.

Now, Senator Eastland has a question, if I may.

What are you doing to enforce your own regulations that deprive illegal aliens, and nonimmigrant aliens from receiving benefits under the SSI programs?

Mr. RUBINSTEIN. I guess Mr. Morrill spoke to the State programs. To the SSI program, the individual who files for benefits must establish entitlement to those benefits. One of the factors of entitlement is that he must give appropriate citizenship, or legal residence, legal permanent residence here; and that would be done only, again, by the birth certificate if he is born here, or by Immigration Service documentation.

So, in terms of section 13 of the bill, for example, we would look at it by saying, we really would have nothing to report to the Immigration Service because if the person is not a citizen, or a legal resident, a permanent resident, we should not be paying him, we don't have that person on our rolls.

If he is a citizen, or a legal alien, we don't have anything to report. So, there should be none of those people in that category, on our rolls.

Senator FONG. Well, thank you very much for coming to us and giving us all of this data which will be very helpful to the committee. We will stand adjourned until further notice; thank you very much.

[Whereupon, at 11:35 a.m., the subcommittee adjourned, subject to the call of the Chair.]

STATEMENTS SUBMITTED

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 17, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: I am delighted you have introduced S. 3074, and are now conducting hearings on this legislation to make certain changes in the Immigration and Naturalization Act including, most significantly, provision of penalties for employers who knowingly hire illegal aliens.

My own congressional district is in San Diego County on the border with Mexico. Illegal aliens are said to put a \$50 million-a-year burden on the local economy, mainly by taking jobs that otherwise would be held by U.S. citizens or legally resident aliens. About one-third of all illegal alien apprehensions, now exceeding 750,000 a year, are made in San Diego County. One can only guess how

many others escape detection, but according to official estimates anywhere from 4 million to 12 million illegal aliens are now in the United States.

Your wise action in introducing S. 3074 will be applauded in the area which I represent. I would suggest only one substantive change, that your legislation be amended to provide criminal as well as civil penalties for persons who repeatedly violate the prohibitions against knowingly employing illegal aliens. This is the approach that has been taken in H.R. 8713, the companion legislation approved by the House Judiciary Committee. In view of the grievous impact of illegal aliens on domestic employment, I believe the threat of a jail sentence would prove a more effective deterrent than the mere imposition of fines for would-be violators.

I would greatly appreciate this letter being made part of the record of the hearings on S. 3074 by your Subcommittee on Immigration and Naturalization.

Sincerely,

LIONEL VAN DEERLIN,
Member of Congress.

NATIONAL CHINESE WELFARE COUNCIL,
San Francisco, Calif., March 26, 1976.

Hon. JAMES O. EASTLAND,
*U.S. Senator, Congress of the United States,
Washington, D.C.*

DEAR SENATOR EASTLAND: We wish to be on the record that we are in favor of certain portions of your bill (S. 3074), which amends Section 249 to give an amnesty to certain aliens who have continuous residence in the United States since July 1, 1968, and Section 312 to eliminate a seemingly obsolete section of the law on the waiver of the requirement of the English language examination for naturalization for persons over 60 years of age.

We are under a duty to oppose that particular portion of your bill (S. 3074) which imposes civil sanction on employers of non-immigrant aliens unauthorized to work for the following reasons:

1. It brings home to us a memory of those early days when caucasian Americans in California violently rejected Chinese as workers. This page in the History of California is one that no American can be proud of today.

2. It creates new operational difficulties for Chinese American merchants. A desire to help out the financially distressing young scholars in pursuit of higher education in this country is natural and admirable. Chinese scholars have made substantial contributions toward the nation's progress in the field of science and technology.

3. It affects the chances of Americans of Oriental origin seeking legitimate employment. The general public are not experts in the field of immigration laws and can not distinguish one paper from the other. To obtain the necessary information from the U.S. Immigration Service would take months, in the meantime the position will be filled by another applicant.

Thanking you for the courtesies extended to us in the past, we are.

Very respectfully yours,

ART PING LEI,
Chairman of the Executive Board of Directors.
TOM L. FONG,
Chairman of the National Chinese Welfare Council, D.C. Branch.
FRANKLIN DEA FONG,
Attorney for the National Chinese Welfare Council.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, D.C., April 8, 1976.

SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
Dirksen Senate Office Building, Washington, D.C.

On behalf of the Japanese American Citizens League, I wish to submit for the record the attached letter in opposition to some of the provisions of S. 3074 which amend the Immigration and Nationality Act.

We appreciate your attention to this matter.

Sincerely,

WAYNE K. HORIUCHI,
Washington Representative.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, D.C., April 8, 1976.

SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION,
Dirksen Senate Office Building, Washington, D.C.

The Japanese American Citizens League wishes to oppose provisions of S. 3074 which amend the Immigration and Nationality Act.

The Japanese American Citizens League (JACL) is the largest national Japanese American human and civil rights organization in the United States. With nearly 30,000 members in over 100 chapters throughout the United States, JACL has fought for over 40 years to achieve legislation which has brought and enhanced the rights and liberties of all persons of Japanese ancestry.

It is for this reason that we oppose certain provisions of S. 3074 which are potentially discriminatory and susceptible to abuse of civil liberties.

There is no doubt that the intent of S. 3074, which is to check the flow of illegal aliens and to address the high unemployment rate in this country is an issue of merit. However, first concern must be made for the civil and constitutional rights of human beings, be they Black, Hispanic, or Native and Asian American.

A high number of Asian Americans immigrate to the United States each year. This is estimated at 22 percent of the total immigration. Japanese, Chinese, Filipino, Korean, Vietnamese, and Pacific Island peoples will be subject to discrimination by employers and referral agents because of a different language, physical feature and surname if S. 3074 is allowed to pass in its present form.

In light of the potential discrimination that might occur which would be based on race and national origin, the Japanese American Citizens League strongly opposes S. 3074.

Sincerely,

WAYNE K. HORIUCHI,
Washington Representative.

THE AMERICAN LEGION,
Washington, D.C., March 18, 1976.

MR. EDWARD A. LOUGHRAN,
Staff Director, Senate Subcommittee on Immigration and Naturalization, Dirksen
Senate Office Building, Washington, D.C.

DEAR MR. LOUGHRAN: Senator James Eastland recently afforded The American Legion the opportunity to present testimony on S. 3074, a bill to amend the Immigration and Nationality Act.

We have decided to submit the enclosed statement in lieu of a personal appearance. If additional copies are needed, please contact me at 393-4811.

Sincerely,

EDWARD J. LORD, Assistant Director,
National Legislative Commission.

Enclosures.

STATEMENT OF FRED T. KUSZMAUL, DIRECTOR NATIONAL AMERICANISM AND
CHILDREN & YOUTH DIVISION BEFORE THE SUBCOMMITTEE ON IMMIGRATION AND
NATURALIZATION SENATE JUDICIARY COMMITTEE ON

S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, March 25, 1976.

Mr. Chairman and members of the subcommittee: The American Legion appreciates the opportunity to present its views on legislation that would, among other things, make it unlawful for an employer to hire illegal aliens and to provide appropriate penalties for their action.

Since its organization, The American Legion has taken an active role in shaping the immigration and naturalization policies of our Nation and has appeared before the Congress on many occasions on specific legislation. Historically, we have addressed ourselves to the problems of the immigrant and inaugurated activities to ease his adjustment into American society and to make him a good citizen.

Our statement today is addressed to that portion of the legislation before you which proposes to provide penalties for those employers who knowingly hire illegal aliens.

Mr. Chairman, I believe it is generally agreed that the principal reason for the increased flood of illegal aliens into the United States is prompted by the anticipation of achieving a higher standard of living in this country.

Our initial concern for the problems created by increased numbers of illegal aliens was the high level of unemployment among Vietnam Veterans, particularly those Vietnam Veterans without job skills. Even today, the unemployment rate among this group is most unacceptable. The news media have reported that many unskilled jobs are being filled by illegal aliens because they will work for wages lower than prevailing rates, and under working conditions that most Americans will not tolerate. When we speak of unskilled jobs we do not mean seasonal agricultural jobs. The recession of recent months has accentuated the unemployment problems of this group of veterans.

In consideration of this situation, the 1974 and 1975 National Conventions of The American Legion unanimously adopted resolutions calling upon the Congress to provide penalties for employers who knowingly hire illegal aliens.

There are a number of other problems directly attributable to our large population of illegal aliens.

The majority of our estimated millions of illegal aliens reside in our large metropolitan centers in slum areas along with our citizens who are at the bottom of our economic ladder and this situation intensifies the miserable housing conditions facing our low income minorities.

The educational systems in these areas already plagued by overcrowding and underfinancing are further harassed by children of illegal aliens on our welfare rolls and the cost of such payment and related social and health services. Estimates have been that such payments run into hundreds of millions since most states do not require citizenship as a condition of such assistance. Compounding the welfare problem is the fact illegal aliens take jobs away from Americans and force them on to the welfare and unemployment rolls.

In the area of federal tax receipts the Internal Revenue has estimated that while illegal aliens partake of various public benefits, a substantial number fail to file federal income tax returns on their earnings or underpay their taxes resulting in a loss of \$100 million to the federal government and \$15 million to the states.

Mr. Chairman, eliminating easy accessibility to employment will not eliminate the problems created by illegal aliens but hopefully such action will reduce their magnitude to a level where they may become manageable. We would recommend that any legislation enacted by the Congress to better control the employment of illegal aliens include a provision making it an immediate crime for an employer to knowingly hire an illegal alien punishable by imprisonment and/or fine.

The American Legion further recommends that the Department of Immigration be authorized to hire additional personnel in its Border Patrol and Investigations Branch to assure that the provisions of this legislation is carried out. It is a known fact that in 1974 and 1975 the Immigration and Naturalization Service apprehended approximately 750,000 illegal aliens. Available facts lead us to believe that as the world population grows additional numbers of illegal aliens will cross our borders. Augmentation of the Border Service should help to alleviate this problem.

We appreciate the opportunity to make our views and recommendations known to your distinguished Subcommittee.

NATIONAL RESTAURANT ASSOCIATION,
Washington, D.C., March 26, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing on behalf of the National Restaurant Association to present for your consideration our views and concerns about S. 3074, the "Immigration and Nationality Act of 1976."

The National Restaurant Association is a business league of some 13,000 individual members in the foodservice industry. Through the membership in our organization of many multi-unit firms and the organizational membership of 47 affiliated State restaurant associations, we represent approximately 125,000 foodservice establishments.

As the spokesman for an industry which is the nation's largest retailer in terms of number of units, and which employs over 5% of our nation's workforce, the National Restaurant Association feels that any legislation in this area which would make the employer primarily responsible for its enforcement would be based upon conjecture and would create more problems than it would solve.

At the outset, we want to make clear that our association does not condone the knowing hire of illegal aliens. We recognize the many economic and social problems the presence of large numbers of illegal aliens create and the necessity to attack those problems. We are, however, deeply concerned that the scope and full implications of the problems associated with illegal aliens are not known with sufficient clarity so as to make the offered solutions fair and workable. We fear that, in effect, solutions are being proposed before the problem is clearly defined.

The number of illegal aliens residing in this country has been variously estimated at four to twelve million. As reliable as the sources of these estimates purport to be, this great range strongly suggests that the government doesn't really know the magnitude of the problem. This lack of knowledge is demonstrated by the fact that in each of the last two fiscal years, the Immigration and Naturalization Service has asked Congress for \$1 million to study the problem. In its requests for these funds, the I.N.S. acknowledged that "without knowing the actual scope of the problem, it is not possible to attack it effectively." The President's recent appointment of a Cabinet Committee to study the problem is further evidence of the lack of concrete information on this subject.

While we are greatly interested in arriving at an effective solution, we believe, and apparently the I.N.S. does too, that an effective solution requires more empirical data on the scope of this problem. To date, neither the Congress nor the government's enforcement officials possess that data. Certainly, a comprehensive study, one which would provide the Congress with a fuller and more accurate understanding of the problem, should precede the enactment of any legislation designed to solve it.

