

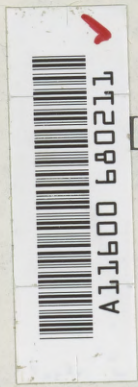
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IMMIGRATION AND NATIONALITY EFFICIENCY ACT OF 1979, S. 1763

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HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-SIXTH CONGRESS FIRST SESSION ON S. 1763

OCTOBER 17 AND 26, 1979

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IMMIGRATION AND NATIONALITY EFFICIENCY ACT OF 1979, S. 1763

WEDNESDAY, OCTOBER 17, 1979

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 2228, Dirksen Senate Office Building, Senator Edward M. Kennedy (chairman of the committee) presiding.

Present: Senators Kennedy and Heflin.

Also present: Antonia Hernandez and Jerry M. Tinker, counsels to the Judiciary Committee for immigration and refugee affairs.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Today's hearing by the Judiciary Committee is to review the provisions of S. 1763, the Immigration and Nationality Efficiency Act of 1979. The purpose of this legislation, which I introduced in collaboration with the administration, is to bring some urgently needed reform to our immigration law.

This bill is strictly remedial in nature. As members of the committee know, overall reform of our seriously flawed immigration statute must await the work of the Select Commission on Immigration and Refugee Policy. This Commission established by Congress has already begun its important task of overhauling our immigration laws and policies.

However, pending the Commission's final recommendations next year, the Judiciary Committee has a continuing responsibility to move ahead on remedial legislation where there is a strong consensus on the need to act, as well as on what needs to be done. The bill before us is such legislation. It repeals many outdated provisions of the current statute. It removes many unnecessary barriers which presently hamper the work of our Immigration Service in providing the American people, and our prospective immigrants, with an efficient Service and with humane and flexible immigration procedures.

By simply repealing and updating antiquated and unnecessary provisions of current law, the bill will not only facilitate the administration of the immigration process, it will also save the American taxpayer over \$1 million every year.

Finally, the bill addresses the question of increasing the number of annual visas made available to our contiguous neighboring countries, Canada and Mexico, to relieve a serious and unfortunate backlog that

has developed in visa numbers for immediate family members of permanent resident aliens. Currently, petitions for second preference visas from Mexico must wait nearly 9 years. This not only does violence to the principle of family reunion, which is one of the fundamental objectives of our immigration law, but it also works real and unnecessary hardship on thousands of families living in the United States. It also contributes substantially to the undocumented alien problem.

We will look forward this morning to hearing from the administration, as well as from a panel of immigration experts on their recommendations for remedial immigration reform.

1965 ACT

I might just mention at the outset that as one of the authors of the 1965 act, one of its goals was to remove two of the most discriminatory aspects that existed in our immigration statute—probably two of the most discriminatory provisions ever written into the Federal statute at any time in our history.

One was the Asian Pacific Triangle provisions and the National Origins Quota system. The point of the 1965 act was to repeal those and to place the priority of our immigration law on the reunification of families—believing as we do in the importance of the family.

Second, it was to permit the entrance into the United States of those with special skills that could mean additional job opportunities for American employment. Those were the principal bases of the 1965 reform.

Now we find that because of some unfortunate changes in the law in 1976, the second preference is backlogged. We have people waiting for family reunification up to 9 years, particularly from Mexico. In order to try to deal with this special problem, and also recognizing the special relationship that exists between Mexico and the United States, as well as Canada and the United States, there is a very important provision in this legislation to increase the quota for these two neighboring countries.

I want to welcome, as our first witness, Senator Huddleston of Kentucky. Senator Huddleston has taken a great interest in the whole question of immigration into the United States, and has a very deep personal interest in this issue in the broadest sense. We welcome his comments and his presence here before the committee. We are glad to have you here.

STATEMENT OF SENATOR HUDDLESTON

Senator HUDDLESTON. Thank you very much, Mr. Chairman. I want to thank you for the opportunity to testify on the Immigration and Nationality Efficiency Act of 1979, S. 1763. Swift action on this bill is another indication of your commitment to improve the immigration laws of the United States. For too long we have overlooked the importance of this area of the law which, as you know, is in urgent need of updating.

SUPPORTS REMEDIAL REFORMS IN BILL

I agree completely with your position that Congress should not postpone needed and remedial improvements in the immigration law pending the report of the Select Commission on Immigration and Refugee Policy. For this reason, I support enthusiastically the bulk of S. 1763. It would streamline outdated procedures and make for a more efficient operation of the Immigration and Naturalization Service. These are goals which we can all applaud and the Judiciary Committee is to be commended for its timely action.

However, there is one section in the bill which I have serious reservations about. Section 4 is a major change in immigration policy as well as procedure. It is designed to increase visas to one country above all others and to introduce the unfair concept of a most-favored-nation status into our immigration law. This overturns the foundation of our present immigration law which is the equal treatment of all races and nations. This should not be done lightly or to satisfy any temporary political pressure from foreign nations or special interest groups.

NEED COMPREHENSIVE REVIEW OF IMMIGRATION LAW

My major concern about immigration law is that it be considered in a comprehensive fashion. The effects of any change within the system must be considered in light of its effect on the system as a whole—on the United States as a whole—and on the countries sending immigrants.

Insofar as U.S. interests are concerned, any change must be related to our population and economic policies. The piecemeal addition of a few tens of thousands of people in the category of refugees, a few tens of thousands of people from one particular country of immigration, and then a few tens of thousands of people who originate from the next point of pressure, is not the way to build a coherent and logical immigration system. Nor is it a way to let the American people know that immigration is controlled by Congress in a steady and thoughtful way.

Section 4 of the bill would increase quota allocation to Mexico and Canada to a number to be determined by this committee. Further, Mexico would be given the right to use all visas not used by Canada. The distinguished chairman has indicated that he would be willing to accept an increased quota of 35,000 per year for each of the two countries. Since Canada has not used more than 8,000 quota slots yearly, this would give Mexico the right to send about 62,000 quota immigrants to the United States yearly.

However, under existing law, Mexico presently sends over twice its 20,000 per year quota to the United States. For the period 1971-77 Mexico contributed over 15 percent of all immigrants to the United States. The entire continent of Africa, with a population seven times as large as Mexico's, sent only one-tenth as many immigrants to the United States.

NEED TO MAINTAIN EQUITABLE IMMIGRATION SYSTEM

If we are to maintain an equitable immigration system, I see little justification to increase Mexico's percentage of our immigration above

15 percent. The nation of origin system of immigration, which was repudiated by Congress and the American people in 1965, was based on favoritism for one group of nations above all others. President John F. Kennedy, one of the foremost advocates of an equitable system in which there would be no favoritism, wrote in 1963:

The use of a national origin system is without basis in either logic or reason. It neither satisfies a national need nor accomplishes an international purpose. In an age of interdependence among nations, such a system is an anachronism for it discriminates against applicants for admissions into the United States on the basis of accident of birth.

I believe that repudiation of a special-favored-nation status within our immigration system is as right morally and practically today as it was then. We are told that immigration from Mexico must increase because there is a long backlog of second-preference applicants from Mexico. If a long backlog is all that is necessary to increase quotas to any nation, then why should the Philippines and Taiwan not also be favored.

OBJECTIVE OF BILL QUESTIONED

Another aspect to consider is that second-preference applications are made on the basis of a sponsor in the United States who is a legal resident alien. Were that sponsor to be a citizen of the United States, those who would otherwise qualify for second preference would then be eligible to come to the United States as nonquota immigrants with no waiting list. It takes 5 years to become a citizen of the United States and the only way a country could develop a backlog of second-preference applicants longer than 5 years would be for large numbers of its citizens to live in the United States but to prefer not to be citizens of the United States. Is that, in fact, the problem which this section of the bill addresses? Is this special treatment being requested in order to aid relatives of Mexican citizens who wish to obtain the benefits of living in the United States by retaining Mexican citizenship? Is that why we are asked to further increase immigration from Mexico?

I see no reason, Mr. Chairman, to break our equitable system of allocating a maximum of 20,000 quota visas to each country to create or recreate favored classes of countries. I see no reason to further increase Mexico's disproportionately large share of immigration to the United States by increasing our total immigration.

If there is a need to expedite the admission of relatives of Mexican citizens who prefer the status of "legal resident aliens" to U.S. citizenship, there is a simpler remedy at hand; we could exempt Mexico from the requirement of the Immigration and Naturalization Act, section 202(e) insures that preference categories be allocated according to their legal proportions within a country which has used all its quota visas in the preceding year. By exempting Mexico from this mechanism, all Mexican visas for the next several years would be available to second-preference applicants. This remedy is surely less dramatic and less drastic than raising immigration levels and less damaging to equity than reestablishing a country of origin system.

BROADER IMPLICATIONS CONSIDERED

Yet, before we institute even this less drastic remedy, I think we should consider the broader implications of our actions. What are we doing to Mexico by taking such a large portion of its best and most talented citizens? In a country with such large and social and economic problems, what favor are we doing to drain off its brightest, most ambitious people, the people most likely to make real changes within its society?

In August of this year, the Los Angeles Times poll of Mexicans found that 65 percent of Mexicans opposed illegal immigration to the United States. I believe that they do so for the same reason that would bring them to oppose increased legal immigration to the United States. Mexicans perceive that the solution of that problem is not to continue to drain the most innovative and hardest working of their fellow countrymen to the United States and I believe that the Mexican people would rightly oppose any implication by the United States that we are making life better for them by taking their fellow countrymen into the United States in ever larger numbers.

Mr. Chairman, I thank you for the opportunity of being here this morning.

Senator KENNEDY. We want to thank you, Senator Huddleston. We have started off this hearing and we have some points of difference right away. But Senator Huddleston has been enormously interested in this field and we are looking for different ways and means of addressing this particular issue and he makes some constructive suggestions on this legislation. We appreciate your presence here and your testimony. We are glad to have you with us this morning. Thank you for taking the time.

Senator HUDDLESTON. Thank you very much.

Senator KENNEDY. Our next witness represents the executive branch in support of the legislation. We welcome David Crosland, Acting Commissioner for Immigration and Naturalization Service. In addition to Commissioner Crosland, we want to welcome Andrew J. Carmichael, Jr., Assistant Commissioner for Naturalization, and Paul W. Schmidt, Deputy General Counsel; we look forward to their testimony and appreciate their help and cooperation in developing the legislation.

Mr. Crosland, would you start off?

**PANEL OF IMMIGRATION AND NATURALIZATION SERVICE
OFFICIALS:**

STATEMENTS OF DAVID CROSLAND, ACTING COMMISSIONER; ANDREW J. CARMICHAEL, JR., ASSISTANT COMMISSIONER FOR NATURALIZATION; PAUL W. SCHMIDT, DEPUTY GENERAL COUNSEL; AND CARL WACK, ASSOCIATE COMMISSIONER FOR EXAMINATIONS

Mr. CROSLAND. Thank you, Mr. Chairman.

I am here today to present the views of the Department of Justice on Senate bill 1763. I am accompanied by Paul Schmidt, Deputy Gen-

eral Counsel; Andrew Carmichael who is the Assistant Commissioner for Naturalization; and Carl Wack who is the Associate Commissioner for Examinations.

I prepared a detailed statement covering each of the sections of this bill which I will submit for the record. With your permission, I will make a much more brief statement which covers the more significant aspects of the legislation.

ADMINISTRATION SUPPORTS BILL

We all recognize the need for a thorough study of immigration law and regulations which is underway by the Select Commission on Immigration and Refugee Policy. However, the Department of Justice strongly supports immediate enactment of interim legislation which would correct some current problems and substantially benefit the public.