Perhaps the Lesko Study, recently commissioned by I.N.S., will provide the needed information, but its initial report is not encouraging. It has been the subject of extensive criticism. In a letter to Congressman Herman Badillo of New York, Mr. Vincent P. Barabba, Director of the Bureau of the Census, characterized the Lesko Study estimates of the U.S.'s current illegal alien population (8 million) as "based on weak and untenable assumptions." Mr. Barabba went on to say that the estimates "add very little to our knowledge of the size of the illegal alien population" and that the "overall estimate of 8 million . . . should be regarded as conjectural at best." We agree with Mr. Barabba's conclusion that "much more research needs to be conducted" and with Congressman Badillo's expressed hope "that the rest of the money will be spent on research which provides more accurate information."

On March 17, 1976, in testimony before your Subcommittee, on behalf of the Justice Department, I.N.S. Commissioner Chapman, asserted that the provision in S. 3074 making it unlawful to knowingly employ an illegal alien "will have two benefits if it becomes law. One, it will immediately open up for unemployed citizens and legal aliens many jobs which are now held by illegal aliens. And, two, over the long run it will sharply reduce the incentive for illegal aliens to enter the United States."

The basis of the several legislative proposals on this subject, including S. 3074, appears to be the assumption that it is jobs that attract aliens to our shores and encourage those who enter legally to remain illegally after their visas have expired. From this assumption, which has been readily accepted on its mere assertion, the thinking continues that if we deny them jobs, many will be dissuaded from coming, and of those already here, many will go home. In order to demonstrate the weakness of these assumptions, let us accept for a moment the estimate that there are 8 million illegal aliens in this country and also the most frequently asserted estimate that about 1 million are holding jobs. If these estimates are correct then only about 12 percent are employed or, conversely, almost 88 percent are unemployed. It seems clear that these assumptions are not based upon solid evidence, but gain most of their attraction from their simplicity and the fact that their acceptance allows the government to avoid the thorough investigation and the hard decisions we would have to make if the facts were known.

Assuming that the Department's figures are accurate, there remains a haunting question. If only 12 percent of illegal aliens are employed, how do the remaining 88 percent subsist? Some of them may subsist, as we are told, on the earnings of others in the family group who are employed. On the other hand, we are also told that a major adverse consequence of illegal alien employment is that their earnings are lost to our economy because they are sent out of the country to family groups in the worker's native country. Whatever the proportion of illegal aliens who may be supported by the earnings of other illegals, it seems clear that there must be very large numbers of *unemployed* illegal aliens who find life here more attractive than in their native land. One can easily conclude from these figures that there are as great or greater attractions than employment inducing illegal aliens to enter or remain in this country.

The only economic inducements, other than employment opportunities, are those offered by government. It follows then that various government assistance programs must provide at least the basic necessities for a large percentage of the illegal aliens and that the benefits of these programs may offer at least as attractive an inducement for illegal immigration as does the job market. In addition to the many government assistance programs, we must assume that illegal aliens avail themselves of numerous publicly-financed services, such as hospitals, schools, parks day-care centers, and so on. Recently, the Immigration and Naturalization Service received a bill from a county which had provided \$7 million worth of medical services to illegal aliens. In hearings on a similar legislative proposal in the House, a member of Congress estimated that in his district alone as much as \$150 million was being spent each year to educate the children of illegal aliens. New York City and Los Angeles estimate that each of their school systems contain some 60,000 children of illegal aliens.

We note that Section 13 of S. 3074 would require the Secretary of HEW to report to the Attorney General the name and address of any illegal alien who is receiving assistance under a number of specific government assistance programs. In its testimony, the Justice Department viewed this requirement as apparently unnecessary. We feel that whether such a requirement is "necessary" or not, it would contribute little toward keeping illegal aliens off public assistance rolls. A number of these programs already prohibit the furnishing of benefits to illegal aliens including, at least, the Supplemental Security Income, AFDC (Welfare), and food stamp programs. However, if the food stamp program is typical of the manner in which these prohibitions are enforced, the situation is not one which inspires a good deal of confidence. The *Food Stamp Certification Handbook*, issued on August 5, 1974, provides as follows:

Section 2208. Verification of Citizenship or Alien Status.

Verification of citizenship or alien status is not required except in questionable cases. Documentation or status can be more difficult for some citizens than for the legally entered alien. The problem of participation by ineligible aliens will also not be of the same magnitude in all States and localities. To require verification for all cases would, therefore, be an unreasonable imposition on the majority of eligible households and administratively infeasible for the State agency. (Pg. 31).

Furthermore, where documentation by an applicant is not available, Section 2208.8 provides that "since the same criteria exists for SSI and AFDC programs, receipt of such aid would constitute proof of status." (Pg. 34).

S. 3074 does not appear to take into consideration any "unreasonable imposition" upon employers and applicants nor the "administrative infeasibility" faced by the employer. If it is going to be made unlawful for employers to knowingly hire illegal aliens, it is only equitable to place similarly stringent responsibilities on government officials. They should also be required to ascertain the status of each and every applicant for government assistance and to deny such assistance to illegal aliens. This would be comparable to the responsibility which this legislation would place on employers to deny employment. Certainly, employers are not solely responsible for the influx of illegal aliens and, therefore, they should not have to bear the entire burden of this effort. In this context, it also seems grossly unfair to place even civil liability on employers for failure to determine the immigration status of an applicant.

There has been much discussion about this legislation's potential for dramatically increasing discrimination against those U.S. citizens whose accents and racial characteristics will cause employers to request extensive documentation. We share this concern as expressed by organizations representing various ethnic groups, by some labor unions, by church spokesmen, and by civil rights and civil liberties organizations. As the Food Stamp Certification Handbook so-

clearly points out "Documentation of status can be more difficult for some citizens than for the legally entered alien." Naturally, if he faces penalties for hiring an illegal alien, the prudent employer will be most reluctant to hire an applicant without adequate documentation.

Although this concern has merit, we feel that the risk of increased employment discrimination is reduced by legislation which absolves an employer from liability if he makes a bona fide inquiry as to an applicant's status and evidences his inquiry by obtaining a signed statement to that effect. We note that the Justice Department's March 17, 1976 testimony urged the deletion of provisions in S. 3074 to this effect. From the Department's view, these provisions may be undesirable and unnecessary for accurate delineation of conduct constituting an offense. However, they are quite necessary if "different" looking and sounding Americans are to be protected from unintentional discrimination. We regret the Department's apparent insensitivity on this point.

This legislation would also create another disturbing problem. If legislation is enacted which will effectively exclude all illegal aliens from the job market, we must then wonder what will become of the several million illegal aliens who have no means of subsistence. S. 3074 offers a partial solution at best. Section 11 would allow all illegal aliens who have resided continuously in the U.S. since prior to July 1, 1968 to have their status adjusted to admission for lawful permanent residence. We strongly support such humane action. But, what of the millions estimated to have entered after that date? Since the legislation is designed to put them out of work, will we then admit them to the public assistance rolls as public charges or will we seek to deport them all? Deportation, of course, often results in the breakup of family units with all the emotional problems that entails.

There are troubling questions and until they can be answered satisfactorily, the validity of these legislative proposals must be seriously questioned. It is unthinkable that we would deny jobs to hundreds of thousands, possibly millions of people, and then simply set them adrift in our midst with no means of support. Certainly, the American people would not condone such an act. Yet, unless we are willing to commit the resources necessary to return them to their native countries or provide public assistance, that is the inescapable result of these proposals.

In view of the lack of definitive data as to the scope of the problem involved, the unfair burdens which would be placed on employers, the possibility of discrimination against those who look or talk "differently," and the tragic personal consequences on the individuals involved, we urge that legislation in this area be deferred until we have the necessary information to measure its impact.

Sincerely,

ROBERT NEVILLE,
Washington Counsel.

LOS ANGELES COUNTY BAR ASSOCIATION,
Los Angeles, Calif., April 16, 1976.

Senator JAMES O. EASTLAND,
*Chairman, Senate Judiciary Subcommittee on Immigration and Naturalization,
Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR EASTLAND: The enclosed Statement has been submitted as part of the record in the recently conducted hearings on S. 3074. Inasmuch as the Statement was not submitted during the hearings (for the reason pointed out in the first paragraph of the Statement), we are taking this opportunity to bring it to the attention of each member of the Subcommittee.

Respectfully yours,

DAVID ELLWANGER,
Executive Director.

LOS ANGELES COUNTY BAR ASSOCIATION,
Los Angeles, Calif., April 15, 1976.

Re Senate Bill 3074.

Senator JAMES O. EASTLAND,
*Chairman, Senate Office Building,
Washington, D.C.*

GENTLEMEN: We appreciate the courtesy of your staff in permitting the submission of this statement for the record of the hearings you have recently conducted on S. 3074. Unfortunately, we did not learn of the scheduling of such hearings

until too late to request the opportunity to provide oral testimony. We respectfully suggest that, should it be determined that further hearings on the important matters dealt with by the bill or which might usefully be dealt with by the bill, are advisable, consideration be given to the holding of such further hearings in Southern California, the region where the bill will have its greatest impact.

It is precisely because the problem of aliens in the United States is of special significance in the Los Angeles region that this Bar Association has a particular interest in the problem. The Los Angeles County Bar Association is a voluntary association of lawyers (both in private and public practice) and judges, with a membership currently exceeding 12,000. In 1974 we formed a Special Committee on the Deportation and Removal of Aliens, charged with conducting an objective study of the ways in which the deportation process could be improved. The names and background of experience of the ten members of this committee are set forth on pages 2-3 of its report and recommendations (hereafter "Report"), copies of which are submitted with this statement. The committee gathered and considered voluminous evidence in the course of its work, and held public hearings here in Los Angeles; all such evidence is, of course, available to your committee should you wish it. The final Report was adopted by the Board of Trustees of the Association and made public on March 4, 1976.

A number of the provisions of S. 3074 codify recommendations contained in the Report. Certain other provisions of the proposed legislation are contrary to the recommendations of the Report. Finally, the Report urges a number of legislative changes which we consider of importance, but with which the legislation in its present form does not deal. It is the purpose of this statement to outline the foregoing matters under topical headings and respectfully to urge that S. 3074 be revised accordingly.

EMPLOYER SANCTIONS

This clearly is the most controversial portion of the Bill, (Section 12 of S. 3074), and must be met directly. In Proposal 54 at page 32 of the Report, the majority of the Committee expressed its opinion that the burdens of placing responsibility for immigration law enforcement on employers, and the imposition of sanctions for their failure to do so, outweighed the benefits of any such provisions. The Report reflects the consensus of the majority of the Committee that the imposition of such responsibilities is not legally practicable and that the impact would fall most heavily and unfairly upon those persons who are least able to bear that burden. It was the opinion of a minority of the Committee that it should be a crime for an employer knowingly to hire an alien who is in the United States without proper authority. It was the opinion of at least one member of the Committee that this is the only practical method to attempt to stop the influx of illegal aliens into the United States. The minority of the Committee favors the amendments proposed in Section 12 of S. 3074, but the majority of the Committee is opposed to said amendments.

AVAILABILITY OF TEMPORARY FOREIGN LABOR

Section 2 of S. 3074 is fully consistent with Proposal No. 55 of the Report, which Proposal unanimously recommended the adoption of a prompt and effective means of obtaining foreign labor when unavailable locally. Proposal No. 55, at pages 33-34 of the Report, reflects the unanimous conclusion of the Committee that current procedures for obtaining temporary laborers are inadequate, and that the Department of Labor involvement in the procedure currently does not produce the desired results. Section 2 of the Bill in recommending amendment to Section 101(a)(15)(H)(ii) of the I.N.A. is a provision which is long overdue, and which has the support of the Committee.

ELIMINATION OF THE DISTINCTION BETWEEN EASTERN AND WESTERN HEMISPHERE NATIVES

In Proposal 42 of the Report the Committee noted that hardship and confusion currently flow from the discrimination between natives of the Eastern and Western Hemisphere countries, and the Committee recommends the abolition of such distinction. The Report endorses such proposed amendments contained in Sections 3, 4, 6, 8, and 10 of S. 3074, insofar as such proposed amendments eliminate this discrimination. The Report contains no position on any other proposed amendments contained in those Sections, such as the per-country limitation of

20,000, or the elimination of the labor certificate exemption for parents of U.S. citizens currently enjoyed by Western Hemisphere natives, inasmuch as such specifics were not considered at the time of preparing the Report.

STATUTES OF LIMITATIONS

Proposal No. 21 at page 18 of the Report recommends the re-establishment of statutes of limitation to govern the grounds for deportation. The current state of the law, in essence, provides for deportation upon specified grounds, without reference to the number of years which may have passed between the time of the acts providing the grounds, and the initiation of deportation proceedings. Section 11 of S. 3074 partially corrects this serious omission by re-establishing a "registry" date for those persons continually present from July 1, 1968. It should be noted that since the previous registry date of June 30, 1948, became virtually obsolete through the passage of time, the concept of a statute of limitations which "floats", 8 years prior to application, is more fully consistent. This proposed amendment is supported by the majority of the Committee. A majority of the Committee also would recommend additional amendments to establish statutes of limitation for other grounds of deportability (other than entry without inspection), perhaps applying different periods of limitation according to the seriousness of the ground of deportation. This is the practice in other areas of civil and penal law. A majority of the Committee supports the proposed amendment of Section 11 of S. 3074, and further recommends the additional amendments discussed herein. One member of the Committee opposed the adoption of any statute of limitation which would mean that after a period of time an alien who either entered the United States illegally or overstayed the period of time he or she legally was entitled to remain in the United States cannot be deported. The reason stated for such opposition was that while thousands of aliens awaiting to enter the United States legally, it is extremely unfair to "reward" an illegal alien simply because he or she was able to avoid detection and deportation for a period of time.

REPORTING OF PERSONS SEEKING HEALTH AND WELFARE ASSISTANCE

Section 13 of S. 3074 imposes a requirement of reporting the names and addresses of aliens not believed to be permanent residents who apply for welfare or medical assistance, to the Immigration and Naturalization Service. Proposal No. 15 at page 15 of the Report recommends against the adoption of any such provision, basing its conclusion upon the receipt of substantial information that to discourage persons from obtaining health or other assistance necessary to maintain life would lead to the spread of contagious diseases, illiteracy and malnutrition. U.S. citizen spouses or children could be deprived of such necessary assistance because of the fear their alien parent or spouse would have in seeking such aid. The Report thus recommends against the adoption of the cross-reporting provision set forth in Section 13 of S. 3074.

DEPRIVATION OF ALIEN REGISTRATION RECEIPT CARD

Proposal No. 10 at page 14 of the Report reflected the concern of the Committee with the deprivation of an immigration document by the Immigration and Naturalization Service prior to any hearing or due process. The Report recommends against such a practice, with the specific exception allowing for such confiscation only when the document was itself evidence of the offense charged. Section 18 of S. 3074 deals precisely with the exception of our Proposal in making it unlawful to possess or use forged or counterfeit immigration documents or such documents otherwise obtained fraudulently or unlawfully. This proposed amendment should be amended further to provide expressly that violation shall be the *only* reason for immediate confiscation of the immigration document, and for no other reason shall any such document be taken from the possessor thereof in the absence of a hearing or other due process of law.

The Committee endorses Section 18 of S. 3074, but also recommends the inclusion of the further proposed amendment.

OTHER RECOMMENDED AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT

Many of the proposals contained in the Report require Congressional action, but are not dealt with at all in S. 3074, or are touched upon only remotely. As

"the Report indicates, significant changes are necessary, and we believe that this Bill should be further amended to provide for such changes, as follows.

ESTABLISHMENT OF A SEPARATE IMMIGRATION COURT

Proposal 25 at page 19 of the Report noted abuses in the existing in-house system, and recommended the establishment of a separate Immigration Court. In unanimously adopting this Proposal, attention was directed to analogous systems, such as the Tax Court, the Court of Claims, the Bankruptcy Court, and something similar to a Federal Magistrate system. It is recommended that S. 3074 be further amended to expressly provide for the creation and establishment of such a separate Immigration Court system.

JUDICIAL RECOMMENDATIONS AGAINST DEPORTABILITY

The current law, (Section 241(b) of the I.N.A.), permits a court to recommend against deportation at the time of sentencing, following conviction for a crime. The current law has been limited by prohibiting such judicial recommendations for certain drug related crimes. Thus, deportation for certain serious crimes may be limited by judicial recommendation, but may not be so limited for less serious narcotics offenses. Proposal 23 at page 19 of the Report recommends that the matter be left within the sound discretion of the judge hearing the case, and that the law be amended to eliminate the current distinction.

THE RIGHT TO COUNSEL FOR INDIGENTS

The Committee is very aware that of the vast numbers of persons subjected to deportation proceedings, the majority are unrepresented by counsel. The Committee is also aware of continuing litigation in the courts as to whether a person being subjected to deportation proceedings is entitled to be provided with free counsel. This contention has made only small headway in view of the provisions of Sections 242(b)(2) and 292 of the I.N.A., which allow for counsel not at Government expense. Although the courts have adhered to the much criticized criminal vs. civil distinction in deciding whether free counsel must be provided—deportation proceedings being considered civil in nature—Congress should recognize the grievous consequences to persons who are deported. Congress should therefore amend the cited Sections by deleting the parenthetical phrases "at no expense to the Government", thus providing for counsel for indigents at all stages at Government expense. Your attention is respectfully directed to Proposals Nos. 1 and 2 at page 10 of the Report advocating this elementary concept of due process.

ARRESTS UPON PROBABLE CAUSE AND MIRANDA-TYPE WARNINGS

Proposals 8 and 9 at page 13 of the Report recommend that Congress adopt the requirement of probable cause for arrests for suspected violations of the immigration law, and further require that Miranda-type warnings be given. The current Section 287(a) has engendered, and continues to engender litigation due to the lack of a proper standard for arrest. In order to end this nation-wide litigation, and to impose a national standard, Congress should in S. 3074 amend Section 287(a) accordingly.

ADOPTION OF A NATIONAL BAIL STANDARD

Proposals 17, 19 and 20, at pages 17-18 of the Report, recommend adopting a standard for the setting of bail, consistent with the current Federal Bail Reform Act and the case law applicable thereto. Current Section 242(a) of the I.N.A. merely provides for the release of a detainee upon bail, without establishing any standards. The Committee has noted that the administrative standards which have developed are vague and inconsistent. It is the recommendation of the Committee that the cited Section be amended to adopt by reference the provisions of the Federal Bail Reform Act.

REMEDIES RELATING TO THE USE OF ILLEGALLY OBTAINED EVIDENCE AND/OR OTHER MISCONDUCT OF OFFICERS OF THE IMMIGRATION AND NATURALIZATION SERVICE

Proposals 28 and 51 at pages 20 and 30 respectively of the Report, recognize that Immigration and Naturalization Service officers are virtually free of any

effective sanctions for their failure to observe the constitutional and other requirements imposed upon all other law enforcement agencies. With specific reference to the arrest and treatment of persons in custody, and evidence-gathering methods, it is noted that the usual exclusionary rules are not available to persons charged in deportation hearings, and that no effective redress exists for deported victims. Therefore, it is the consensus of the Committee, in Proposals 28 and 51 of the Report, that Section 287 of the I.N.A. be amended: (1) to expressly provide for the inadmissibility in deportation and exclusion hearings of evidence obtained in violation of law, and (2) to specifically create a cause of action for victims of unlawful conduct of Immigration and Naturalization Service officers in the arrest and custody of persons, and in evidence gathering.

One of the members of the Committee was opposed to applying the exclusionary rules in deportation hearings. That member of the Committee believes that adequate sanctions can and should be developed and that they should be vigorously enforced in the event that I.N.S. officers fail to observe the law in making arrests. (See DISSENT on pages 20-21 of the Report)

DEPORTATION OF PERSONS WITH PENDING PETITIONS

Proposal 37 at page 23 of the Report expressed the unanimous concern of the Committee over the deportation of persons with pending unadjudicated petitions. This has occurred because different branches are involved in the deportation and adjudicating processes and one branch (usually the deportation branch) often moves much faster than the other. In order to relieve the unfairness of this system, it is recommended that Sections 204 and 245 of the I.N.A. be amended to prevent the deportation of any person prior to the final adjudication of any pending petitions for relief to which the person may be *prima facie* eligible.

IMMIGRATION AND NATURALIZATION SERVICE FUNDING AND EFFICIENCY

Proposals 41 and 44 at pages 26 and 27 of the Report expressed the concern over the lack of efficiency and inadequate establishment of priorities by the Immigration and Naturalization Service. These problems are reflected in the requests made by the Immigration and Naturalization Service to the Congress for additional budget. The Committee unanimously recommends: (1) that an outside and independent efficiency study be directed by Congress, and (2) that pending same Congress provide additional funding, specifically earmarked for the adjudication of pending applications and for public information and alien services. In any new legislation, Congress should ensure that these two items are accomplished before any further budget requests of the Immigration and Naturalization Service are granted.

REVISION OF THE EXERCISE OF ADMINISTRATIVE DISCRETION

Many provisions of the Immigration and Nationality Act, such as Section 245 and Section 244, provide for the exercise of administrative discretion. Congress intended, by such provisions, to ameliorate the harshness of many of the laws. The Immigration and Naturalization Service, however, by administrative interpretation, has distorted the Congressional intent and has deprived persons of benefits to which they would otherwise be eligible. Proposal 48 at page 28 of the Report expresses our recommendation that the law be amended to permit the exercise of discretion only to ameliorate the harshness of the law when certain humanitarian factors are present, and to prohibit the exercise of discretion to deprive persons of benefits provided to them under the law except pursuant to specific statutory guidelines.

LABOR CERTIFICATION PROCEDURES

Section 212(a) (14) of the I.N.A. is the pivotal provision of the law, as to the labor certification process and as to the exclusion of skilled or unskilled labor in the absence of labor certification. Under this Section, both the Departments of Labor and of Justice are involved in administering this Section, with no procedural guidelines being given. Proposal 56 at page 34 of the Report urges the amendment of the indicated Section so as to provide the opportunity to present and argue evidence, and to establish a burden of proof. The absence of any such guidelines has resulted in shifting standards and considerable confusion. This Congressional amendment is therefore necessary.

REVIEW OF UNITED STATES CONSULAR OFFICER DECISIONS

Pursuant to Sections 103 and 104 of the I.N.A., both the Attorney General and the Secretary of State are charged with the enforcement of the immigration laws, yet, anomalously, pursuant to Section 106 of the I.N.A., only decisions of the Attorney General are subject to judicial review. Proposal 58 at page 35 of the Report advocates amendment to Section 106 of the I.N.A. to provide for express judicial review of decisions on immigration visa matters rendered by consular officers of the Department of State.

CONCLUSION

Once again, we appreciate the opportunity to submit these views and recommendations to you. If you or your staff should desire any further elaboration, or if we can be helpful in any other way, we hope you will ask us.

Respectfully yours,

FRANCIS M. WHEAT,
President.

AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL, INC.,
New York, N.Y., May 26, 1976.

TESTIMONY ON S. 3074

The American Council on International Personnel, Inc. (ACIP) is pleased to have been accorded the opportunity to comment on S. 3074, introduced by Senator Eastland and on Senator Fong's proposed amendments to S. 3074.

ACIP was organized in 1971 as a result of successful efforts on the part of a few business groups to amend the Immigration & Nationality Act, as amended to include the "L" category in the nonimmigrant provisions and to refine the H-1 category. Many of the problems encountered by American business when attempting to bring foreign personnel to the United States were greatly alleviated by the institution of the "L" visa and the amendment of the H-1 provision. It was immediately recognized that without an organized group to represent American business and other institutional employers on a continuing basis, new, as well as recurring, problems were not likely to be solved. ACIP was formed as a not-for-profit corporation that would act 1) as a forum for discussion of problems and a clearinghouse for dissemination of information and 2) as a sponsor and advocate for favorable legislation and administration of the law. We will not attempt to comment on the entire bill and will instead focus on those portions which are particularly relevant and of vital interest to our members; namely, those sections which relate to the importation and employment of foreign personnel to perform badly needed services.