In general, the proposal which the committee is considering would accomplish several objectives. It would eliminate some inequities in the present law, modify or delete certain provisions of the Immigration Act which are proved unnecessary or impractical, clarify some sections which have been affected by administrative and judicial decisions. It would also eliminate some unnecessary and time-consuming requirements on the part of the public, while reducing some workload and backlogs in the Immigration and Naturalization Service.

SUPPORTS INCREASED QUOTAS FOR CANADA AND MEXICO

A major effect of the bill would be to allow increased immigration from Canada and Mexico and raise the annual worldwide ceiling to accommodate such an increase. This is a move which has been supported by both the past administration and the Carter administration. In the case of Mexico, it would simply restore immigration to about the level it was before the passage of the Western Hemisphere law in 1977. The number suggested by President Carter in August 1977 was a 50,000 combined number for both countries. However, the administration would not oppose a figure of 35,000 for each which, as a practical matter, would be an increase of 15,000 over the present limit.

To avoid taking these numbers away from other countries, 30,000 could be added to the world immigration quota, bringing that limit to 320,000.

ELIMINATING UNNECESSARY PAPERWORK

The bill also provides that the Attorney General's consent to the reapplication for entry of an alien who has been deported will be required for only 5 years rather than for all time as is the case now. Little, if any, useful purpose is served by requiring such permission for a deported alien who has been outside the country for more than 5 years. Considerable, unnecessary and, we believe, unproductive work on the part of the Immigration and Naturalization Service—INS—is devoted to adjudicating those applications. When such a request is received, INS must consult its paper files, determine the individual's record of past violations, what his offenses were, and whether he continues to have trouble with the law. We then weigh the negative factors against the positive ones. For example, we ask questions such as:

Are there U.S. citizen children dependents? Who will benefit from the reentry? Does the individual possess a skill that is needed by an American employer?

Enactment of this provision would save INS from handling about 2,600 such applications a year, reducing slightly our overwhelming paperwork, and we believe it would be in the public interest as well.

EASING REENTRY PERMITS

Another section of the bill provides that a reentry permit issued to a permanent resident alien leaving the United States would be valid for 2 years and not renewable. This would eliminate a type of Catch-22 that now exists. An alien leaving for less than 1 year can reenter on an alien identification card, a so-called "green card"; however, if he plans to be out of the United States for more than a year, he must reapply for a reentry permit which is good for only 1 year. This means that by the time he is ready to use it, the card has expired and must be renewed. This application is a somewhat involved process for both the alien and the INS. The individual must contact either an INS or counsel officer abroad and proof must be presented that U.S. income tax was filed for the year the person was out of the country. If the original reentry permit was lost, renewal is more difficult. A cable must be sent to an INS office in the United States. Then we must locate one of the 40 million paper files to determine the status of the applicant. When this is done the card is reissued and returned.

However, if the permit renewal is denied, the alien can appeal and if he attempts to reenter the United States, he is entitled to an exclusion hearing. It takes an average of 5½ INS officers working 1 year to handle the 35,000 such renewal applications received annually. This work would be eliminated by a commonsense approach to issuing the permit just once, making it nonrenewable, invalid after 2 years.

ELIMINATING WITNESSES FOR NATURALIZATION

Another step which we believe time has eroded is the necessity of two-witness requirement for naturalization applicants. At one time, each person could be naturalized but had to bring two U.S. citizens to a Federal district court. In an earlier time, those persons would be questioned by the judge as to the alien's fitness and qualifications for citizenship. It provided the only real evidence of the applicant's eligibility.

Today, however, INS has a file on the applicant and access to records through other Government agencies which are checked to determine if they are valid reasons why citizenship should be denied. But it is still required that two witnesses be brought before the immigration officer to testify to the good character of the alien. These witnesses are chosen by the applicants and are, of course, always friends who swear to his good character. Rarely, if ever, does this testimony have any bearing on the granting or denial of citizenship.

Still, each of the 200,000 or more persons called for hearings on their naturalization applications each year must bring two witnesses to be interviewed by an INS examiner. Often great distances must be traveled and a full day taken from the job for witnesses to appear.

Considerable unproductive time by INS personnel is also involved. The time involved in the witness interviewing is estimated to consume the worktime of 56 people over the period of 1 year.

Backlogs of persons waiting for citizenships are already lengthy in many INS offices and they promise to grow larger next spring when more than 100,000 of the original Indo-Chinese refugees begin to obtain eligibility for naturalization.

Elimination of the witness provision would help reduce existing backlogs and accommodate the increased workload. Delay in naturalization would also be eliminated by another section of this legislation. This is the required 30-day waiting period before filing of the petition for naturalization and the court's final hearing on it. This was necessary at one time to allow time for the courts to investigate the applicant and to serve public notice on the impending hearing. Modern investigative methods make this no longer necessary. Nearly all cases of determination of eligibility can be made at the time of the preliminary hearing before an INS officer.

Because of the waiting period, INS examiners must make two trips to the court, one to file the petition and a second for the final hearing. Often 1 day or more travel time is involved so productive work of the INS officer is lost and travel expenses are needlessly incurred.

CONCLUDING COMMENT

We are pleased that the committee is considering this legislation which would be an important assistance to the INS in carrying out its responsibilities. Enactment would mean some small, but significant, improvements in the current law, especially in the area of naturalization proceedings. Countless people would be spared what is viewed as government redtape as it appears to them and does in fact serve very little useful purpose.

We stand ready to provide you and the committee with any further assistance and information you may need in order to consider this legislation and we would be happy to answer any questions that you may have.

Senator KENNEDY. Thank you very much.

SAVINGS UNDER BILL

Let me ask you at the outset, what if this bill were enacted, what is it going to mean in terms of savings to the Justice Department? Have you made any estimate on this?

Mr. CROSLAND. Well, we made at least an estimate of \$1 million each year. I have outlined the number of people who have to work on just some of these matters. We can submit for the record a more detailed statement if you like as to specifically what we estimate to be in savings.

Senator KENNEDY. Do you think that it also improves the efficiency of the Department as well?

Mr. CROSLAND. Very much so.

Senator KENNEDY. In the ways that are outlined in your more complete statement?

Mr. CROSLAND. Yes.

WHY TREAT MEXICO DIFFERENTLY?

Senator KENNEDY. Can you respond to some of Senator Huddleston's concerns about why we ought to be treating Mexico differently from some of the other countries that have a backlog in the second preference?

Mr. CROSLAND. Well, the major relief would be to those second-preference persons who are in this country whose sponsors and children are outside of the country. These are permanent residents in the United States.

Senator KENNEDY. Why should we do this for Mexico? That is what I am interested in hearing; why should we do this for Mexico and Canada and not for other countries?

Mr. CROSLAND. Well, we have cultural ties to contiguous neighbors, Canada and Mexico. Obviously, the effect is going to be, given the experience with Canadian immigration decreasing, more immigration from Mexico, but there are many persons who live in this country who are related to persons in Mexico and it serves to unite those families which has been one of the underlying tenets of immigration law throughout the history of this country.

Senator KENNEDY. Is it not the fact that once they become citizens, they will be able to bring them in without quotas; is that correct?

Mr. CROSLAND. That would be a longer period of time.

Senator KENNEDY. Yes; but what we are basically doing is talking about the separation of some families for rather an artificial period of time. Once they become citizens, in 5 years, they can come right in. So it is a rather arbitrary provision of the law which is keeping families separated now for 9 years, and which I imagine encourages the illegal movement of people across the border. Also, I would think this has a rather important impact on members of the family and family structure. If a member of a family is able to join his or her spouse only illegally, their children are maybe illegal, in terms of the definitions of the law, and that obviously presents a human aspect of it which I think should not be lost, certainly, in the course of this particular hearing.

That is why I think this bill is certainly consistent with the spirit of the 1965 act. And we are also talking about our neighboring countries where there is a very special relationship for a variety of different reasons of culture and history, language-shared beliefs and other values, and we have this really artificial barrier.

Mr. CROSLAND. We agree with that analysis.

Senator KENNEDY. I have some other questions which I will submit to you later.

CHARGES OF BRUTALITY BY BORDER PATROL

Let me ask you one other question on the question of brutality on the border. I have two training books that are put out by the INS and the police of the District of Columbia where they refer to the use of force. It appears that the training manual used by INS is much weaker on the use of physical force than the Washington Police Department.

The INS handbook states "use of physical force or violence in handling detained aliens or other persons with whom official business is being conducted is permissible only in self-defense and defense of

another person or to such an extent as is absolutely necessary in making an arrest, or preventing an escape." Can you tell us what does "such an extent as is absolutely necessary" mean?

Mr. CROSLAND. Mr. Chairman, I would think that the individual circumstances would have to govern. Most law enforcement officers have to make immediate decisions as to what sort of force is necessary. The question suggests that perhaps it doesn't spell out specifically what kind of circumstances would warrant force and how much force. I think there are some fairly clear guidelines on when force should be taken which would protect life of the INS border patrolmen or any innocent bystanders. My understanding is that it is sufficient to subdue and that is the extent of the force that should be used.

Senator KENNEDY. It is not defined in the handbook, is it? I was just interested in the guidelines which are used, for example, in the District of Columbia. They spell out in very considerable detail when the use of firearms and other service weapons can be used, and when the use of handcuffs are appropriate, and many other factors that relate to arrest or preventing escape, and I was just wondering whether it was the intention of the INS to develop similar kinds of guidelines.

Mr. CROSLAND. I am told that such specific information is spelled out in the border patrol handbook. If they are not, they certainly should have the same specificity in instructing persons on the border as persons on the interior involved in law enforcement activities.

We appreciate your bringing that to our attention.

[The prepared statement of Mr. Crosland follows:]

PREPARED STATEMENT OF DAVID CROSLAND

Mr. Chairman, members of the committee, I am pleased to be here to present the views of the Department of Justice on S. 1763. We all recognize the need for the thorough study of the Immigration and Nationality Act which is presently being undertaken by the Select Commission in Immigration and Refugees. However, the Department of Justice strongly supports immediate enactment of legislation which would achieve fairer and more efficient administration of the present statute pending the completion of the Commission's study and the enactment of any major revision which may follow. Generally, the legislative proposal which the committee has before it eliminates some inequities in the present law, modifies or deletes provisions of the act which have proved unnecessary or impractical, and clarifies some sections which have been affected by administrative and judicial decisions. Many of the provisions of this bill were contained in an administration draft bill which was forwarded to both Houses of Congress on April 20, 1979.

Section 1 of the bill amends the nonimmigrant student provision of the Immigration and Nationality Act to limit "F" student classification to academic students. A new "M" classification is created which would be applicable to non-academic or vocational students. This change would make it easier to enforce restrictions on the length of stay and employment of nonacademic students, and is needed because of the many abuses of the "F" classification by nonacademic students and institutions.

Section 2 of the bill deletes from the term "ineligible to citizenship" reference to individuals who are exempted from U.S. military service because of treaties between the United States and foreign countries. The Department has no objection to this amendment.

Sections 3 and 4 of the bill are amendments which would allow increased immigration from Canada and Mexico, and would raise the annual worldwide ceiling on immigration to accommodate such increase. As you are aware, in his August 4, 1977 message to the Congress on immigration policy, President Carter endorsed an increase in the limitation for immigrants from Canada and Mexico. The Select Commission on Immigration and Refugee Policy is at present examining the entire question of immigration policy, and will report its findings to the

Congress. Although the number mentioned by the President was 50,000 for both countries combined, the administration would not object to a limitation of 35,000 each for Canada and Mexico. This would amount to an increase of 15,000 each over the present limitation of 20,000 applicable to Canada and Mexico. In order to avoid disadvantage to other countries, 30,000 visas would be added to the worldwide limitation, thus bringing that number to 320,000. The Department endorses the bill's concept of allowing the unused portion of one country's limitation to be added to the other country's limitation in the next fiscal year.