SECTION 2: AMENDING SEC. 101(A) (15) (H) II OF THE IMMIGRATION AND NATIONALITY ACT

ACIP favors this amendment which will extend H-2 nonimmigrant status to allow aliens to work on a temporary basis in jobs which are permanent in nature. It is wholly consistent with the 1970 amendment of the H-1 provision and would be a boon to employers desperately in need of workers in times and areas where American workers are either unavailable or unwilling to fill permanent positions. In the present law, however, there is no time limitation on the stay of the temporary worker. We question whether statutorily limiting the stay to one year might not eliminate the possibility of application for extension of stay in cases where jobs must be staffed for periods exceeding one year. As you know, present regulations of the Immigration & Naturalization Service permit H-2 status to be extended for a total duration of two years. We would recommend continuing this practice.

ACIP is in complete agreement with the provision for the Secretary of Labor to produce qualified American workers or grant labor certifications within 60 days of filing. Long delays in certifying temporary workers have placed particular hardship on businesses employing H-2 aliens; by the time the application is adjudicated, the need for the temporary worker may have abated and the business may have suffered irretrievable financial losses. Providing a 60 day limit for adjudicating labor certifications or referring qualified workers would also have the effect of radically changing the Labor Department's previous refusal to grant

certification in certain classes of employment where little experience is required but much diligence and hard work. Even more significantly, the Department of Labor frequently rejects applications for scientists and professionals which clearly should be approved.

ACIP does recognize that the provisions for certification of temporary workers must be rigidly enforced to guard the American labor market and at the same time to avoid abuse from employers who might exploit alien workers with sub-standard wages and working conditions.

Senator Fong's Amendment #1485 will further enhance the efforts of S. 3074 to speed up the labor certification process. Amendment 1485 proposes to place a limitation of 90 days for adjudication of *all* applications for labor certification. Employers who need the services of a permanent worker are frequently under time pressures just as employers needing temporary workers. The object in both cases is to get the job underway and whether the end result is long or short-term employment is immaterial; long delays are burdensome and expensive.

Senator Fong's amendment also proposes to amend Sec. 212(a)(14) of the Immigration & Nationality Act to restrict the availability of workers to the area in which the job will be performed. In certain occupations, the Department of Labor now considers the entire United States to be the source from which available workers can be drawn. As Senator Fong points out, simply because there are engineers available in California does not mean that Hawaii should go without engineers. Relocation is not always possible, nor may workers be willing to relocate. Further, we agree that the standards for labor certification should be set by the Secretary of Labor by regulation, thus further reducing the arbitrariness of the application procedure. The Department of Labor has been considering the implementation of regulations for an extended period of time (approximately two years) without action.

In this same regard, ACIP is pleased that neither S. 3074 nor the Fong amendments support the Administration's view that the labor certification process itself (other than making it more rapid and more responsive to the local labor market) be changed. The Administration's proposal would have the opposite effect of greatly broadening the authority of the Labor Department and making Labor Department decisions virtually impossible to review judicially. Most significantly, under their proposal, the Department of Labor would view availability of professionals and scientists without regard to the nuances of their expertise, on a country-wide basis.

SECTIONS 5 & 6 AMENDING SEC. 202 & 203 OF THE IMMIGRATION AND NATIONALITY ACT

We wholly support the extension of the numerical limitations and preference system currently applicable only to Eastern Hemisphere natives to natives of the Western Hemisphere. The dissimilar treatment of the hemisphere is unjustifiable and inequitable. It imposes a particularly great burden on American business since ties with Canada and Mexico are so close.

We also support Mr. Fong's amended #1477 which affirms the bill's proposal to increase dependent state quotas to 600 from the current 200, and goes on to allow the dependent state to make use of any unused visas of the 20,000 allotted to the "parent" country. At present, the preference categories pertaining to professionals (3rd) and other workers (6th) are closed for some dependent states because all the available visa numbers are used up in the first or second preference category (e.g. Hong Kong). Unfortunately, a mere 400 additional numbers does not solve the problem to any appreciable extent. We support the concept of allowing the dependent states to use the remaining visa numbers of the primary country as a logical and equitable solution which would allow not only the immigration of qualified workers but also further facilitate family reunification.

SECTION 10 AMENDING SECTION 245 OF THE IMMIGRATION AND NATIONALITY ACT

ACIP generally endorses Sec. 10 which will allow Western Hemisphere organizations wishing to transfer personnel to the United States permanently or to hire natives of the Western Hemisphere have been forced up to now to bring them on temporary work permits in order to get them here in a reasonable period of time and avoid the 2½ year waiting period current oversubscription has created. This creates an untenable dilemma. Should application then be made

for permanent residence, the risk is taken that because the individual was here on a temporary visa, application for permanent residence might be denied because the temporary work visa is inconsistent with attaining permanent residence. The effect of the present law is to penalize organizations which choose to hire Western Hemisphere natives. A revision of the law should greatly reduce the backlog and would, of course, be a tremendous boon to organizations wishing to obtain permanent resident status for their Western Hemisphere employees.

One area of concern is subsection (c) (2) providing that an alien who takes unauthorized employment prior to filing an application for adjustment of status to permanent resident will be barred from making such an application in the future. Currently, there are long delays in adjudicating applications for non-immigrant classifications which permit employment (H and L visas). If an alien begins working before his nonimmigrant visa petition is approved, he may be technically ineligible for adjustment of status at a later date. More significant is the case of the individual who seeks to extend his nonimmigrant visa beyond the period of initial approval. The forms for extension specifically state that the application should not be submitted more than 30 days before the original expiration date. Processing and adjudication delays being what they are, the extension may not be approved for 2 or more months. If the alien continues to work while he waits for his extension application to be approved, he could be violating the law and could be ineligible to apply for adjustment of status at any time in the future. We recommend that the subcommittee reconsider the wording of subsection (c) and make some allowance for the Immigration and Naturalization Service backlog. Simply leaving it to their discretion to deal with in regulations does not seem sufficient.

SECTION 12 AMENDING SECTION 274 OF IMMIGRATION AND NATIONALITY ACT

This provision makes it unlawful to knowingly employ or refer for employment aliens who have entered the United States illegally or nonimmigrant aliens who entered the United States legally but who are not authorized to work. The bill would proscribe civil penalties for employers who violate this provision. This provision is a considerable improvement over earlier proposals for employer sanctions (e.g. the Rodino, Kennedy, and Administration Bills) which provide for criminal penalties and, even more significantly, in the case of the Rodino Bill, not even requiring a "knowing" violation in the first instance.

However, we must state our opposition to any penalty provision on two grounds. First, we believe that the obligation of apprehending illegal aliens lies with the government, not the employer. We feel that by strengthening and enforcing the social security card issuing procedures, a substantial amount of illegal employment would be curtailed. The employer should only have an obligation to be sure that the employee has a valid social security card.

Second, we fear that employers who hire work authorized nonimmigrants would not be free of the prospect of penalty. Given current Immigration and Naturalization Service delays in processing applications for extension of H and L visas, conceivably a corporate executive who is obviously a far cry from the unskilled laborer at whose influx such provisions seem to be aimed, would be technically an illegal alien if he continued to work past the time his original visa expires while he awaits extension approval. His employer during the time the executive was not technically in legal status, could be subject to civil penalties under the law.

SECTION 17 AMENDING PUBLIC LAW 89-732

Section 17 would exempt Cuban refugees from the Western Hemisphere visa number limitations. ACIP endorses this amendment. The large numbers of Cuban refugees has greatly reduced the visa numbers available to other Western Hemisphere countries. Many American companies draw employees from the Western Hemisphere, particularly Canada, and have experienced the adverse effect of this situation.

FONG AMENDMENT 1486 AMENDING SECTION 291 IMMIGRATION AND NATIONALITY ACT

This amendment would allow for an individual to appeal the Consular denial of a visa to the Secretary of State. Under Sec. 291 the Consul has the final authority to determine whether a visa should be granted. It is not an unusual occurrence for an individual to have an approved visa petition and an approved labor certification only to be denied a visa at the Consul's office when he is ready to depart for the United States. Under Sec. 291, the individual cannot appeal

that decision, even when it may be obviously erroneous. Amendment 1486 offers some relief.

CONCLUSION : AN ACIP AMENDMENT

ACIP feels that Senator Eastland's Bill and the Fong Amendments generally make substantial improvements in Immigration & Nationality Act, as amended. Of course, we favor either complete deletion of the employer sanction provision or reworking of it so that penalties apply only to flagrant offenders such as, those who exploit alien labor. The sections relating to the H-2 visa, Western Hemisphere revision and Senator Fong's Amendments requiring prompt decisions on labor certifications by the Labor Department and determinations of availability of resident workers on a local labor market area basis will definitely benefit American business. ACIP would ask that the Subcommittee consider one more amendment that would solve a persistent problem for multinational organizations employing foreign personnel.

Frequently, it becomes necessary to employ a foreign national in the United States on relatively short notice in a position which is permanent in nature. Such situations may arise from a number of factors, including health, unexpected resignations, etc. Since multinational organizations deploy employees throughout their worldwide organization on the basis of need, availability and experience, on occasion, it is necessary to place a foreign national in a particular job. If the transfer is permanent in nature, of course, it is desirable to pursue an application for permanent residence in the first instance by processing a labor certification and an application for an immigrant visa. Unfortunately, for Eastern Hemisphere natives this process takes a minimum of six months and for Western Hemisphere natives two and one-half years.

It is indeed unusual to have this much notice of the need for a particular individual. Our member organizations attempt to predict need as far in advance as possible, but two to three months is the norm. Therefore, the only alternative is to bring this key employee on an H-1 or L-1 visa. For the L-1 visa holder, there seems to be a divergence of interpretation between various Immigration and Naturalization Service offices and various consular posts. Some maintain that an intention to ultimately seek resident status is not inconsistent with an L-1 visa. Others maintain that such an intention is inconsistent since L-1 visa should only be issued when the intended employment is of temporary duration. The problem encountered in the case of H-1 visas is more acute, since, unlike the L-1 category, the alien must have a residence abroad which he has no intention of abandoning.

In our opinion, these rules are artificial and serve no useful purpose. They merely impede the movement of personnel. Therefore, we propose that the H-1 category be amended to delete the requirement of maintaining a residence abroad which the alien has no intention of abandoning and the legislative history be made clear that an intention to immigrate is not inconsistent with H-1 or L-1 status, and finally, that it is perfectly acceptable for H-1 or L-1 visas to be issued to persons who will ultimately apply for residence, or are even contemporaneously applying for residence. Only through enactment of such a provision can organizations run a truly multinational personnel program.

We thank you for this opportunity to present our views and trust that they will be duly considered by the Committee.

Respectfully submitted,

AUSTIN T. FRAGOMEN, Jr.,
Executive Director,
American Council on International Personnel.

NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS,
Washington, D.C., April 19, 1976.

HON. JAMES O. EASTLAND,
Chairman, Subcommittee on Immigration and Naturalization Committee on the
Judiciary, Dirksen Senate Office Building, Washington, D.C.

We transmit herewith, Senator Eastland, a statement regarding S. 3074, the Immigration and Nationality Act Amendments of 1976, and respectfully request that it be included as part of the hearing record.

Sincerely,

PERRY R. ELLSWORTH,
Executive Vice President.

Enclosures.

STATEMENT OF NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS REGARDING S. 3074

This statement regarding S. 3074, the Immigration and Nationality Act Amendments of 1976, is submitted by the National Council of Agricultural Employers, a national, voluntary membership non-profit trade association. NCAE membership is comprised of individuals and organizations whose principal operation is the production of agricultural commodities or products within the United States, grower, trade and commodity organizations whose members are engaged in the production, handling or processing of agricultural commodities or products within the United States. Members of this association employ an estimated 75 percent of the agricultural workers in this country.

Our comments will be limited to Sections 2 and 12 of the bill, which deal with agricultural workers.

The National Council of Agricultural Employers favors approval of S. 3074 insofar as sections 2 and 12 are concerned. Each section proposes a solution to problems which have plagued and continue to plague agricultural employers.

Before proceeding further, there are several general points that should be placed upon the road.

1. NCAE firmly agrees with those who hold that employers should employ United States citizens and those aliens who are legally authorized to seek employment, *provided* such workers can be found who are willing, able and qualified to do the work. Historically, however, such workers have not been available in sufficient number at the times and places needed.

2. Agricultural employers need workers who will report at the appointed time and remain to finish seasonal jobs. Employers' records are replete with employees who do not. As a single case in point, an agricultural employer organization in Virginia reported the following statistics at the end of its 1975 harvest season:

"This past season the Employment Service referred to us 172 people. Of this number 110 showed up and 14 finished the season."

Of the workers from within Virginia:

Fifteen percent completed the season.

Forty-two percent worked less than 1 week.

Twenty-five percent worked less than 2 weeks.

Six percent worked less than 3 weeks.

12 percent worked more than 4 weeks, but failed to complete the season.

Of the workers referred from other States, mostly Florida:

Nine percent completed the season.

Twenty-seven percent worked less than 1 week.

Thirty-five percent worked less than 2 weeks.

Seven percent worked less than 3 weeks.

Twenty-two percent worked more than 3 weeks, but failed to complete the season.

3. It has been alleged that the removal of all illegal aliens and a prohibition against the use of temporary foreign labor will eliminate the unemployment problem in this country. We have serious doubts that unemployment persons in, say Detroit, will travel to Virginia to harvest fruit, or even spend a full season picking peaches, cherries or apples in Michigan. The unemployment figures have been high for at least two years, but growers still can not find workers, even through the State-Federal Employment Service, and in spite of aggressive local recruiting efforts.

4. The fallacious thinking exists that just anyone can do agricultural labor. Such is not the case. Physical fitness and manual dexterity are most essential. Many persons are afraid to climb ladders to harvest tree fruits. Others do not like stoop labor.

5. It has been alleged that bringing in foreign agricultural labor adversely affects the wages and working conditions of workers similarly employed. Quite the opposite is true. Any agricultural employer who employs one or more foreign workers must pay those workers, plus all his domestic workers doing the same work, "adverse effect rates" which are higher than would be paid if no foreign workers were employed.

6. When foreign agricultural workers are certified by the Secretary of Labor and the Attorney General, they are brought into this country for a specified period of time to perform specified labor. When that job is completed, all such workers must be returned to the country whence they came. They can not remain to seek work elsewhere. There are significant economic sanctions against

employers who use foreign laborers and do not return all of them at the end of the contract period.

NCAE particularly supports that portion of Section 2 of S 3074 which provides that if the Secretary of Labor finds there are not sufficient domestic workers who are able, willing and qualified at the time and place needed to perform the work for which such workers are to be employed, he shall so notify the Attorney General and the Attorney General shall then certify foreign workers to fill the employment need.

The section-by-section analysis of S 3074 in the March 4, 1976 Congressional Record (page S 2800), stated, in part:

"The amendment further provides that the availability of unemployed persons, who are capable of filling the jobs in question, will be determined with reference to the locality in which the work is to be performed. The current law is broader in using the term 'in this country.'" (Emphasis added.)

NCAE suggests that there is need to establish a fixed definition of the term "with reference to the locality in which the work is to be performed." Perhaps a definition of a specified radius from the locality in which the work is to be performed would be in order.

At present, the Employment Service requires agricultural employers to engage in positive recruiting efforts throughout the United States, to agree to hire workers from distant states who may or may not show at the time needed, and, often, to furnish transportation to workers in advance. To our knowledge, no other segment of employers is required to go through such an expensive and frequently futile exercise.

Agricultural employers also support the provision in Section 2 of S 3074 which provides that the Secretary of Labor should provide able, qualified and willing workers in the number desired within 20 days of the date an employer files a request for certification or approve certification for foreign labor. Should there be strong opposition to the timing of this provision NCAE would accept a modification whereby the Secretary of Labor must provide the needed willing, able and qualified domestic workers or certify foreign workers at least 30 days prior to the date needed at the work site.

Since agricultural employers require workers on a seasonal basis only, NCAE takes no position relative to the Section's provision whereby the Attorney General may extend the terms of an alien's admission for a period or periods not exceeding one year in the aggregate.

Frequently, after an agricultural employer has been certified for foreign labor and has received his foreign workers, the Secretary of Labor locates additional domestic workers whom he judges to be able, willing and qualified. Regulations promulgated under the authority of the Wagner-Peyser Act require an employer to accept those domestic workers even though his labor camp is filled to capacity with already hired domestic workers and certified foreign workers. This provision seems patently unfair. Such an employer is caught in a totally untenable position. He can not arbitrarily fire domestics already in camp. He can not arbitrarily break his contract with his foreign workers. He has no place to house the newly located domestic workers.

NCAE suggests that Section 2 of S 3074 be amended by adding a provision to the effect that once the Secretary of Labor has determined and certified to the Attorney General that sufficient workers who are able, willing and qualified are not available at the time and place needed to perform the work for which such workers are to be employed and the employment of foreign workers will not adversely affect the wages and working conditions of domestic workers similarly employed, the Secretary of Labor shall cease and desist from any further recruiting efforts on behalf of the employer concerned unless the employer agrees to accept any newly discovered available domestic workers.

Turning to Section 12 of S 3074, this organization takes a definite position against legislation which would require agricultural employers to "police" the Immigration and Naturalization Act. On the other hand, NCAE agrees that no employer should knowingly hire or employ any alien illegally.

Section 12 of S 3074 would require the Attorney General to prescribe regulations whereby an employer will be adjudged to not be in violation if the employer obtains from an employee a signed statement regarding that employee's legal right to employment. To the extent that the employer is not held responsible for further "police action," NCAE supports Section 12 as written.

The Farm Labor Contractor Registration Act of 1963 as amended in 1974 prohibits recruiting, employing, or utilizing, with knowledge, the services of any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment. Section 40.51(p) of the proposed regulations to implement the amended Act, published in the December 8, 1975 Federal Register, reads, in part, as follows:

"A farm labor contractor shall refrain from recruiting, employing or utilizing, with knowledge, the services of any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment, and must evidence an affirmative showing of a bona fide inquiry of each prospective employee's status as a United States citizen or as a person lawfully authorized to work in the United States. Such affirmative showing will be deemed to be met by written documentation that reliance in good faith was based on any of the following:" (Emphasis added)

Acceptable documents such as birth certificate and numerous INS forms are then listed in the proposed regulation.

NCAE has strongly opposed the above proposed requirement because of the almost impossible burden it would place on agricultural employers and because it would lay employers open to charges of discrimination or violations of the Civil Rights Act. Further, the only proof-positive of the "written documentation" required would be photocopies of birth certificates or INS documents. Employers do not have photocopy machines at all points of hire, and it is presently unlawful to photocopy INS documents.

Section 12 of S 3074 appears to provide a reasonable *modus operandi*, provided the regulations to be promulgated by the Attorney General will indeed permit employers to utilize a signed statement by each employee certifying his eligibility for employment. If examination of the signed statements by the Attorney General reveals presence of illegal aliens, the Attorney General should remove such persons and deal with them according to current regulations.

NCAE stands ready to discuss in detail any of the views expressed in the statement and to answer any questions the Subcommittee may have relative to Sections 2 and 12 of S 2074.

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., April 13, 1976.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Air Transport Association of America, representing virtually all of the scheduled airlines of the United States, supports S. 3074, the bill you introduced on March 4, 1976 to help curb the influx of illegal aliens. At the same time we urge your support of Amendment No. 1487 to S. 3074 to facilitate the flow of visitors from other countries to the United States by waiving the visitor visa requirement under certain conditions.

We strongly support the purpose and intent of S. 3074. The job displacement of U.S. citizens and resident aliens by "illegal's" places a harmful burden upon society through increased demand on public services, swelling welfare rolls, social unrest and a balance of payment drain resulting from the export of dollars to relatives abroad.

In order to effectively carry out the intent of S. 3074, we strongly urge the Congress to authorize and appropriate the necessary funds for the Immigration and Naturalization Service so that Agency can effectively carry out its assigned task. We are very concerned that the FY '77 INS Budget provides no increase in appropriations to address the illegal alien problem.

Preventing the influx of illegal aliens is of great importance. However, it should be possible to administer such a program without precluding normal visits and travel to the United States. Amendment No. 1487 to S. 3074 would enhance and ease the travel of foreign tourists and businessmen to the United States by waiving, in certain cases, the United States requirement for a visa to visit the United States. Particularly at this time when this Nation is celebrating its 200th anniversary, it appears fitting that steps be taken to encourage legitimate travelers of other countries to visit us.

Today, all overseas visitors to the United States must obtain a visa before they can enter. This process tends to discourage some foreign travelers from visiting

the United States and causes them to journey to countries where no visas are required. Obviously this visa requirement is desirable for visitors from some countries. On the other hand, there are other countries where it need not be a requirement because illegal aliens present no problem to the United States. Western Europe and many other countries do not impose a visa requirement on U.S. citizens. In fact, most of those countries which require visas do so as a matter of reciprocity. We strongly urge that the visa waiver Amendment No. 1487 be given careful consideration.

We sincerely believe that if visa waiver, for temporary travel to the United States, is initially applied on a carefully selected and reciprocal basis, such as for nationals of Northern Europe and Japan, it would not contribute to the illegal immigrant problem. At the same time it could also help improve our balance of payments picture. In addition to the provisions of S. 3074, safeguards such as Immigration preclearance procedures at airports of foreign departure, could be initiated in such places as Europe and Japan to further insure against illegal immigration. This is now done, for example, in Canada, Bermuda, and the Bahamas.

The airlines will cooperate with the Immigration Service on any additional protective steps which would help to ensure that the selective visa waiver program does not impact on the illegal immigrant problem. Actually, we believe visa waivers for certain countries could help the illegal alien situation. If visas were waived for the no-problem countries, visa-issuing U.S. consular officers could be transferred from Western European countries where there is no problem to consular offices in other countries of the world where an acute problem exists.

We are conscious and concerned about the illegal alien problem. We endorse measures to rectify that problem in the national interest. We also strongly feel that adoption of the visa waiver amendment to S. 3074 would equally be in the national interest, and will help mitigate the illegal alien problem.

It would be appreciated if this letter is included in the hearing record on S. 3074.

Sincerely,

NORMAN J. PHILON,
Executive Vice President.

Copies to Members of the Committee on the Judiciary.

APPENDIX

[From the Congressional Record, March 17, 1976]

STATEMENT BY SENATOR FONG ON AMENDMENTS TO S. 3074

Mr. President, on March 4, our distinguished colleague, Senator Eastland, chairman of the Judiciary Committee and of its Subcommittee on Immigration and Nationality, of which subcommittee I am the ranking minority member, sent to the desk a bill to revise the Immigration and Nationality Act.

At that time, he said:

"More than ten years have passed since President Lyndon Johnson in an historic ceremony signed the Act of October 3, 1965 on Liberty Island at the base of the Statue of Liberty in New York harbor.

"Many of the changes wrought in our immigration law by the 1965 Act have worked out well. Some have not. The time has come to take stock and to address ourselves to the question of what further revisions of the immigration laws are needed or are desirable in the best interests of the United States."

Senator Eastland addressed himself to two major problems: Immigration from the Western Hemisphere and the illegal alien. S. 3074, which he introduced, in essence, addresses itself to these and other problems which emerged in the years since the enactment of the Immigration and Nationality Act Amendments of October 3, 1965 (79 Stat. 911). In these years, my concern with the humanitarian problem of reuniting families, with the problem of refugees and their resettlement, with the elimination from our statute books of the vestiges of discriminatory legislation still on our books, and with the day-to-day operations under the Immigration and Nationality Act, lead me, at this time, to send to the desk a series of amendments to S. 3074, so that they too may be considered.

I. AMENDMENTS AFFECTING REUNION OF FAMILIES

Reunite permanent residents with parents—amendment 1474 to S. 3074.

At the present time, there is no way for permanent residents to be reunited in the United States with their parents, unless the parent qualifies for a third, sixth, or nonpreference visa. Older people are not frequently able to obtain the labor certification required for these types of visas as they frequently enter the labor market only marginally.

Parents of U.S. citizens over the age of 21 years, on the other hand, are eligible for immediate relative status under section 201(b) of the Immigration and Nationality Act, which I shall hereinafter refer to as "the act." They need no labor certification and are not subject to the numerical limitations imposed by the act.