Section 5 of the bill provides that the requirement that the Attorney General consent to the reapplication for admission of an alien who has been deported will remain in force for only 5 years. Currently, such an alien is perpetually barred and can seek readmission only after securing the Attorney General's consent to his reapplication. However, an alien who has been excluded from the United States is barred from readmission without prior consent for only 1 year. The Department believes that little if any useful purpose is served by requiring an application for permission to reapply from aliens who have been outside the United States for 5 years or more. A direct economy would result from the reduction in the number of applications for permission to reapply which the INS must adjudicate each year.

Section 5 also restores the Attorney General's authority to waive certain technical defects in immigrant visas which are not the fault of the alien involved. Similar authority was deleted, apparently inadvertently, when the act was amended in 1965. Lack of authority to waive technical defects in immigrant visas has caused hardship in some cases. The amendment would provide needed administrative flexibility.

Section 6 provides that a reentry permit, issued to a lawful permanent resident alien who temporarily proceeds abroad, shall be valid for 2 years and shall not be renewable. Currently, a reentry permit's initial validity is limited to 1 year, with provision for renewal for 1 more year. However, since the alien registration receipt card carried by all lawful permanent resident aliens is sufficient for a return to the United States following absences of up to 1 year, a resident alien seldom needs to apply for a reentry permit unless he anticipates being absent for more than one year. The result is a large number of unnecessary applications for renewal of reentry permits. This would be remedied by making the reentry permit good for up to 2 years with no provision for renewal. We anticipate a savings of approximately 30,000 man-hours as a result of this change.

Section 7 of the bill makes a very important change regarding the choice of countries to which an excluded alien may be removed. Currently, an alien who is excluded from the United States may be returned only to the "country whence he came." The statutory reference is subject to interpretation, and in some cases the "country whence he came" has been construed as the country where the alien last had a place of abode. Sometimes, however, that country does not recognize the alien's right to return. When that happens, the U.S. Government currently has no discretion under the act to apply to a second country which may be willing to accept the alien. By contrast, when an alien illegally in the United States is ordered deported, the law provides that if the country first designated will not accept the alien, application can be made to other countries. This amendment would provide similar options with respect to aliens who have been ordered excluded from admission to the United States. It will also eliminate the confusing term "whence he came."

Section 8 amends section 241(f) of the act to clarify what has been a major source of controversy and litigation for many years. That section currently provides a mandatory waiver of deportation based upon visa fraud at the time of entry for those who are "otherwise admissible" and who are spouses, parents, or children of U.S. citizens or lawful permanent residents. The issue of the proper interpretation of this section has reached the Supreme Court twice with no clear resolution, and the differing administrative and judicial interpretations have left the law in a state of confusion which makes it virtually impossible for the INS to uniformly administer section 241(f). The amendment makes the waiver discretionary with the Attorney General, clarifies the meaning of the term "otherwise admissible", and makes it clear that relief is available to those who have made innocent, as well as fraudulent, misrepresentations.

Section 9 of the bill eliminates the requirement of a report to Congress on the grant of suspension of deportation by the Attorney General. Under the current statute, in most cases where suspension is granted by the Attorney General,

Congress has the option of disapproving that grant. In more serious cases, the Attorney General's grant of suspension of deportation requires an affirmative act of approval by the Congress. The Department of Justice has taken the position that the current law's provision for a "one-House veto" of executive action is unconstitutional. A case involving that issue is currently pending in the Ninth Circuit Court of Appeals. *Chadha v. INS*, Civ. No. 77-1702, 9 Cir. As a practical matter, suspension of deportation can be granted only following a hearing by an immigration judge, and the statutory criteria applied are quite strict. The Department strongly recommends the deletion of the provisions relating to congressional action on suspension of deportation cases.

Section 10 is a conforming amendment relating to the charging of visa numbers used for aliens whose deportation has been suspended.

Section 11 codifies several administrative interpretations relating to ineligibility for suspension of deportation. One modification lifts the bar to suspension of deportation for an exchange alien who is not subject to the 2-year foreign residence requirement. The other modification is basically a conforming amendment which deletes the reference to ineligibility for suspension of deportation for natives of contiguous countries or adjacent islands. This bar has had no legal effect since the enactment of the Western Hemisphere amendments which became effective January 1, 1977.

Section 12 makes a change which would allow a nonimmigrant exchange visitor who is not subject to the 2-year foreign residency requirement to be eligible for a change to another nonimmigrant status. The original rationale for barring exchange visitors from applying for a change to another nonimmigrant status was that all exchange visitors were subject to a foreign residence requirement which would be evaded by allowing them to change to another nonimmigrant status while in the United States. However, the law has now been changed so that many exchange aliens are not subject to the 2-year foreign residence requirement. Even those who are subject to the requirement can often obtain waivers of that requirement. There is no continuing justification for barring a change of nonimmigrant status while in the United States for exchange aliens who do not have to comply with the foreign residency requirements.

Section 12 also codifies current INS regulations which bar a change from fiancée status to any other nonimmigrant status. An alien fiancée is admitted as a nonimmigrant for the sole purpose of entering into a marriage with a U.S. citizen within 90 days. If the marriage occurs, the fiancée automatically becomes a lawful permanent resident. If the marriage does not take place, the fiancée is required to leave the United States.

Section 13 would allow the INS to retain funds spent out of the INS appropriation for the purchase of evidence when such funds are later recovered. Currently, such recovered funds must be deposited into the treasury as miscellaneous receipts in accordance with a ruling by the Comptroller General. We estimate that the INS may be able to recover up to \$100,000 through this change in the law.

Section 14 relates to the elimination of the permanent bar to U.S. citizenship for aliens who have requested exemption from military service based upon a treaty between the United States and their native country. As I mentioned earlier, the Department has no objection to this amendment.

Section 15 modifies certain residency requirements for naturalization. It would allow the spouse and unmarried dependent sons and daughters, who are members of the household of a lawful permanent resident whose employment requires him to be abroad, to receive beneficial treatment with respect to the period of continuous residence in the United States required for naturalization. Currently such benefits are limited to the principal alien. The Department favors this provision.

Sections 16, 17 and 18 are key provisions of the bill relating to naturalization. They eliminate all references to the requirement that a petitioner for naturalization be accompanied by two witnesses when he files his petition for naturalization in court prior to a final hearing on the petition. Examination of accompanying witnesses is time consuming, unnecessary, and unproductive. Witnesses selected by the petitioner are unlikely to reveal his faults, if any. Moreover, when necessary, the INS can obtain information about the petitioner's fitness for citizenship through its own investigation.

As you are aware, many of our district offices have been plagued by backlogs in the naturalization section. The elimination of the witness requirement would result in savings of over 35,000 man-hours of officer time, and over

60,000 man-hours of clerical time, per year. The time saved could be applied to reducing backlogs and to performing other more useful functions in the naturalization area.

Section 19 of the bill eliminates the requirement for a 30-day waiting period between the filing of a petition for naturalization and the final court hearing on the petition. The mandatory 30-day waiting period was intended to assist the Government in conducting inquiries into the petitioner's qualifications for naturalization. However, as a practical matter, all necessary inquiries will normally have been made between the day of submitting initial applications to the INS and the date on which the applicant is scheduled to appear for a preliminary examination and the filing of a petition for naturalization. If at any time factors appear which require further investigation, an inquiry will be undertaken and the final hearing will be delayed until its completion. The amendment will eliminate the need for the applicant and the naturalization examiner to make to second trip to court 30 days or more after the filing of the petition. We believe that this change would save over \$130,000 in travel funds alone.

Section 20 of the bill changes the law to authorize certain State courts which have naturalization jurisdiction to retain up to \$20,000 of the fees collected in naturalization proceedings in any 1 year. Current law authorizes the retention of a maximum of \$3,000 of the annual fees. The Department believes that the amount which State naturalization courts may retain under the current law is inadequate to compensate them for the services which they perform. The Department strongly endorses this amendment in view of our concern that State courts may withdraw from the naturalization process unless the amount which they may retain is adequate to cover their costs.

Section 21 of the bill provides that all provisions of the bill will become effective on the date of enactment with the exception of the amendments relating to vocational and nonacademic students, which will become effective after 6 months. This is to allow sufficient leadtime to arrange for the change of classification of those nonacademic and vocational school students who are presently in the "I" student classification.

In reviewing the bill, the INS General Counsel's office has come up with a number of minor technical suggestions on various sections of the bill which we will communicate to the committee staff.

We are pleased that the committee is giving expeditious consideration to this important legislation. Enactment of this bill would be a significant improvement in the current law, especially in the area of naturalization processing. We stand ready to provide you and committee staff with any further assistance or information you may need to complete your consideration of this bill.

This completes my prepared remarks. I will be happy to answer your questions.

Mr. CROSLAND. Thank you.

Senator KENNEDY. Thank you very much.

Ambassador Richard Sneider, who has had a long and distinguished career in the Department of State, is here appearing on his own behalf in support of a visa waiver amendment we are considering. You weren't on our original witness list, so perhaps you could submit for us, Mr. Ambassador, your statement and then we will get back to you with the questions, if necessary.

Ambassador SNEIDER. I will be glad to help. Thank you.
[The prepared statement of Mr. Sneider follows:]

PREPARED STATEMENT OF RICHARD L. SNEIDER

Mr. Chairman, members of the committee, I appreciate the invitation to participate in today's hearing. I would like to emphasize that my comments are based on my experience in the Foreign Service and more recently from my participation on the State/Office of Management and Budget Teams' review of the staffing of U.S. overseas Missions. In late May, the President directed that OMB and the State Department carry out a review of the staffing of U.S. overseas Missions. As a first step in this process, Ambassador L. Dean Brown and I headed two teams which visited 12 countries to identify overstaffing and under-

staffing situations and possible remedies. Unfortunately, a previous engagement prevents Ambassador Brown from being here this morning.

The most striking situation seen by the teams was the huge increase in non-immigrant visa applications (primarily of visitors for pleasure and business) in countries such as the United Kingdom, the Federal Republic of Germany, and France. It was obvious, particularly in countries where there is a low incidence of visa fraud or whose nationals seldom violate the terms of their stay in the United States, that the resources devoted to processing such visa applications are wasteful and duplicate efforts by the Immigration and Naturalization Service (INS) at the port of entry. It results in tremendous additional consular workload each year. I believe that legislation should be developed which would provide for the selective waiver of the nonimmigrant visa requirement for short-term visits by businesspersons and tourists who are citizens of countries where the rate of visa fraud is very low and the requirement is therefore an unnecessary and increasingly expensive formality.

During a period of greater fiscal restraint, it will simply not be possible to continue supplying more personnel to process the rapidly escalating requests for visa services from legitimate travelers. In addition, such legislation would assist the U.S. Government to reallocate resources, improving the quality of services to Americans and to meet more pressing diplomatic and consular requirements elsewhere.

I should add that the idea embodied in such a proposal is not new. However, its enactment at this time would bring the United States into line with many other nations of the world which do not require visas of our citizens and would reinforce our commitment to freedom of travel. Additionally, the adoption of such a nonimmigrant visa waiver would encourage travel to this country, reducing our balance of payments deficit.

[Additional material by Mr. Sneider follows:]

SELECTIVE NONIMMIGRANT VISA WAIVER PROPOSAL

This amendment to section 212(d) of the Immigration and Nationality Act of 1952 would authorize the Secretary of State and the Attorney General jointly to waive the nonimmigrant visa (NIV) requirement for nationals of certain countries visiting the United States for 90 days or less for business or pleasure. (Such an amendment would extend the coverage of a blanket waiver authority which is granted already to nationals of Canada and the Bahamas, to British nationals resident in Bermuda, the Cayman Islands and the Turks and Caicos Islands.) The countries to which this additional waiver provision would apply would be selected on the basis of reciprocity and of data showing that applicants from those nationals pose the lowest risk of becoming public charges or of violating their status as temporary visitors.

Countries initially eligible for the benefits of this waiver proposal would be those which (1) did not require a visa of United States citizen tourists and business visitors, or were prepared to abolish such a requirement; and (2) had a non-immigrant visa refusal rate of not more than 2 percent in the last fiscal year before the proposal became effective. After the initial period, continuing eligibility for this benefit would be based upon rates of formal or informal denial of entry and of violation of nonimmigrant status after entry. Thus, if experience with the waiver provision showed that it resulted in a meaningful increase in attempted or successful entry by unqualified aliens from one or more beneficiary countries, the entitlement of those countries would be cut off automatically and potential threats to the integrity of our system for controlling aliens would be prevented. Provision is made in the proposal for according this benefit at a later date to countries which did not qualify initially, but subsequently were determined to have become eligible.

Twenty-nine countries now meet all requirements. Japan and Brazil presently require visas of U.S. visitors, but there is reason to believe that both will lift the requirement if the USG indicates readiness to do the same for their citizens. Visitors admitted under the proposed amendment would be required to accept certain requirements, such as purchase of a round-trip, nonrefundable ticket, completion of a new Immigration and Naturalization Service (INS) form, and routine namechecks at the port of entry.

PROCEDURES

Implementation of the proposal for short term business and pleasure visits by nationals of the countries jointly designated by the Attorney General and the Secretary of State will entail the institution of procedures to ensure that (1) eligible alien visitors without visas are aware of the conditions and limitations governing their visit, and (2) adequate entry and departure controls are maintained for aliens entering without visas. These procedures will be primarily a matter of extending the existing contractual relations between the Immigration and Naturalization Service and the international carriers. It is anticipated that the following arrangements would prove satisfactory to both INS and the carriers:

Entry without visa would be available (as at present) only to aliens transported to the U.S. on carriers which have entered into a contractual agreement with INS requiring the carrier to:

- (1) Refuse to accept for passage to the United States any nonimmigrant visitor without a visa or a completed INS card.
- (2) Remove without expense to the U.S. Government, to the foreign port from which the alien embarked, any alien brought to the U.S. under the visa waiver and found ineligible for admission by an immigration officer at the port of entry.
- (3) Make no refunds or partial refunds on the return portion of a round-trip, nonrefundable ticket to be held by each alien entering the U.S. under the visa waiver, or accept for transportation a person other than the one in whose name the ticket was issued as presently required.
- (4) Honor unconditionally the return portion of the round-trip ticket when presented for return passage.

The carrier would be responsible for ensuring that the alien was aware of the limitations governing his entry under the visa waiver.

The carrier would provide an INS form to the alien, at time of purchase or embarkation containing:

- (1) A statement that the alien understands that he is not permitted to engage in employment in the U.S., and cannot have his temporary visitor status changed or his stay extended beyond 90 days.
- (2) A statement that the alien is not ineligible for admission under one or more of the categories described in section 212(a) of the Act. The alien would sign this form and present it to the immigration inspector at the port of entry, together with his passport and nonrefundable return ticket.

Notwithstanding the fact that the alien had signed this form (which would contain a caveat that entry was not guaranteed), the determination as to his admissibility would rest solely with INS at the port of entry. If found ineligible, the carrier would be obliged to return the alien to his port of embarkation, his country of origin, or a third country to which he is eligible for admission, using the round-trip or ongoing trip portion of the alien's ticket.

The INS form issued to the alien by the carrier prior to his arrival would serve as an entry and departure document when properly endorsed by the inspecting officer. The form would be in duplicate, the alien retaining the original and INS retaining the copy as a control document. The alien would surrender his form when he departed the U.S. for collation with INS's control copy. If INS received no record of departure, the alien would be regarded as an overstay and referred for investigation. To avoid expensive and time-consuming INS efforts to verify departure, the carrier would be responsible for lifting the alien's form and returning it to INS, as is done now with Form I-94.

An alien who remained beyond the 90-day limit or otherwise failed to maintain status would be subject to deportation proceedings, with the alternative of voluntary departure if the alien established that he was ready, willing, and able to depart the U.S. promptly or that his inability to depart promptly was due entirely to circumstances beyond his control.

Although these procedures ostensibly place on the carrier the responsibility and the financial burden for removing aliens found ineligible at the port of entry, it should be noted that the requirement for the alien to have a round-trip ticket in his possession saves the carrier from financial loss in the event the alien is found ineligible. It is this provision that has induced the carriers to support, indeed to promote, earlier visa waiver proposals. It should be further noted that the requirement for a contractual agreement between INS and the carrier, and the carrier responsibility for distribution and collection of the INS

eligibility/control form, are not departures from, but merely extensions of, procedures already used to comply with Sections 238, 240, 293 and related provisions of the Immigration and Nationality Act. Based on previous carrier concurrence in this procedure, it is anticipated that the carriers would find it in their own interest to undertake these obligations under the visa waiver proposal.

DISCUSSION

In 1978, Foreign Service posts issued approximately 4.5 million nonimmigrant visas—three times the annual total of ten years ago. Of these, about half will be issued in the 31 countries for which the proposal would apply initially—and three-fourths of these to short term business and pleasure visitors. In the next two years, total issuances will increase by at least an additional million annually, with reduced air fares providing the possibility of even higher increases.

During a period when the Department's personnel resources are being cut back, it will simply not be possible to continue to provide prompt visa services in countries which supply the bulk of legitimate travelers as well as to screen fraudulent applications adequately in countries where there are the greatest risks. The proposed amendment would enable the Department to concentrate its limited resources on the areas which pose the greatest problems.

At the same time, enactment of the proposed amendment would give a positive sign to the world of the Administration's commitment to greater freedom of travel, as expressed in the Helsinki final act of the CSCE.

The Department estimates that implementation of the proposal would initially save 95 positions and \$2.6 million by fiscal year 1982.

SUMMARY

Implementation of the proposal would provide substantial present and future personnel and money savings for the Department of State with virtually no added resource impact on domestic agencies. Short-term tourists and business persons from low-fraud countries would find it simpler to travel to the United States and might well be encouraged to do so in great numbers by the elimination of the NIV requirements, which would help our balance of payments situation. It would provide a concrete signal of the Administration's commitment to the freedom of international travel and will accord to many of our friends the same treatment they have been providing U.S. nationals, some for many years. By enabling the Department of State to strengthen visa screening operations in countries which are the source of most illegal applicants for U.S. entry, the proposal would make possible the improved use of Departmental funds and personnel during period of diminishing resources.

AMENDMENT TO IMMIGRATION AND NATIONALITY ACT

SEC. (a) Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end thereof the following new paragraph:

"(9) (A) The requirement of paragraph 26(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly in the case of an alien who is—

(i) Applying for admission as a nonimmigrant visitor for business or pleasure for a period not exceeding ninety days; and

(ii) Is a national of a country which extends, or is prepared to extend, reciprocal privileges to United States citizens and nationals and which is described in subparagraph (B) of this paragraph.

(B) (i) For the period beginning on the effective date of this paragraph and ending on the last day of the first fiscal year which begins after the effective date of this paragraph, a country shall be considered to be within the purview of subparagraph (A) (ii) of this paragraph if, in the last fiscal year preceding the effective date of this paragraph, such country had a nonimmigrant visa refusal rate, as determined by the Secretary of State in such manner as he shall by regulations prescribe, of less than two percent.

(ii) For each fiscal year following the period specified in subparagraph (B) (i), a country considered to be within the purview of subparagraph (A) (ii) during such period shall not be considered to remain within the purview of subparagraph (A) (ii) unless, in the fiscal year immediately preceding such fiscal year, it had

a rate of exclusion and withdrawal of application for admission and a rate of violation of nonimmigrant status, as determined in both cases by the Attorney General in such manner as he shall by regulations prescribe, which did not exceed one percent.

(iii) If, in any fiscal year following the period specified in subparagraph (B) (i), a country not previously considered within the purview of subparagraph (A) (ii) shall have a nonimmigrant visa refusal rate, as determined in the manner provided for in subparagraph (B) (i), of less than 2 percent such country shall be considered to be within the purview of subparagraph (A) (ii) for the next following fiscal year and shall thereafter be treated in the manner specified in subparagraph (B) (ii).

(b) Subsection 214(a) of the Immigration and Nationality Act (8 U.S.C. 1184(a)) is amended by changing the period at the end thereof to a colon and by adding thereto the following:

"Provided, That no alien admitted to the United States without a visa pursuant to section 212(d) (9) shall be authorized to remain in the United States as a temporary visitor for business or pleasure for a period exceeding ninety days from the date of his admission."

(c) Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)) is amended to read as follows:

"(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; (3) an alien admitted in transit without visa under section 212(d) (4) (C); or (4) an alien admitted as a temporary visitor for business or pleasure without a visa under section 212(d) (9)."

(d) Section 248 of the Immigration and Nationality Act (8 U.S.C. 1258) is amended by inserting after the word "except" the following:

"an alien admitted as a temporary visitor for business or pleasure under section 212(d) (9)."

THE VISA WAIVER

ESTIMATED POSITION AND DOLLAR SAVINGS

Countries listed below (1) do not require visas of U.S. citizen visitors, or have indicated an intention to reciprocate abolishment of the U.S. visa requirement, and (2) have a visitors visa refusal rate of 2 percent or less.

METHODOLOGY

1. The refusal rate for national visitors applying at posts in the country was derived.

2. The refusal rate less "documentary refusals" (under 221(g) of the INA) was derived.

3. A straight (not weighted) average of the refusal rates for all NIV-issuing posts in the country was calculated.

4. If the country refusal rate, either total or less 221(g) refusals, did not exceed 1.59 percent the man-hours/visa and U.S.-FSN ratios (rounded to nearest 0.5) were taken from the consular package submissions and applied to (1) 75 percent of total "B" visas processed for nationals and (2) 50 percent of that figure. Position and dollar savings were then derived from these figures.

5. Experience in Nassau, where INS pre-clearance exists and Bahamian nationals are eligible for the visa waiver, indicates that large numbers of Bahamian nationals nevertheless elect to obtain visitors visas. The 50 percent utilization rate thus appears the more realistic assumption in estimating man-hour savings.

BENEFICIARY COUNTRIES

Andorra*	Malaysia*
Austria	Malta*
Belgium	Monaco*
Botswana*	Morocco*
Brazil	Netherlands
Denmark	New Zealand
Finland*	Norway*
France	San Marino*
Germany (FRG)	Spain
Iceland*	Swaziland*
Ireland	Sweden
Italy	Switzerland
Japan	Tunisia*
Liechtenstein*	United Kingdom
Luxembourg*	Venezuela
Malawi*	

*No position savings.