My amendment would compromise the difference in treatment. It would permit resident aliens to apply for second preference visas for their parents as they now may do for their spouses, unmarried sons, or unmarried daughters. Mr. President, I ask unanimous consent that the text of amendment No. 1474 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1474

"On page 7, between lines 11 and 12, insert the following:

"(b) amending paragraph (2) of subsection (a) by inserting parents, immediately after 'spouses'.

"On page 7, line 12, strike out '(b)' and insert in lieu thereof '(c)'."

Mr. FONG. To facilitate reuniting of sons or daughters of U.S. citizens or permanent residents by extending waiver provisions for fraud or misrepresentation—amendment No. 1475 to S. 3074.

Section 212(i) of the act, dealing with excludability of aliens, now reads:

"(i) Any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, may be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States."

This leaves it, based on the facts and equity in each case, to the discretion of the Attorney General to consent or not to consent to the alien's applying or reapplying for a visa and for admission to the United States.

Parents love sons and daughters over the age of 21 as much as they love their children under the age of 21.

My amendment would enable the Attorney General, based upon the same considerations, to waive the ground for excludability whether the offspring be under this age of 21—as now provided by the act—or over the age of 21—as my amendment would revise the act.

Mr. President, I ask unanimous consent that the text of amendment No. 1475 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1475

"On page 8, line 23, insert '(a)' immediately before 'The'.

"On page 9, between lines 5 and 6, insert the following:

"(b) Section 212(i) is amended by striking out 'or child' and inserting in lieu thereof 'son, or daughter'."

Mr. FONG. To facilitate keeping together of sons or daughters of U.S. citizens or permanent residents with parents by extending waiver provisions in deportation proceedings—amendment to S. 3074.

Section 241(f) of the act, dealing with deportation of aliens, now reads:

"(f) The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or

a child of a United States citizen or of an alien lawfully admitted for permanent residence."

In this instance, the son or daughter is already in the United States. The same consideration of familial reunion and love applicable to amendment 1476 to S. 3074 prevail in these cases. Families should not be torn apart because an offspring is over 21, while provision is made for action by the Attorney General if the offspring is under 21 years of age.

Mr. President, I ask unanimous consent that the text of amendment 1476 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1476

"On page 9, line 6, insert '(a)' immediately before 'Section'.

"On page 9, between lines 22 and 23, insert the following:

"(b) Section 241(f) of the Immigration and Nationality Act is amended by striking out 'or a child' and inserting in lieu thereof 'a son, or a daughter'."

Mr. FONG. Treatment of aliens chargeable to dependent areas of a foreign state—amendment 1477 to S. 3074.

Section 202(c) presently limits the visa numbers available in any year to persons born in a colony or dependent area of a foreign country to a total of 200 for all categories of immigrants.

Section 5 of S. 3074 would increase this number to 600. This is a good step forward.

My amendment 1477 to S. 3074, would even go one step further. It would initially permit the issuance of up to 600 visas to any single dependent area in a year. Then, it would permit the use of any of the balance of the 20,000 visa numbers available to natives of a foreign state under section 202(a) of the act by persons chargeable to the dependent areas of that foreign State.

For example: At present, persons born in Hong Kong are chargeable to the 20,000 visa limitation of Great Britain, with a present maximum 200 visas available under sections 203(a) (1) to (8) of the act to persons who qualify as relatives under paragraphs (1), (2), (4), and (5), to persons who qualify because of labor certification under paragraphs (3) and (6), and to persons who qualify as refugees—paragraph (7)—or to non-preference immigrants—paragraph (8). It now is and has been at all times, prior to the 1965 act and since, almost impossible to reunite more than unmarried sons or daughters of U.S. citizens—first preference visas—with their parents because of the huge demand for immigrant visas.

S. 3074 would bring that number up to 600 and would likely enable spouses, unmarried sons or unmarried daughters to be reunited with their permanent resident parents—second preference. Whether this will make visas available for persons in the professions—third preference—or for married sons or married daughters of U.S. citizens to be reunited with their parents—fourth preference—is, in my opinion, doubtful because of the demands for immigrant visas by persons born in Hong Kong.

Amendment 1477 to S. 3074, would make any balance of the 20,000 numbers available to Great Britain, but unused, available for persons born in Hong Kong and who otherwise qualify for immigrant visas under the act. Many more families would thus be reunited.

Mr. President, I ask unanimous consent that the text of Amendment 1477 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered printed in the Record, as follows:

AMENDMENT NO. 1477

"On page 3, lines 24 and 25, strike out 'or who may, pursuant to section 203 (a) (7) enter, conditionally,'.

"On page 4, lines 10 and 11, strike out 'or who may, pursuant to section 203 (a) (7), enter conditionally'.

"On page 4, lines 22 and 23, strike out the comma after 'visas' and insert in lieu thereof 'and', and strike out 'and conditional entries'.

"On page 5, line 3, immediately after year' insert 'except if the foreign state to which such area is dependent has not exceeded the numerical limitation set forth in clause (1), aliens otherwise chargeable to such dependent area may be charged instead to such foreign state'."

II. REFUGEES

Mr. FONG. In my opinion, the provisions of the act dealing with refugees are defined in light of experiences which, in today's unsettled world, have proven to be inadequate and to require much too much expenditure of money and personnel and too much special legislation to assist refugees to obtain entry or to regularize their status.

Revised admittance for refugees—amendment to S. 3074. Section 203(a)(7) of the act provides for the Attorney General to make available up to 10,200 conditional entries for persons inspected by Immigration and Naturalization Service officers in non-Communist or non-Communist-dominated countries to persons who have fled because of persecution of fear or persecution on account of race, religion, or political opinion from any Communist or Communist-dominated country or area or from any country in the Middle East, and are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and are not nationals of the countries or areas in which application for conditional entry is made; or are persons uprooted by catastrophic natural calamity as defined by the President and who are unable to return to their usual place of abode. Then, the act provides that when such persons have been continuously present in the United States for 2 years, they may apply to adjust their status to that of permanent residents.

First, in all countries with which we have diplomatic relations, we already have consular officers who presently issue all visas. Section 203(a)(7) of the act requires the added presence of Immigration and Naturalization Service personnel to grant conditional entry to this category of immigrant. Then after 2 years of continuous physical presence in the United States of the refugee—during which time he is in limbo and ineligible to join our Armed Forces or work for the Government since he has no permanent residence—the Service must again take time and effort of their personnel, at great expense, to adjust these refugees to permanent residents. This procedure requires an added initial cost and an added cost 2 years hence on the part of the Immigration and Naturalization Service. This should be corrected.

Second, in most countries there are no INS facilities for granting conditional entry. This makes it impossible for qualified refugees to even apply for what is now conditional entry to the United States.

Two examples make it amply clear what problems this creates in today's world.

First. People who in the 1940's and 1950's had fled Communist China, resettled in Cuba. Then, they fled from Cuba to Spain. These people, born in the Eastern Hemisphere, were refugees from a Communist or Communist-dominated Cuba and thus eligible for seventh preference entry to the United States. But, there were no INS officers in Spain to process their applications. Despite all the cooperation and efforts on the part of both INS and the State Department, it was necessary to move these people from Madrid to Rome and then process them for seventh preference entry in Rome, where there were INS officers, before they could proceed to the United States. If the Consul in Madrid had been able to issue visas, as he would have been able to do for all other immigrants, the added cost and time and heartbreak on the part of all could have been avoided.

Second. Refugees from the People's Republic of China have been fleeing into Hong Kong and the surrounding area since at least the 1950's—at great personal risk to their lives. When they got to Hong Kong, no INS officers were present, so there was no way for them to apply for conditional entry, as provided for in the 1965 act. After much negotiation initiated at my insistence, an INS office was opened in Hong Kong in November 1970 and seventh preference visa numbers were allocated to Hong Kong in January 1971.

For the first time, people who would have been otherwise eligible for entrance to the United States under section 203(a)(7) of the act were able to avail themselves of its provisions. And, they did apply in droves. The British Crown Colony of Hong Kong, under date of October 22, 1971, promulgated an immigration ordinance effective April 1, 1972, providing for a category of persons known as Chinese residents. Persons who for 7 years prior to April 1972, had been in Hong Kong were granted this status. True, they could remain in Hong Kong, travel on the document provided them and reenter Hong Kong—they had

no other documents—but under the very same ordinance, the privilege of being a “Chinese resident” could, at any time, be withdrawn by the government, with or without cause.

Immediately, INS determined these refugees, who until 1971 were unable to obtain even conditional entry to the United States, through no fault of their own, were deemed ineligible for conditional entry. In most instances, these people in order to live had gone to work; to stay alive, they had rented apartments or even, if financially able, bought their residences. Because of these successful efforts on their part to survive, they could not overcome the presumption that they “resettled” in Hong Kong and, therefore, were denied conditional entry to the United States. Because of the inaction of the United States in earlier setting up facilities to process section 203(a)(7) entries from Hong Kong, the United States penalized these people and created an almost irrebuttable presumption of resettlement, which even under the Woo case, was only to be one factor to be considered—not the sole factor, as it became. This is an injustice we wrought and should correct.

To correct this, my amendment 1478 to S. 3074 provides that a refugee who could not have obtained conditional entry from the country in which he lived would, for a period of 3 years from the enactment of the Immigration and Nationality Act Amendments of 1976 (S. 3074), not be considered permanently resettled. This would give these persons denied access to conditional entry to the United States a 3-year period in which to apply for seventh preference visas.

Third, the definition of a person qualifying for a section 203(a)(7) conditional entry permit is cast in the political concept of an earlier time. It should be simplified, clarified, and made contemporaneous. This section of my amendment 1478 to S. 3074 would do so.

Fourth, there is no reason for a different processing of refugees from that of immigrants. A refugee, like any other potential immigrant to the United States, should be granted an immigrant visa by the consul wherever he finds himself and become a permanent resident immediately. Not only would this eliminate wasteful expenditures of money, but it would make adjustment easier and less fraught with concern to the refugees. My proposed amendment to S. 3074 would accomplish these ends.

Mr. President, I ask unanimous consent that the text of amendment 1478 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1478

“On page 7, between lines 15 and 16, insert the following:

“(c) amending paragraph (7) to read as follows:

“(7) Visas shall next be made available, pursuant to regulations in a number not to exceed 6 per centum of the number specified in section 201, to aliens who are refugees. For the purpose of this paragraph, the term ‘refugee’ means (A) any alien (i) who is outside the country of his nationality or who, not having a nationality, is outside the country of his habitual residence, and who is unable or unwilling to return to such country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (ii) who has been uprooted by catastrophic natural calamity and who is unable to return to his usual place of abode, and (B) the spouse and children of any such alien, if accompanying or following to join such alien. For purposes of this section, a refugee who has lived outside the country of his nationality, or the country of his habitual residence, as the case may be, for not more than 3 years from the date on which the Immigration and Nationality Act Amendments of 1976 take effect shall not be considered permanently resettled in such country if such refugee was precluded from entering the United States because conditional entering was not available from such country under this Act.”

Mr. FONG. Adjustment of Status for Parolees of Attorney General—Amendment to S.3074. Section 212(d)(5) of the Act reads:

“(5) The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the

opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

Under this provision, entry to the United States has been granted to such groups as the Hungarian refugees, the Cuban refugees, the Ugandan refugees, and last year the Indochina refugees, as well as to individuals on humanitarian grounds.

In most instances, it was necessary to enact legislation to enable these groups of people to adjust their status and become permanent residents and to permit this adjustment without affecting the numerical limitations on the number of permissible visas for the hemisphere.

Section 212(d) (5) should be amended to give the Attorney General discretionary power to permanently parole in individuals or groups of refugees and they should be afforded permanent residence at once, without regard to visa numerical limitations, if the Attorney General so determines.

Amendment 1479 to S. 3074 would accomplish this end. By making the immigration status of a refugee uncertain, we make it that much more difficult for him to acquire the necessary peace of mind to adjust to a new life in the United States and rebuild the broken pieces of his life which every immigrant hopes to put together effectively and happily in the United States.

Mr. President, I ask unanimous consent that the text of amendment 1479 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT 1479

"On page 9, between lines 5 and 6, insert the following new subsection:

"(b) Section 212(d) (5) of the Immigration and Nationality Act (8 U.S.C. 1182 (d) (5) is amended to read as follows:

"(5) The Attorney General may in his discretion parole into the United States under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien or group of aliens applying for admission to the United States, and such parole of such alien or group of aliens shall be regarded as an admission of the alien or group of aliens who thereafter shall be dealt with without regard to the numerical limitations under this Act."