VISA WAIVER

ESTIMATED POSITION AND DOLLAR SAVINGS (USED BY 50 PERCENT OF ALL TRAVELERS)

Country	Positions saved ¹		Fiscal year 1981 funds				Fiscal year 1982 funds			
			American			FSN FSN oper. ²	American			FSN FSN Oper.
	Ameri- can	FSN	Sala- ries	P.A.T.	Oper.		Sala- ries	P.A.T.	Oper.	
EUR										
Austria.....	0	1				1,700				20,000
Belgium.....	0	2				3,400				40,000
Denmark.....	0	1				1,700				20,000
France.....	2	6	22,500	10,400	11,000	10,000	45,000	20,800	22,000	120,000
Germany.....	1	11	11,250	5,200	5,500	60,200	22,500	10,400	11,000	220,000
Ireland.....	0	2				3,400				40,000
Italy.....	1	8	11,250	5,200	5,500	13,600	22,500	10,400	11,000	160,000
Netherlands.....	0	3				5,100				
Spain.....	0	3				5,100				60,000
Sweden.....	0	1				1,700				20,000
Switzerland.....	0	2				3,400				40,000
United Kingdom..	13	17	146,250	67,600	71,500	28,900	292,500	135,200	143,000	340,000
EA										
Japan.....	1	9	11,250	5,200	5,000	(20,000)	22,500	10,400	10,000	450,000
New Zealand.....	0	2				5,100				40,000
ARA										
Brazil.....	1	3	11,250	5,200	5,500	5,550	22,500	10,400	11,100	59,100
Venezuela.....	2	3	22,500	10,400	14,700	(4,800)	45,000	20,800	29,400	38,400
Total.....	21	74	23,250	109,200	78,700	119,100	472,500	208,000	227,500	1,763,500

¹ Figures in parentheses reflect increases included in fiscal year 1981 consular package.² Includes 1-time termination costs.

VISA WAIVER -CONTINUED

ESTIMATED POSITION AND DOLLAR SAVINGS (USED BY 75 PERCENT OF ALL TRAVELERS)

Country	Positions saved ¹		Fiscal year 1981 funds				Fiscal year 1982 funds			
			American			FSN oper. ²	American			FSN Oper.
	Ameri-can	FSN	Sal-a-ries	P.A.T.	Oper.		Sal-a-ries	P.A.T.	Oper.	
EUR										
Austria.....	1	2	11,250	5,200	5,500	3,400	22,500	10,400	11,000	40,000
Belgium.....	1	4	11,250	5,200	5,500	6,800	22,500	10,400	11,000	80,000
Denmark.....	1	2	11,250	5,200	5,500	3,400	22,500	10,400	11,000	40,000
France.....	3	13	33,750	15,600	16,500	22,100	67,500	31,200	33,000	260,000
Germany.....	3	18	33,750	15,600	16,500	30,600	67,500	31,200	33,000	360,000
Ireland.....	1	3	11,250	5,200	5,500	5,100	22,500	10,400	11,000	60,000
Italy.....	1	13	11,250	5,200	5,500	22,100	22,500	10,400	11,000	260,000
Netherlands.....	0	4				6,800				80,000
Spain.....	1	4	11,250	5,200	5,500	6,800	22,500	10,400	11,000	80,000
Sweden.....	0	1				1,700				20,000
Switzerland.....	1	3	11,250	5,200	5,500	5,100	22,500	10,400	11,000	60,000
United Kingdom..	20	28	225,000	104,000	110,000	47,600	450,000	108,000	220,000	560,000
EA										
Japan.....	3	14	33,750	15,600	15,000	(-70,000)	67,500	31,200	30,000	700,000
New Zealand.....	0	2								40,000
ARA										
Brazil.....	2	5	22,500	10,400	11,100	9,250	45,000	20,800	22,200	98,500
Venezuela.....	3	5	33,750	15,600	22,050	(-8,000)	67,500	31,200	44,100	64,000
Total.....	41	121	461,250	213,200	229,650	92,750	922,500	426,400	459,300	2,802,500

¹ Figures in parenthesis reflect increases included in fiscal year 1981 consular package.² Includes 1-time termination costs.

Senator KENNEDY. Our next witnesses are representatives from the academic community and will speak to us on the nature of United States-Mexico relations and their implications on our immigration laws. We want to welcome Prof. Gilbert Cardenas, senior economist for Southwest Border Regional Commission, Prof. Robert Bach, Brookings Institution, Prof. David Gregory, Dartmouth College; and Prof. Caesar Sereseres, University of California.

PANEL OF PROFESSORS:

STATEMENTS OF GILBERT CARDENAS, SENIOR ECONOMIST, SOUTHWEST BORDER REGIONAL COMMISSION; ROBERT BACH, BROOKINGS INSTITUTION; DAVID GREGORY, DARTMOUTH COLLEGE; AND CAESAR SERESERES, UNIVERSITY OF CALIFORNIA

Dr. CARDENAS. Mr. Chairman, my name is Gilbert Cardenas. I am a Brookings economic policy fellow, presently assigned to the Southwest Border Commission. I am on leave from Pan American University as a professor of economics where I teach courses in labor, economics, manpower policy, and other public policies.

In terms of background for my testimony, I have done past research on the issue of illegal immigration in the Southwest, particularly in some of the labor markets along the border—San Antonio, Tex., San Diego, and Los Angeles. Calif., and other labor markets.

Mr. Chairman, I would like to thank the committee and the staff for the opportunity to be invited to testify on the relationship of Senate bill 1763 to the problem of illegal immigration.

I do not have a prepared statement, but I will be glad to submit for the record later this week a prepared statement. I would like to comment on the Senate bill and the implications it will have for Mexican illegal immigration.

Senator KENNEDY. We will submit all your testimony. You are all academics, you are all professionals, you are all knowledgeable about this subject, so I want you to summarize it and hit the high points. We will have all your testimony in the record. We have a limited amount of time and we have other panels, so if you can do that we would appreciate it very much.

BILL WILL HELP EASE ILLEGAL ALIEN PROBLEM

Dr. CARDENAS. Proposed legislation in the form of Senate bill 1763 will have an effect toward the solution of the illegal alien problem in the Nation. In the past, the Mexican illegal alien experience in the U.S. labor markets has been generally unfavorable. For many years, there has been extensive illegal migration to the United States from Mexico. In the contemporary setting, Mexican illegal aliens have come to the United States for economic reasons seeking employment opportunities.

Traditionally, many Mexican illegal aliens were concentrated into rural areas, primarily located along the United States-Mexico border. Today, many Mexican illegal aliens are likely to be found residing in urban labor markets such as Dallas and Chicago.

In recent years, Mexican illegal alien migration to the United States has been associated with a push of rural poverty in Mexico and the pull of employment opportunities in U.S. labor markets. Also, the economic conditions in Mexico in recent years has been generally unfavorable, associated with high rates of poverty, high rates of inflation and unemployment, thus making such illegal migration possible.

FACTOR CONTRIBUTING TO ILLEGAL MIGRATION

I would like to comment on some of the reasons, for a variety of reasons, why illegal aliens cannot come to the United States legally. Many who come from the impoverished regions in Mexico do not have a technical know-how or economic resource to migrate legally. Another reason for such illegal migration is the limited quota restrictions of 20,000 annual allotment for immigrants from Mexico to the United States. It is indeed very difficult for many aliens to qualify for immigration purposes.

Furthermore, cumbersome and bureaucratic procedures for such purpose make it much easier for such aliens to come to the United States illegally. One of the things that I have noticed, for example, in the research that I have done, the typical illegal alien that comes to the United States for this particular reason is not able to qualify for legal visas. Definitely, the people that apply for the legal visas have more marketable skills than the qualifications granted to this particular alien. What happens often is, as aliens come to the United States and although the majority of them are married, their families reside in Mexico. There are many Mexican illegal aliens that come to the United States and marry legal residents, in many cases, Mexican-Americans.

Because of the waiting period of 9 years and the backlog of cases, it is very common for the families to be separated, and the husbands or other spouses may end up going to Mexico for this wait period, and this definitely contributes to a lot of problems for family unity.

Oftentimes, what I notice, in terms of my research, is that this particular alien, during that waiting period, comes back to the United States illegally. A lot of times they are penalized by immigration services if they are caught illegally. This creates a lot of problems for the population.

ECONOMIC PROBLEMS IN MEXICO

There are several reasons why we should favor legislation such as proposed in Senate bill 1763. The major one is definitely the economic conditions in Mexico. Mexico and the United States have traditional ties that go back for many, many years, both historically and culturally, and economic ties that definitely should be considered in making any changes in immigration policy.

In recent years, the problems have gotten a lot worse and definitely because of the problems, you have such influx of migration. It is, indeed, in the national interest for this Nation to assist Mexico with such economic problems as necessary and appropriate to continue its amiable relations with both countries that have developed over many years.

Among the ways to assist Mexico in such endeavors is through changes in U.S. immigration policy in the form of increase of the quota for visas from Mexico.

The Kennedy proposal in the form of Senate bill 1763 will contribute greatly to such changes needed in immigration law and procedure. Among the provisions of the bill will be to increase the visa allotment for Mexico to 35,000 annually. The number proposed is justified by the excessive backlog of visas.

WHY TREAT MEXICO DIFFERENTLY

Senator KENNEDY. You heard Senator Huddleston say there is backlog in other countries. They have a lot of poverty. Why do you think we ought to do it for Mexico? That is the case we have got to make. That is what we are going to be asked on the floor of the U.S. Senate. You don't have to convince me, but you are the professionals, the people who have been thinking about it, and I want to hear some good arguments and answer the questions that I am going to be asked.

Dr. CARDENAS. I think one of the reasons that we should give special consideration to the Mexican case is the economic conditions going on in Mexico and the implications of this backlog and the flow of illegal immigrants to the United States.

I notice that—

Senator KENNEDY. Well, let's say you have a backlog in South Korea. You have a backlog in the Philippines. They have a lot of poverty, too.

Dr. CARDENAS. Mr. Chairman, I am familiar with the implications of the backlog, for example, of the Mexican immigrants, the potential Mexican immigrants to the United States, and the implications that this has for family problems it has here in the United States. I am not familiar with the other backlogs.

Senator KENNEDY. Let me ask the other members of the panel what their reaction is to this. What is the strongest case that we can make on this point?

Dr. Gregory?

UNITED STATES-MEXICAN RELATIONS: MUTUAL SELF-INTEREST

Dr. GREGORY. Mr. Chairman, I think that the strongest case that we can make on that is mutual self-interest, not charity, not trying to hand out a special relationship and gift to Mexico. The fact is that this is a litmus test, I suppose, of our own intentions as to how we are going to view future relationships with Mexico. It is not something that we should expect to be thanked for, but I think that there is a very positive argument here, based upon mutual self-interest, that applies to the case of Mexico that doesn't apply to India, or most of the other countries in the world.

Senator KENNEDY. What do you think are the interests that are being served by this?

Dr. GREGORY. Well, most of my work has been done in Europe. Since 1966, I have been studying the movements of temporary and permanent labor programs between the Mediterranean countries and the EEC, and I have come back to the United States and it looks like the United States and Mexico are going to try and reinvent the wheel and ignore the kinds of economic corroboration that has been developed in these countries over the past 20 years by various experiments.

I think, first of all, we have got to look at some of our short-term demographic projections in this country in which there are strong indications that the United States will face a shortage of labor in the mid-1980's. I think that the impact of such a labor shortage will be further complicated by predictable crisis in retirement—

Senator KENNEDY. Is that consistent with where we are in unemployment in the United States now and what tight money policy is going to mean?