Mr. FONG. Adjustment for Indochina Refugees—amendment to S. 3074.

The latest large influx to these shores were the refugees from Vietnam, Cambodia, and Laos. These people are starting out on a hard process of adjusting to a new country, a new cultural environment, even new climatic conditions for many. Life is hard and uncertain to them.

One of the most oft-repeated worries of the Indochina refugees is the question of what is their status in these United States. Words do not reassure them.

Many of the young men have spent their entire adult life fighting alongside our troops. They wish to join our Armed Forces. Permanent residence would enable them to do that.

Many of the Indochina refugees have been long-term, dependable and efficient employees of the U.S. Government. Once again, they should be afforded the opportunity of having the Government employ them and avail itself of their skills, if it so desires.

Amendment 1480 to S. 3074 would accomplish this.

Mr. President, I ask unanimous consent that the text of amendment 1480 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1480

"On page 18, between lines 12 and 13, and immediately before section 21, insert the following new section:

"SEC. 20B. (a) Notwithstanding any other provision of law, and without regard to the numerical limitations specified in the Immigration and Nationality Act (8 U.S.C. 1101), the status of any alien who is a native or citizen of Cambodia, Vietnam, or Laos and who has been inspected and admitted or paroled into the United States subsequent to April 1, 1975, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if—

"(1) the alien makes an application for such adjustment; and

"(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence.

"(b) Upon approval of an application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of the date of the alien's arrival in the United States. The provisions of this section shall be applicable to the spouse and child of any alien described in subsection (a) regardless of their citizenship and place of birth, who are residing with such alien in the United States.

"(c) Except as otherwise provided in this section, the definitions contained in section 101 (a) and (b) of the Immigration and Nationality Act shall apply in the administration of this action. Nothing contained in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization."

III. ELIMINATION OF DISCRIMINATORY PROVISIONS OF U.S. LAWS

Mr. FONG. Repeal of Obsolete Provision of Chinese Exclusion Act—amendment 1481 to S. 3074.

Since the act of March 17, 1894, as amended by the act of April 28, 1904 (33 Stat. 478); there has been provision in our statutes (8 U.S.C. 298) for the use of the Bertillon system of identification at our various ports of entry to prevent the unlawful entry of Chinese into the United States. This was a part of the section of the law titled the "Chinese Exclusion Laws."

Webster's New International Dictionary, second edition, unabridged, describes the Bertillon system as a system for the identification of persons by a physical description based upon anthropometric measurements, notes or markings deformities, color, impression of thumb lines, and so forth.

Webster's Third New International Dictionary, unabridged, describes it as a system for the identification of persons by a physical description based upon anthropometric measures, standardized photographs, notation and classification of markings, color, bodily anomalies, thumb print impressions, and other data that has been largely superseded by fingerprinting.

In 1943, the other sections of the Chinese exclusion laws, of which this section providing for the use of the Bertillon system was a part, were repealed—act of December 17, 1943, 57 Stat. 600. However, this section was not included in the provisions of that repeal statute even though for some years prior thereto, no moneys had been appropriated to prevent entry of illegal aliens referred to this section.

I feel I need say very little to support repeal of this last, obsolete section of the Chinese exclusion laws. The very memory of this discriminatory legislation based solely on race should be eliminated from our statute books.

Mr. President, I ask unanimous consent that the text of amendment 1481 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1481

"On page 19, between lines 12 and 13, insert the following new section:

"SEC. 21. The portion of the first section, entitled 'Enforcement of the Chinese-exclusion Act', of the Act entitled 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and five, and for other purposes', approved April 28, 1904 (33 Stat. 478), is repealed.

"On page 19, line 13, strike out '21' and insert in lieu thereof '22.'"

Mr. FONG. Elimination of statement of "country of former nationality" from Certificate of Naturalization—amendment 1482 to S. 3074.

Section 338 of the act entitles a naturalized citizen to receive a certificate of naturalization which, among other information, contains the "country of former nationality" of the citizen.

We are all equal citizens of the United States, be we born in the United States, in Asia, Africa, Europe, North or South America—anywhere in this world.

Any document given a citizen as evidence of his citizenship should not show his origin since in fact, as well as in law, I trust that we are all just citizens

of the United States. Lest the naturalized citizens from one area or one country be discriminated against, because of former nationality, this provision of section 338 of the act should be eliminated.

Mr. President, I ask unanimous consent that the text of amendment 1482 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1482

"On page 16, between lines 19 and 20, insert the following new section:

"SEC. 15A. Section 338 of the Immigration and Nationality Act (8 U.S.C. 1449) is amended by striking out 'marital status, and country of former nationality' and inserting in lieu thereof 'and marital status'."

Mr. FONG. Elimination of statement of birthplace, from U.S., passports—amendment 1483 to S. 3074.

U.S. passports bear information as to the birthplace of its U.S.-citizenholder. Nothing in our statutes requires this information to appear on a U.S. passport. As I have repeatedly stated, we are all equal citizens of the United States, regardless of the accident of our place of birth.

Countless naturalized citizens have called this to my attention. They point out that this information is used by some foreign countries to deny them visas to visit that country. Whether this is so or not is immaterial. I have pointed out this problem to the Passport Office, to no avail. They advised me that foreign countries would ask for the information before granting a visa to a U.S. citizen-passport-holder. If so, so be it. But, we do not have to be an agent for any foreign government. From our standpoint, this invasion of privacy is evidence of unnecessary differentiation of citizens—those born in the United States and/or some other country against those born in the less favored nations.

The information as to a birthplace is immaterial to the fact that the holder of a U.S. passport is entitled thereto as a citizen of the United States. This information should not appear on our passports. Amendment 1483 to S. 3074 would require that information as to birthplace of a U.S. citizen not appear on the U.S. passport.

Mr. President, I ask unanimous consent that the text of amendment 1483 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1483

"On page 19, between lines 12 and 13, insert the following new section:

"SEC. 20A. The Secretary of State shall not require any person applying for a passport to indicate such person's country of former nationality, if any, nor include in the passport any information indicating the birthplace of the holder."

Mr. FONG. Attorney General to be empowered to institute action where alien is not hired or is discriminated against because of national origin—amendment 1484 to S. 3074.

Section 12 of S. 3074 provides for civil penalties against any employer, agent, or referrer who knowingly hires or refers for employment any alien not authorized to accept employment. To be sure that there is no discrimination because of national origin, I propose to add authorization to that section for the Attorney General to institute action in the U.S. district-courts for any failure or refusal to hire or refer an alien because of his national origin. Hopefully, this will help eliminate some of the discriminatory practices which may ensue on the part of employers and others who fear they may be subject to a penalty for hiring an alien not entitled to employment.

Mr. President, I ask unanimous consent that the text of amendment 1484 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1484

"On page 11, line 16, strike out "(e)" and insert in lieu thereof "(f)".

"On page 11, line 17, strike out "and (d)" and insert in lieu thereof "(d), and (e)".

"On page 14, line 16, strike out the quotation marks and the final period.

"On page 14, between lines 16 and 17, insert the following new subsection:

"(e) (1) Whenever the Attorney General has reasonable cause to believe that any employer has failed or refused to hire any alien, or otherwise discriminated against such alien, because of such alien's national origin, in addition to any other remedies available, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such incident, pattern or practice, and (3) requesting such relief, including damages, an application for a permanent or temporary injunction, restraining order or other order against such employer, as he deems necessary.

"(2) The district courts of the United States shall have jurisdiction of any action instituted pursuant to this subsection."

IV. AMENDMENTS TO S. 3074 TO IMPROVE OPERATION OF IMMIGRATION AND NATIONALITY ACT

Mr. FONG. Labor certification—amendment 1485 to S. 3074.

Section 212(a) (14) of the act excludes aliens from admission to the United States unless the Secretary of Labor has determined and certified to the Attorney General that, first, 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 at the place where the alien is destined to perform his skilled or unskilled labor, and second, the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

Despite that language, employers in Hawaii have been unable to obtain certification for needed employees when qualified workers were available in mainland United States. This has caused considerable hardship to Hawaii employers.

Section 2 of S. 3074 requires the workers to be "available at the time and place" where they are to be employed. A similar provision should be utilized under section 214(a) (14) of the act. It is utterly ridiculous to be told engineers are in excess in Atlanta or Seattle when a plant in Hawaii cannot continue its operation because labor certification is denied their prospective employee even though no engineers are available in Hawaii.

Furthermore, there are not time limitations set forth in the act within which the Secretary of Labor must act on an application for labor certification under section 214(a) (14). It has been reported to me that this has taken 6, 8, and 12 months before action was completed after filing of the application.

Section 2 of S. 3074 requires that within 60 calendar days of the date on which the employer files a request for certification the Secretary of Labor must make and issue a certification; and in the case of agricultural workers, the period is reduced to 20 calendar days.

A time limitation for action by the Secretary of Labor of 90 calendar days on all other applications for labor certification should be more than adequate.

In addition, the standards for certification should be set by the Secretary of Labor by regulation.

The amendment I now propose would, first, make labor certification dependent on availability of labor at the time and place, where the service is to be performed; second, require the Secretary of Labor to act upon a request for labor certification under the act within 90 calendar days from the filing of the request; and third, make such action subject to standards set forth in regulations promulgated by the Secretary of Labor.

Mr. President, I ask unanimous consent that the text of amendment 1485 to S. 3074 be printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1485

"On page 8, line 23, insert "(a)" immediately before "The".

"On page 9, between lines 5 and 6, insert the following new subsection:

"(b) The first sentence of section 212(a) (14) of the Immigration and Nationality Act (8 U.S.C. 1182(a) (14)) is amended to read as follows: "Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined, according to standards which he shall prescribe by regulation, and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the area in which such alien seeks employment 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 alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The Secretary of Labor shall approve or disapprove any application for a certification described in this paragraph within 90 days after such application is filed."

Mr. FONG. To make actions of consular officers in visa cases subject to appeal to appeal to the Secretary of State, without right to any further appeal to the courts—amendment 1486 to S. 3074.

Section 291 of the act vests in the consular officer final authority within the State Department for the making of a determination as to whether or not a person seeking a visa meets the burden of proof to establish he is entitled to such visa. Unfortunately, consular officers, like all human beings, are not infallible and at times, have been guilty of the exercise of what to me seems like poor judgment in denying a visa application. Despite the feeling within the State Department that the denial may have been unjustified, there is no action which can be taken to rectify the action of the consular office, short of disciplining or removing him, which is too drastic a remedy.

This difficulty arises frequently in requests for visitor visas which are denied based on a failure on the part of the alien to overcome the statutory presumption that the person seeking entry to the United States is an immigrant—section 214(b) of the act.

Some feasible remedy should be available to correct bad judgment on the part of a consular officer. Accordingly, I propose that an appeal from the denial of an application for a visa or document by the consular officer lie with the Secretary of State, without recourse to further appeal to the courts.

Mr. President, I ask unanimous consent that the text of amendment No. 1486 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1486

"On page 15, between lines 5 and 6, insert the following new section:

"Sec. 13A. Section 291 of the Immigration and Nationality Act (8 U.S.C. 1361) is amended by striking out the second sentence and inserting in lieu thereof the following:

"If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not subject to exclusion under any provision of this Act. Such person may appeal the decision of the consular officer to the Secretary of State, who may direct that the required visa or other document be issued to admit such person to the United States. The decision of the Secretary of State shall be final without any right of appeal."

Mr. FONG. Nonvisa visitor program: Several years ago, I proposed that based upon reciprocity, the Secretary of State, in his discretion, be empowered to enter into agreements with foreign countries to permit their citizens or subjects to visit the United States for a period of up to 90 days, during which visit it would not be possible for the alien to change or adjust his status in any manner. Particularly in this Bicentennial Year and as evidence of our desire to share this celebration of our free Nation, what could be more fitting than enactment of such provision for nonvisa visitors.