UNEMPLOYMENT VS. LABOR SHORTAGES IN FUTURE

Dr. GREGORY. I am looking at the needs of this country and the relationship with Mexico over the next—

Senator KENNEDY. I am just asking whether we are going to get the unemployment trend down under recent economic decisions. What I am interested in is your projections, and most economists would think that we are going to face some increasing pressures in unemployment probably over the next year, but you are talking about into the period of the 1980's?

Dr. GREGORY. Yes, I am, mid-1980's.

Senator KENNEDY. Mid-1980's? And what do you see as the employment projection during that period?

Dr. GREGORY. Well, to begin with, I think that it is a mistake to look at the first part of the migration having the effect that Mexican immigrants compete with the American unemployed. This is something which we really do not have very good information about, except for a few special cases. But there have been no studies to show that Mexicans are taking jobs away from Americans.

ECONOMIC IMPACT OF MIGRATION

Senator KENNEDY. I will come back to the other members of the panel, but we will hear you on this first. What does your study show about illegal aliens depressing wages in various areas. This is a point that is made by others; that they may not be competing for the same jobs, but the fact that you have them, depresses wages in various labor markets. Do you have studies that show that not to be the case?

Dr. GREGORY. I can say that I have not seen any good studies anywhere in the country which has given us any sound statistics. We don't really have any regional impact studies. We can't—

Senator KENNEDY. Shouldn't we have that?

Dr. GREGORY. Definitely.

Senator KENNEDY. That will be something that the Select Commission, hopefully, will develop, I would think.

Dr. GREGORY. You can't take New York and Los Angeles and some others and come up with an average. The problems in the East are not the problems in the Sun Country or the Southwest.

Dr. CARDENAS. Mr. Chairman, some of the work that I have done, for example, in labor markets such as San Antonio—

Senator KENNEDY. Before we get to the labor market, I am interested in just hearing the other members of the panel on this issue, why Mexico and why not the others, should receive special immigration quotas. Would you talk to that just a moment?

FOREIGN POLICY CONSIDERATIONS

Mr. BACH. First of all, Mr. Chairman, you must remember that the bill proposed is a remedial bill not designed to impact over the long run and, therefore, questions of labor market impact, employment, are not related, I would argue, to this particular bill.

What argues in favor of special treatment for Mexico in terms of this bill is foreign policy considerations. In particular response to Senator Huddleston, it must be recalled that the changes in 1965 were the outcomes of domestic pressures—part of the civil rights movement to end racial, ethnic discrimination built into the immigration law. If you will review those policy changes which I have in my testimony, you will find that at the same time we were relaxing or making the law more equal, there was a special negative impact on Mexico in terms of foreign policy. What I think the immediate remedial—

Senator KENNEDY. Also in Ireland, I might say [laughter] that I have heard a good deal about. Sorry, I apologize. [Laughter.]

Mr. BACH. I won't argue.

If you read the concerns of the Johnson administration, during the changes in the law, they were very concerned not only on the impact on Mexico, but on all the Western Hemisphere and they basically lost in their foreign policy concerns. What I would argue is that this immediate legislation is a step in the right direction and only a step, to show not that we are giving a gift to Mexico—because Professor Gregory is very correct that that would be seen as sort of a paternalistic gesture from the North—but instead, it will adjust the status of Mexican nationals from illegal to legal which is a longstanding concern of the Mexican Government and would not be considered a gift.

SPECIAL RELATIONSHIP WITH MEXICO

Dr. SERESERES. Mr. Chairman, you mentioned the term "special relationship" and, of course, it has been a reality for both nations. However, for the past decade or more, this notion of special relationship has been gradually undermined over a period of years because of specific issues that have ranged from water management to immigration, illegal drug trade and now we have the petroleum energy issue. The place that an immigration bill such as this, as remedial as it may be, could play—it could contribute a signal, it could contribute some form of accommodation on our part toward a better working relationship that should be to the creation of a more positive climate for the resolution of other issues.

To better appreciate this, when asked to understand the Mexican prospective, in their reaction to the changes in the immigration bill, the act in 1976, they were caught by surprise; they felt they were vulnerable; it came in a period of time in which they were negotiating with the U.S. Treasury Department and with the International Monetary Fund during their own economic and financial crisis. They felt they could say nothing; they could not react to it and any effort to at least go back to the numbers of the mid-1970's would be for them a gesture on our part that would contribute to the kinds of activities that are going on in this point of time.

Senator KENNEDY. Mr. Cardenas, would you like to go ahead and summarize the remainder of your testimony?

Dr. CARDENAS. OK, I was just going to say that in terms of—you asked early about the wage impact—some of the economic work that I have done in several labor markets, the wage impact, is definitely minimal.

Senator KENNEDY. You will submit that later, won't you?

Dr. CARDENAS. Definitely, I will submit it as the record and it was one of the few studies that I really looked at more as a regional impact. I don't think you could make national generalizations about the nature of the problem, but I think it does illuminate on this particular issue, and, definitely, the impact on wages is minimal. I will submit that for the record.

BILL WILL DECREASE SOME ILLEGAL IMMIGRATION

Last, I just wanted to say that in terms of the implications of the bill, I think the potential significance of the bill is that illegal immigration would be decreased providing that such illegal aliens are able to avail themselves with such visas in Mexico. Mr. Chairman, I am worried about that. I am concerned that although such increase may contribute to assist in the backlog, I am leery about how many potential illegal aliens might be able to take advantage of such because it is very small; that number is very, very small. I think 50,000. If we want to see the impact of illegal immigration reduced in this country, I think 50,000 would be more reasonable than 35,000.

It is oftentimes, if you look at the characteristics of the people that are in the backlogs, would barely touch the tip of the iceberg of the illegal aliens stock of the population and this is something that the committee ought to look into.

The positive aspects of the proposed bill are that such illegal immigrants would be able to take advantage of the visas and would experience less discrimination and exploitation in the country than as formerly illegal aliens in the labor markets.

Senator KENNEDY. OK. Professor Bach?

Dr. BACH. Thank you, Mr. Chairman. I have prepared a written statement which I will submit for the record.

I would like to highlight several points and two strong points in this legislation, both associated with increased quotas.

The first is that the bill is remedial in nature only. The proposed increased quotas are useful provisions for overcoming some of the current backlogs and is not designed, and I don't think should be designed at this point, to affect illegal immigration in general.

The second is the bill's foreign policy. I just said, here again, the increased quota provisions demonstrate an expanded sensitivity.

WHY TREAT MEXICO DIFFERENT THAN OTHER LATIN NATIONS

Senator KENNEDY. Let me ask you though, if we are looking just to foreign policy concerns, what do we do about the Haitian refugees? What about the Jamaicans in Florida? We have a lot of different movements that are coming now, and yet we have this special kind of consideration for Mexico. That is what we are going to be asked about on the Senate floor.

If we are doing this on the one hand for Mexico, how about the Caribbean countries and their needs?

Dr. BACH. First of all, it would be incorrect, historically to see the immigration law as a universalized standard to evaluate. It has always been influenced by political decisions and political directions. When we changed the immigration law in 1965, part of it was in response to objections from Jamaica and Trinidad because their quotas were about 100 at that time. So, we established special foreign policy treatment there by increasing their standards. My point is that the effect was a special impact, negative impact, on Mexico. What we are doing here is reversing that negative impact.

Senator KENNEDY. Some would say, however, that we did establish a single standard across the line, and that did impact negatively on Mexico and other countries—the Northern European countries—in terms of the numbers available—so are we going to say that because it did we are going to have to make adjustments all the way along the line, or are we going to say that we are just going to make an adjustment for Canada and Mexico?

Dr. BACH. I think the answer is very simple. Mexico has long been special in the sense of being our best customer for trade, it exports most of its goods to the United States, it has been a defender of U.S. foreign policy throughout the world on most issues. There is a very special status and I think in contrast to the 1965 amendment, where there was a domestic policy concern, the wave of pressure today is a foreign policy concern and we must move in that direction to overcome the negative impact of the last 20 years.

The roots of the legislative problem, both remedial and foreign policy are in the reforms of the 1960's. Taking the backlog issue first, it is the combination of termination of Public Law 78, the bracero program,

the subsequent Western Hemisphere quotas, and now the country's specific quotas that resulted in the division of potential Mexican immigrants into three groups.

The first group consists of former braceros, legal workers who were suddenly declared illegal. There was not substantial enforcement in order to prevent them coming into the United States, so we have the continued circulation of the two labor markets in the United States.

The problems are difficult and long ranged and, therefore, should not be a target of short-term remedial policy and, particularly, the one proposed here.

Neither is the current bill directed toward the second group, created by the provisions in the preference category.

These people are potential normal legal immigrants who often have problems associated with certification and reporting. The present efficiency measures may help out some, but again, the increased quota, *per se*, would not have much of an immediate impact.

GROUP OF MIGRANTS TO BE AFFECTED BY BILL

The third group is the group of immigrants that desperately need remedial action, and indeed, this is the group that the increased quotas would serve most effectively. This group consists of those who are eligible to enter legally but, because of numerical restrictions, end up in the United States residing illegally.

Two groups comprise the third category. First of all, there are those that most of us have been talking about, those who are eligible immediately to enter the United States, and, because of the backlog, they have to go to the United States to be with their families or with already certified jobs.

There is a second group—status adjusters—illegal immigrants who enter the United States and during their illegal experiences are able to adjust their status by gaining the credentials, by marrying American citizens, by finding jobs. This group, the third category, is probably more important than just the backlog. A survey in 1973 showed; 1973-74, in which I participated, showed that approximately 70 percent of the legal Mexican immigrants had resided in the United States previously as illegals, living anywhere from 1 to 8 or 9 years. There is a 70 percent of the legal flow; the survey is representative, in general, of all legal Mexican immigrants.

These are the people, the 70 percent, the estimate would be, or at least a majority, to which the increased quotas are directed, and those who are waiting to get in. The increased quotas, I would argue, would only impact those who are already eligible to get in, immediately eligible and, therefore, would enter.

The foreign policy appeal of Senate bill 1763 follows a very similar concern and that is the improvement of the status of Mexican nationals awaiting entry to the United States, Mexican nationals who in the future will be U.S. citizens.

ROOTS OF CURRENT PROBLEM

The roots of this pressure again is in the 1960's reforms summarized in the text. I would just like to call your attention to and read two

quotes, one from a briefing memo to President Johnson from Secretary of State Dean Rusk just prior to the arrival or meeting with Mexican President Lopez Mateos.

The Mexican Government is privately seriously disturbed about the termination of this program—the bracero program. The program has been of substantial economic and political benefit. Congressional opposition is strong and you should not commit yourself to continue the program. Assure the Mexican President that you understand the problem—your own war on poverty—and that you will see what can be done to help.

What was done was in response to desires of Mexico for AID funding to help alleviate the employment impact of the bracero program. The counteroffer was only a fruitful work program through a privately funded foundation.

Foreign policy also was involved in the immigration—the amendment to the Immigration Nationality Act again demonstrates the failure of the foreign policy considerations during the time. Let me read very briefly from a White House memo from a Presidential aide to President Johnson.

According to Secretary Rusk, if we go along with attempts to impose Western Hemisphere quotas, we will vex and dumbfound our Latin American friends who will now be sure we are in final retreat from Pan Americanism.

Again, as I said before, there was final defeat. The administration backed off the foreign policy aspect only at the very end when they realized the bill could not get through Congress any other way.

FOREIGN POLICY CONSIDERATIONS

Foreign policy consequences have continued to be negative all the way from the fight in 1970 when we started talking about another operation “wet-back”. There were political upheavals in Mexico at the time, to even the absence of a foreign aid Mexican development package in President Carter’s proposals of August 1977. The increased quotas of the proposed legislation take a remedial step in the direction of increased sensitivity to Mexico’s concern. However, I should point out that it is not the increased quotas, per se, again, that provide a useful foreign policy gesture, to use the Senator’s terms. In fact, if an increase of 15,000 or 20,000 was all that was implied, it would be seen as a paternalistic gift.

Instead, it is precisely because, as I noted before, the larger quotas affect the forced illegal status of legal immigrants in waiting that these reforms demonstrate an awareness of Mexican interests. The Mexican perception and demands have, for a long time, focused on the protection of the rights and living and working conditions of Mexican nationals in the United States. The remedial foreign policy suggested here would recognize these concerns and offer an effective response to improve these immigrants’ statuses.

CONCLUDING COMMENT

In summary, then, the high marks I would accord this remedial legislation is precisely due to its limited, but carefully, targeted goals. This much said, I must conclude by reminding the committee of the inherent long-range limitations of not only this legislation, but immigration policy in general.

The domestic labor and foreign policy concerns which continually drive immigration reforms are in turn only minimally affected by these reforms. That is, immigration law should not become the easy-out alternative to the tough bargaining required with our neighbors to get desirable trade and natural resource flow, nor should it become the substitute for the long overdue reform of labor policy in both the United States and Mexico.

Thank you.

[The prepared statement of Mr. Bach follows:]

PREPARED STATEMENT OF ROBERT L. BACH

Mr. Chairman, I am very pleased to have the opportunity to testify in support of the Immigration and Nationality Efficiency Act of 1979 (S. 1763) and, specifically, to comment on the relationship of this legislation to Mexican immigration. The two reforms proposed by this bill, enhanced administrative efficiency and increased quotas for Mexico and Canada, are logical first steps in what will surely become a series of reforms designed to overcome the unanticipated problems of the last 15 years. In particular, the proposed increased quotas have significant potential for helping to relieve some of the pressures which have rendered the actions of the Immigration and Naturalization Service inefficient.

One of the most difficult problems in the evaluation of immigration reform is the clear absence of objectively neutral criteria. In many judicial and legislative areas the weight of history imposes itself as an uncontested standard. However, in our collective experiences with the former "national origins quota system," it became apparent that in immigration policy to stand still often obstructs justice more than encourages it. The present legislation should be evaluated, therefore, not in terms of static definitions of "national interests" but in terms of whether the conditions which give rise to the proposed reforms warrant new legislative efforts and whether the reforms so proposed are effective responses.

The perspective I have to offer the committee is that of a social scientist whose primary interest is in determining what conditions lead policy changes and what impact these changes are likely to have on the immigration flow. For this reason, I have chosen not to discuss the value of the administrative efficiency measures per se but, instead, to focus on two additional goals of the bill as highlighted in the chairman's remarks introducing the bill to the Senate. These goals concern (1) the remedial nature of the legislation and (2) its "gesture" of foreign policy. The questions asked include what is it that needs correcting and why and to what extent does the proposed legislation have a foreign policy appeal.

I would also like to raise briefly more general questions about the long-term effectiveness of not only this legislation but immigration reform in general. Even though this proposed legislation is intended not to conflict with long-term policy change, it does form part of the current debate over immigration and, therefore, subject to similar scrutiny. Present debates are showing signs of following a familiar historical pattern. On the one hand, domestic labor and foreign policy concerns (reflected in this bill also) tend to drive efforts at immigration reform. However, it seems at the same time that immigration legislation is one of the least effective mechanisms for accomplishing goals in either area. One must wonder, consequently, whether the debate over immigration reform, a debate that rages on and off in predictable ways, is not serving another purpose altogether—one which may have the opposite effect from the intentions and goals of those involved. For in the past, debate over immigration reform has served to slow significant change in precisely those areas of domestic and foreign policy which fueled the debate originally. That is, there is a pattern of the conservative use of liberal, immigration reform.

Let me turn first to the source of the problems which give rise to these proposed remedial actions. I will be brief in both these and my concluding general remarks.

The problems facing immigration policy today originate, in large part, with the reforms of the 1960's. As many on the committee will recall, these reforms were part of the larger civil rights movement and had a particularly acute impact on immigration from Mexico. In 1964 the program to import foreign contract labor (mostly Mexicans) was terminated, followed in 1965 by the introduction of Western Hemisphere quotas and a preference system. Subsequent to these

amendments to the Immigration and Nationality Act, restrictions have increased to the present country-specific numerical ceilings.

The immediate, short-term pressures for reform in the 1960's focused on the protection of domestic laborers from the competition of imported workers (what the AFL-CIO called "imported colonialism") and on elimination of the blatantly discriminatory national origins quota system. Both reforms had direct links to the passage of the Civil Rights Act of 1964. One report put the connection to Public Law 78 (the foreign worker program) as follows:

"It is much more than coincidence that Congress terminated Public Law 78 just at the time when the Nation was writing the dictates of decency into the Civil Rights Act and declaring war on poverty and ignorance in this country. The drastic reduction in the use of foreign farm labor in 1965 reflected the recognition that continuation of the previous practice would have been totally inconsistent with the contemporary national decision to perfect the American social and economic order."

The Washington Post editorialized more generally:

"Once the civil rights bill is enacted into law, immigration policy should be high on the congressional agenda. Discrimination on grounds of race and origin is as un-American at the country's gates as it is inside them."

And Senator Fong (Hawaii) pushed the sentiment specifically into the debate on the 1965 amendment to the Immigration and Nationality Act:

"For as we move to erase racial discrimination against our own citizens, we should also move to erase racial barriers against citizens of other lands in our immigration policies and laws. * * *"

While these efforts challenging discriminatory practices would be generally applauded today, it was the response of immigration reform to these domestic pressures which unintentionally established the conditions that would later necessitate remedial action such as that proposed in the current legislation. These conditions consisted of the combination of tighter restrictions with a highly specified preference system and the abandonment of longstanding foreign policy.

The end of the so-called Bracero Program and the enactment of the preference categories for legal immigration created three categories of potential Mexican immigrants. First, as was true for the restriction during the Depression, the end of the contract labor program created and expanded a pool of potential illegal immigrants. In many cases, these would be former braceros who returned each year to their established, regular employer, only now barred from legal status. It is generally regarded that these immigrants work only temporarily in the U.S. responding to seasonal labor market demands. To the extent this circulatory character is accurate their illegality created "only" problems of apprehension and enforcement, legitimate concerns to be sure but ones which the present legislation is not designed to resolve.

The second category of potential Mexican immigrants resulted from the more precise requirements for legal admission. The preference system created a number of administrative difficulties, not the least of which was the requirement to certify the special need for particular categories of workers. These administrative regulations were made even more difficult by attempts to turn this preference category into a backdoor solution to the termination of the bracero program. However, while some of the efficiency measures proposed by this current legislation would help ease the problems in processing immigrants in certain categories, for example students, there is little reason to expect that the increased quota provisions per se would have much impact on this group either.

It is the third category of potential Mexican immigrants that is targeted by the proposed legislation. These immigrants form the bulk of the unanticipated backlogs and application problems. The group consists of two types of potential legal immigrants who reside in the United States illegally prior to their entry to the United States. The first type is comprised of those who are eligible to immigrate legally but end up living in the United States illegally in order to be with their families or at their jobs until their entry is approved. The second type consists of those persons who, while residing in the United States, are able to become eligible for legal entry by acquiring the necessary credentials. The family reunification and labor certification categories are used as both require some contacts in the United States prior to approval of the application. As numerous people have noted, the labor certification provisions actually encourage such a path of illegal to legal immigration because it requires the prospective immigrant to actually locate an employer before filing their application. Of course, this illegal-legal

path does not have to be a well conceived or even conscious plan of action. Instead, it represents more an opportunity which some immigrants find they can make use of.

The importance of this third category of potential immigrants was explored by a 1973-74 survey of legal, Mexican immigrants entering the United States through the border stations at El Paso and Laredo, Texas. In general, the sample was representative of the population of legal, Mexican immigrants even though the sampling was done solely in Texas. The survey found that approximately 70 percent of the respondents interviewed had lived in the United States for extended periods prior to their legal entry. Those who had lived in the United States were from substantially different regional and socioeconomic backgrounds in Mexico than those immigrating "normally." Not surprisingly, these backgrounds resembled closely the generally low status and rural origins of illegal, Mexican immigrants. Unfortunately, it is impossible to determine these data whether they were eligible for legal entry before they entered the United States legally and would therefore merely be "waiting their turn" or whether their illegal experiences allowed them to gain the "credentials" necessary to satisfy the family reunification or labor certification provisions.

These survey findings demonstrate that the remedial provisions of the proposed bill are directed at a most significant and probably the most numerous portion of the legal, Mexican immigrant flow. Moreover, it is for this group that increased quotas would prove most useful. As the chairman stated explicitly in his remarks introducing the bill, the advantage of the increased quotas is to allow those who qualify to move rapidly and efficiently into the United States without the rather lengthy period of illegal residence generally observed and documented in the above survey. With an estimate of at least a majority of legal Mexican immigrants entering through this illegal-legal path, it would seem that even the modest increase in the Mexican quota would have a significant and beneficial impact.

That the source of pressure for the above reforms in the 1960's was almost totally domestic should alert us to a potential adverse effect on foreign policy. In fact, the legislative response during this period focused so much on domestic-oriented reforms that foreign policy would have been ignored had not the reforms been so disturbing to Western Hemisphere countries and Mexico in particular. United States relations with Mexico were challenged by three aspects of the immigration debate: The essentially unilateral termination of Public Law 78, the imposition of Western Hemisphere quotas, and the conflicts surrounding the "green card commuters." While none of these actions was of crisis proportions, each demonstrated to the Mexicans their level of dependence on both the American economy and politics.

The impetus for the end of the bracero program was almost exclusively domestic: organized labor's opposition and the decreased demand for such laborers by agricultural capital. This one-sidedness filtered into foreign policy as indicated by the following briefing of President Johnson by Secretary of State Dean Rusk, just prior to the President's visit with Mexican President Lopez Mateos:

"The Mexican Government is privately seriously disturbed about the termination of this program (the bracero program). The program has been of substantial economic and political benefit. Congressional opposition is strong and you *should not commit yourself to continue the program*. Assure the Mexican President that you understand the problem—your own war on poverty—and that you will see what can be done to help." [Emphasis in original.]

For the Mexican part, President Lopez Mateos later responded to President Johnson's request for his opinion on the termination of the program by saying that "he had always felt that the use of Mexican braceros in the United States was a matter of mutual convenience rather than an obligation on the part of the United States." Moreover, as a former Secretary of Labor, the Mexican President had told U.S. labor officials that as soon as braceros were paid the same wages as U.S. farm workers, employer's demand would end and so would the labor program.

Nevertheless, it was clear that the Mexican Government was given very few options. The Mexicans were hoping for help from AID funding to alleviate the anticipated employed consequences. The United States counter offer was a "food-for-work" program financed through a private foundation.

The foreign policy implications of the 1965 amendment to the Immigration and Nationality Act were examined much more closely by the Johnson administration but they too were insufficient to overcome the tide of domestic reform. As early

as the immigration reforms of the 1920s there had been an explicit recognition that Western Hemisphere quotas would threaten the general drive for Pan-Americanism. The State Department had demonstrated this concern by using its control over granting visas to tighten and restrict immigration during protectionist years rather than allow the Hemisphere to come under legislated ceilings.