Mr. President, I ask unanimous consent that the text of amendment 1487 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1487

"On page 9, between lines 5 and 6, and immediately before section 9, insert the following new section:

"SEC. 8A. Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding the following new subsection at the end thereof:

"(d) Any alien may be admitted without a visa to the United States as a nonimmigrant for a period of 90 days or less if—

"(1) the foreign state of which such alien is a citizen provides for similar entry for citizens of the United States; and

"(2) the Secretary of State enters into a written agreement with that foreign state providing for the reciprocal entry rights described in this section.

"Such 90-day period may not be extended.

"On page 10, line 20, strike out "or".

"On page 10, line 25, immediately before the first period insert ", or (3) an alien admitted without a visa under section 214(d)".

Mr. FONG. Permit entry to the United States of spouse of citizen who dies during active duty status in Armed Forces of the United States—amendment 1488 to S. 3074.

If the citizen spouse were alive, the alien spouse would be eligible for an immigrant visa as an "immediate relative," under section 201(b) of the act. The alien spouse could gain entry to the United States as a permanent resident, outside of the numerical limitation provisions applicable to either Eastern or Western Hemisphere and without labor certification.

Upon the death of the citizen spouse, the alien spouse remains eligible for naturalization without prior residence or specified physical presence in the United States.

The problem is how is the spouse to enter the United States. Obviously, if coming to the United States for immediate naturalization, the surviving spouse is not a visitor. If the spouse is coming as an immigrant, it is necessary to qualify for a preference under section 203(a) of the act, if visa numbers are available for the country of birth and preference.

To restore the surviving spouse to the legal position in which that spouse would have been prior to the death of the citizen spouse while on active duty in the Armed Forces of the United States, the entry requirements should be waived or made consistent with what they would have been if the citizen spouse had applied for immediate relative status for the alien spouse. Then, upon entry, the alien spouse could proceed to be naturalized under section 319(d) of the act.

Presently, it is usually necessary to have a private bill enacted to enable the surviving spouse to enter the United States so as to proceed with the naturalization.

Mr. President, I ask unanimous consent that the text of amendment 1488 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1488

"On page 16, between lines 19 and 20, insert the following new subsection:

"Sec. 15A. Section 319(d) of the Immigration and Nationality Act (8 U.S.C. 1430(d)) is amended to read as follows:

"(d) Any person who is the surviving spouse of a United States citizen, whose citizen spouse dies during a period of honorable service in an active duty status in the Armed Forces of the United States and who was living in marital union with the citizen spouse at the time of his death, if otherwise qualified, shall be immediately admissible as a lawful permanent resident without regard to labor certification any numerical limitations under this Act, and shall be immediately eligible for naturalization upon compliance with all the requirements of this title except that no prior residence or specified physical presence within the United States, or within the jurisdiction of the naturalization court shall be required."

Mr. FONG. Waiver of literacy requirements for naturalization of persons over the age of 60 years with 20 years of residence—amendment 1489 to S. 3074.

Presently, section 312 of the act permits naturalization of persons otherwise qualified for naturalization, who as of December 24, 1952, the effective date of the act, were at least 50 years of age and had been living in the United States for periods totaling at least 20 years, without their being required to meet the English proficiency tests.

As the chairman in his section-by-section analysis points out, this benefit is available now to persons who are over 73 and have now been in the United States for over 43 years.

At age 60, it is generally conceded that it is too difficult for a person to become sufficiently proficient in a foreign language, especially English, so as to enable them to read, write, and speak well enough to pass the tests for naturalization.

Section 15 of S. 3074 would waive the English literacy requirements for persons over 60 years of age, with 20 years residence, as of the effective date of the Immi-

gration and Nationality Act Amendments of 1976. This is a good idea but would require continuous revision of this section of the act.

My amendment to section 15 of S. 3074 would eliminate the time restriction and enable a person whenever he reaches more than 60 years of age and has 20 years of residence to become naturalized without being subject to the English proficiency requirements of the act.

Mr. President, I ask unanimous consent that the text of amendment 1489 to S. 3074 be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 1489

"On page 16, line 14, strike out '1428' and insert in lieu thereof "1423."

"On page 16, lines 17 and 18, strike out ", on the effective date of the Immigration and Nationality Act Amendments of 1976.'".

Mr. FONG. With these amendments to S. 3074 it is my considered opinion that the Immigration and Nationality Act will be much improved.

Persons born in the Eastern Hemisphere and the Western Hemisphere would be treated similarly—if separately.

The employment of illegal aliens would, hopefully, be stopped, without causing discrimination against others based on national origin.

Family reunions would be facilitated.

Refugees throughout the world seeking entry to the United States would be treated as immigrants, equally, with less duplicative work and at less cost.

Discrimination in or under our laws would be eliminated.

Changes would, hopefully, improve operation of the Immigration and Nationality Act.

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. Fong to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 7, between lines 11 and 12, insert the following:

"(b) amending paragraph (2) of subsection (a) by inserting 'parents,' immediately after 'spouses,'".

On page 7, line 12, strike out "(b)" and insert in lieu thereof "(c)".

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. Fong to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 8, line 23, insert "(a)" immediately before "The".

On page 9, between lines 5 and 6, insert the following:

"(b) Section 212(i) is amended by striking out 'or child' and inserting in lieu thereof 'son, or daughter'".

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. Fong to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 9, line 6, insert "(a)" immediately before "Section".

On page 9, between lines 22 and 23, insert the following:

"(b) Section 241(f) of the Immigration and Nationality Act is amended by striking out 'or a child' and inserting in lieu thereof 'a son, or a daughter'".

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. Fong to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 3, lines 24 and 25, strike out ", or who may, pursuant to section 203 (a) (7) enter conditionally,".

On page 4, lines 10 and 11, strike out "or who may, pursuant to section 203(a) (7), enter conditionally".

On page 4, lines 22 and 23, strike out the comma after "visas" and insert in lieu thereof "and", and strike out ", and conditional entries".

On page 5, line 3, immediately after "year" insert "except if the foreign state to which such area is dependent has not exceeded the numerical limitation set forth in clause (1), aliens otherwise chargeable to such dependent area may be charged instead to such foreign state".

[S. 3074, 94th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fong to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 7, between lines 15 and 16, insert the following:

"(c) amending paragraph (7) to read as follows:

"(7) Visas shall next be made available, in a number not to exceed 6 per centum of the number specified in section 201, to aliens who are refugees. For the purpose of this paragraph, the term "refugee" means (A) any alien (i) who is outside the country of his nationality or who, not having a nationality, is outside the country of his habitual residence, and who is unable or unwilling to return to such country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (ii) who has been uprooted by catastrophic natural calamity and who is unable to return to his usual place of abode, and (B) the spouse and children of any such alien, if accompanying or following to join such alien. For purposes of this section, a refugee who has lived outside the country of his nationality, or the country of his habitual residence, as the case may be, for not more than three years from the date on which the Immigration and Nationality Act Amendments of 1976 take effect shall not be considered permanently resettled in such country if such refugee was precluded from entering the United States because conditional entry was not available from such country.'".

[S. 3074, 94th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fong to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 9, between lines 5 and 6, insert the following new subsection:

(b) Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) is amended to read as follows:

"(5) The Attorney General may in his discretion parole into the United States under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien or group of aliens applying for admission to the United States, and such parole of such alien or group of aliens shall be regarded as an admission of the alien or group of aliens who thereafter shall be dealt with without regard to the numerical limitations under this Act."

[S. 3074, 94th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Fong to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 19, between lines 12 and 13, and immediately before section 21, insert the following new section:

Sec. 20B. (a) Notwithstanding any other provision of law, and without regard to the numerical limitations specified in the Immigration and Nationality Act (8 U.S.C. 1101), the status of any alien who is a native or citizen of Cambodia, Vietnam, or Laos and who has been inspected and admitted or paroled into the United States subsequent to April 1, 1975, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien makes an application for such adjustment; and

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence.

(b) Upon approval of an application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of the date of the alien's arrival in the United States. The

provisions of this section shall be applicable to the spouse and child of any alien described in subsection (a) regardless of their citizenship and place of birth, who are residing with such alien in the United States.

(c) Except as otherwise provided in this section, the definitions contained in section 101 (a) and (b) of the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 19, between lines 12 and 13, insert the following new section:

"Sec. 21. The portion of the first section, entitled 'Enforcement of the Chinese-exclusion Act', of the Act entitled 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and five, and for other purposes', approved April 28, 1904, (33 Stat. 478) is repealed.

On page 19, line 13, strike out "21" and insert in lieu thereof "22".

[S. 3074, 94th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 16, between lines 19 and 20, insert the following new section:

Sec. 15A. Section 338 of the Immigration and Nationality Act (8 U.S.C. 1449) is amended by striking out "marital status, and country of former nationality" and inserting in lieu thereof "and marital status".

[S. 3074, 94th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 19, between lines 12 and 13, insert the following new section:

Sec. 20A. The Secretary of State shall not require any person applying for a passport to indicate such person's country of former nationality, if any, nor include in the passport any information indicating the birthplace of the holder.

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 11, line 16, strike out "(e)" and insert in lieu thereof "(f)".

On page 11, line 17, strike out "and (d)" and insert in lieu thereof "(d), and (e)".

On page 14, line 16, strike out the quotation marks and the final period.

On page 14 between lines 16 and 17, insert the following new subsection:

"(e) (1) Whenever the Attorney General has reasonable cause to believe that any employer has failed or refused to hire any alien, or otherwise discriminated against such alien, because of such alien's national origin, in addition to any other remedies available, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such incident, pattern, or practice, and (3) requesting such relief, including damages, an application for a permanent or temporary injunction, restraining order, or other order against such employer, as he deems necessary.

"(2) The district courts of the United States shall have jurisdiction of any action instituted pursuant to this subsection."

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 8, line 23, insert "(a)" immediately before "The".

On page 9, between lines 5 and 6, insert the following new subsection:

"(b) The first sentence of section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)) is amended to read as follows: 'Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined, according to standards which he shall prescribe by regulation, and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the area in which such alien seeks employment 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 alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The Secretary of Labor shall approve or disapprove any application for a certification described in this paragraph within ninety days after such application is filed.'"

[S. 3074, 94th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 15, between lines 5 and 6, insert the following new section:

SEC. 13A. Section 291 of the Immigration and Nationality Act (8 U.S.C. 1361) is amended by striking out the second sentence and inserting in lieu thereof the following: "If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not subject to exclusion under any provision of this Act. Such person may appeal the decision of the consular officer to the Secretary of State, who may direct that the required visa or other document be issued to admit such person to the United States. The decision of the Secretary of State shall be final without any right of appeal."

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 9, between lines 5 and 6, and immediately before section 9, insert the following new section:

"SEC. 8A. Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding the following new subsection at the end thereof:

"(d) Any alien may be admitted without a visa to the United States as a nonimmigrant for a period of ninety days or less if—

"(1) the foreign state of which such alien is a citizen provides for similar entry for citizens of the United States; and

"(2) the Secretary of State enters into a written agreement with that foreign state providing for the reciprocal entry rights described in this section.

Such ninety-day period may not be extended."

On page 10, line 20, strike out "or".

On page 10, line 25, immediately before the first period insert ", or (3) an alien admitted without a visa under section 214(d)".

[S. 3074, 94th Cong., 2d sess..]

AMENDMENT Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 16, between lines 19 and 20, insert the following new section:

Sec. 15A. Section 319(d) of the Immigration and Nationality Act (8 U.S.C. 1430(d)) is amended to read as follows:

"(d) Any person who is surviving spouse of a United States citizen, whose citizen spouse dies during a period of honorable service in an active duty status in the Armed Forces of the United States and who was living in marital union with the citizen spouse at the time of his death, if otherwise qualified, shall be immediately admissible as a lawful permanent resident with regard to labor certification any numerical limitations under this Act, and shall be immediately eligible for naturalization upon compliance with all the requirements of this title except that no prior residence or specified physical presence within the United States, or within the jurisdiction of the naturalization court shall be required."

[S. 3074, 94th Cong., 2d sess.]

AMENDMENTS Intended to be proposed by Mr. FONG to S. 3074, a bill to amend the Immigration and Nationality Act, and for other purposes, viz

On page 16, line 14, strike out "1428" and insert in lieu thereof "1423".

On page 16, lines 17 and 18, strike out " , on the effective date of the Immigration and Nationality Act Amendments of 1976,".