The State Department continued that concern through the 1960s reforms. Secretary of State Rusk testified, for example, in 1964 in support of an end to the discriminatory quotas for immigrants from the Asia-Pacific Triangle on the grounds that "the present law is indefensible from a foreign policy point of view." At the same time, he asserted the necessity "to recognize the common bond uniting the Americas by exempting from any quota restrictions those immigrants who were born in independent countries of the Western Hemisphere." The administration adopted this as an official position precisely on foreign policy grounds. In a White House memo, a Presidential aide wrote, "According to Secretary Rusk, if we go along (with attempts to impose Western Hemisphere quotas) we will vex and dumbfound our Latin American friends, who will now be sure we are in final retreat from Pan-Americanism." The administration held to this position until it became clear that without such restrictions the Immigration Act would not have passed.

Since these reforms, the major foreign policy issues surrounding the immigration law, as far as Mexico is concerned, has been the fear of a United States crackdown on illegal aliens or a decision to cut off the green-card commuter traffic. However, even without the need to respond to domestic pressures comparable to the civil rights movement, there have been few major attempts to incorporate a foreign policy component into immigration legislation.

It is in the light of this history that even the modest efforts, most certainly a gesture, of the present legislation seem to offer a significant remedial act. At the very least it would restore visible sensitivity to the impact of U.S. domestic policy on relations with Mexico. However, this sensitivity would not be expressed, in my opinion, through the mere increase in the numerical limits. Instead, the potential benefit is in the way the increased quotas are likely to impact. That is, recalling the above discussion, the increased quotas could substantially improve the status of Mexican nationals already waiting to enter legally. The reform has the potential of offering a multiyear reprieve for those eligible immigrants sentenced to the life of an illegal in the United States. The protection of Mexican nationals in the United States is something the Mexican government has worked for since at least the beginning of the bracero program.

I would now like to conclude with only a few remarks trying to put the current debates on immigration reform, including this particular bill, in some perspective, at least as they relate to Mexican immigration. Any such discussion, it seems to me, must begin with a rather simple observation. The economic and social relations between the United States and Mexico form part of a single, well-integrated economy. The movement of workers and families throughout this economy is important, but it constitutes only one small part of the overall set of ties between the two countries. A bilateral history of commodity trade, foreign investment and cultural exchange, to name just a few, would certainly point to many relations which outweigh the significance of problems created by the immigration. Mexican immigration, therefore, is just one additional element in the structure of this international economy, an economy whose success is in the interests of both the current Mexican and U.S. Governments. As such, there is a bilateral interest in either having the immigration continue or, at the minimum, not to allow its restriction to interfere with the other ties between the two countries.

Historically, the long-term interest in maintaining the pattern of bilateral development has clashed periodically with fluctuating and usually short-lived attempts to alter the composition or structure of the immigration. The fact that migration becomes a social problem at all, brought to the attention of policymakers and then proposed for remedial action is a reflection of political opposition on either side of the border to the promotion of the current pattern of development.

These structural roots to social problems and, therefore, policy reform implies that the periodic reform drives that result in substantial change of the immigration policy successfully link themselves to much larger social and economic issues. The pattern that has emerged in the United States is a "social welfare-immigrant restriction" strategy. Immigration restrictions and enforcement, for that matter, have become linked to the expansion and contraction of social wel-

fare programs for the domestic population. The clearest example is the one noted above. It was the civil rights movement, with its associated expansion of welfare reform and, especially, its attempts to upgrade the conditions of U.S. farm workers, that brought about the end of the bracero program and the passage of the numerical ceilings on legal immigration. There was, however, nothing special in the actual reforms; in fact, they had been proposed and supported by each administration from Truman to Johnson. What was special was the timing of their success, particularly in terms of the problems which could be resolved during this time. For just as social welfare programs expand and contract with fluctuations in not only periods of unemployment but when there is substantial social unrest, so immigration policy responds to these same social challenges by diverting political attention to debate and conflict over a rather narrowly defined set of alternatives. Immigration reform legislation offers an excellent case in point as the issues debated have become rather minor ones, represented by quota levels, preference categories and overall ceilings. What is missing from the debates, of course, is a realization that adjusting immigration quotas will not affect substantially either the domestic labor conditions which give rise to concern over issues like illegal aliens, for this is a question of the enforcement of labor standards and the direct relationships between management and workers or the trade policies sought after with our neighbors, for these are the outcomes of tough negotiations and bargaining not the gift of a few more immigrants accepted.

What these immigration reforms do tend to accomplish, however, is the assurance that for the near future there will be stability in the migrant flows and maintenance of the pattern of long-term development. The immigration reforms of the 1960's purged the Nation of the "migrant labor image" associated with the charges of "imported colonialism." In doing so, it reduced the political turmoil associated with the original reform push. The reforms did not, however, stop the migration—some say it has increased—nor substantially upgrade the standards of domestic farm workers.

What all this boils down to is that the pursuit of immigration reform in the name of domestic labor protection or foreign policy often winds up with anticipations of significant change when, in fact, just the opposite will happen; you merely stand still. But perhaps even more troublesome is the recognition that the success of immigration reform legislation may be at the expense of more substantial reform in the very activities which in the long run will drive the immigration system.

All this is simply a reminder that as good as this proposed legislation appears to be in terms of remedial and foreign policy gestures neither it nor any other similar activities, including the work of the Select Commission on Immigration and Refugee Policy, are substitutes for the much more difficult reforms but more needed changes in labor and foreign policy.

Senator KENNEDY. Professor Gregory?

Dr. GREGORY. Mr. Chairman, members of the committee, I also prepared a statement which I would like in the record.

Senator KENNEDY. It will be printed in the record.

Dr. GREGORY. Since 1966, I have been involved primarily with migration problems in Europe and I do not really present myself as an expert in Mexican-American migration problems.

Over the last 6 months, I, along with the former Ambassador to Mexico, Robert McBride, have been trying to see if we might not be able to apply certain lessons from Europe to the Mexican-American situation. In fact, Ambassador McBride who has read over your bill, feels that it is a very important step in the right direction in terms of giving Mexico a notice of our willingness to cooperate with them in a new format. He also feels that in light of the overall world situation, it is rather intolerable not to have a more effective working relationship with Mexico. It is unfortunate that the illegal alien problem or the undocumented worker problem so seriously seems to be prejudicing our relationships.

PENDING BILL ONLY FIRST STEP

Senator KENNEDY. Of course, this isn't going to resolve that problem, though.

Dr. GREGORY. But it is a beginning because I feel—we were in Mexico in March and we talked to many people, both in the private sector and in the government—and there is an incredible interest in the whole area of how we are going to deal with immigration. Because of the Mexican constitution, it makes it very difficult for them to take the initiative.

While I think that ultimately the solution has to be approached bilaterally, the initiative probably has to come from the United States. Such a bill as this, I think, emphasizes the kind of special relationships with Mexico we have; it emphasizes that we are really beginning to restudy or reevaluate what this special relationship with Mexico might be.

I would like to say that while in 1962 in Mexico City, President Kennedy made a very optimistic statement and a very positive statement; namely, that "geography has made us neighbors; tradition has made us friends; and economics has made us partners." I think that if we look at this in terms of our future relationships and our present relationships with Mexico, it lulls us into a false optimism by making us unaware of the fact that, while these relationships exist in potential, they are going to need a great deal of work.

If anything, geography has made us competitors. Tradition has made us rather ambivalent, if not sufficient, friends, but definitely, the way we seem to be going, in the near future, economics certainly should make us partners.

ECONOMIC COOPERATION WITH MEXICO

I think that there are a number of very pertinent elements which push toward this future economic cooperation. The first being, that as I mentioned, I think there are strong indications that the United States will face a shortage of labor in the mid-1980's, which the Europeans are beginning to face in the present decade. The impact of such a labor shortage will be further complicated by a predictable crisis in retirement financing where fewer workers will carry the burden of support for a greater portion of the elderly.

Meanwhile, the rate of growth of the U.S. labor force is expected to decline. It has been about 21 percent in 1970 and it is projected at less than 12 percent in the 1980's. The impending shortage of labor in the 1980's will be felt especially at the lower status end of the employment scale by virtue of the increasing disinclination of the American workers to perform either menial or repetitive tasks. As native foreign American workers continue to adapt the certain characters of Western post-industrial society, it is even expected that the productivity might decline. That is one side of the equation.

POPULATION GROWTH IN MEXICO

On the other side, while President Portillo's family planning program appears to be making progress in Mexico, Mexico is still going to face an unemployment problem for the decade to come. In fact, 47

percent of the population is now 15 years of age, or under. They are just beginning to approach the childbearing age.

Mexico's capital-intensive drive toward further industrialization is going to require only a modest input of labor relative to the total manpower available.

NEW ARRANGEMENTS WITH MEXICO NEEDED

Given the foregoing, it is in the interest of both countries and their respective business communities, to try to come up with some new arrangement such as initial step which has been suggested by your bill. To do this, however, we are going to have to accomplish, I think, a 180° reversal of our present attitudes which I think are expressed rather well by Senator Huddleston.

No. 1, we are not dealing only with the problem of assimilation which has been typically related to American problems of immigration when compared to the European movements to America.

No. 2, we are no longer talking about the *bracero* programs, stoop labor. I think there are a number of studies, Wayne Cornelius' is among them, which are beginning to show that Mexican labor has moved out of the primary sector into services, light industry, et cetera. We are no longer just talking about a border problem. There appear to be around 500,000 undocumented Mexican workers in the Chicago area alone. So we have a situation which is very much different than any situation that exists whenever Mexican migration comes to the floor and people want to refer back to an old *bracero* model.

I think that we have to move somewhat away from the idea of: (1) Assimilation in the strict sense of the word, although it is still important for the issues that your bill is trying to relate, and (2) a continued referral back to the *bracero* program. I think there has been a number of responsible studies which have already demonstrated that eight out of nine migrants from Mexico to the United States have returned to Mexico after temporary work here in the period between 1970-76.

Senator Huddleston seems not to approve of the fact that people want to come here and then return to their home country. If they come here, if they add to our productivity, if they increase the productivity of the various regions and then return home, I think they have given us more than we have asked for.

STATISTICS ON ILLEGAL MIGRATION UNCERTAIN

Senator KENNEDY. But you can't get away from the fact—even if they come here and then return—that the total numbers have increased dramatically, haven't they? This is the point that will be made.

Dr. GREGORY. I suppose they have increased dramatically, but I have been amazed by the fact that in 1 year the so-called Mexican illegal population in the United States has statistically decreased by 4 million people. At the beginning of this year, I was reading figures from INS and others that there are between 8 to 12 million undocumented Mexicans in the United States. We now have a figure of 4 to 6.

Senator KENNEDY. 4½ million is what I've heard. But I think that most would say that these estimates were not really based upon scientific surveys.

Dr. GREGORY. So, we still come up with the fact that I don't think we know what the estimates are.

Senator KENNEDY. That is why I am asking. How do we know that they are going back?

Dr. GREGORY. All we know is—

Senator KENNEDY. The general concern, and I have heard this repeatedly on the floor of the Senate, is that we are getting overrun here by illegal aliens—that is the fear we have to deal with, quite frankly. That is why I want to hear from you people on this.

Dr. GREGORY. All we really have at this point are studies that have been carried out in Mexico and it is very curious that when academics want to study the Mexican immigration problem we always want to study it in Mexico.

Senator KENNEDY. That is somewhat understandable.

Dr. GREGORY. It is a much more exotic country, but I know I would much rather spend 9 months in Mexico than Detroit. Aside from that fact, the kind of studies we have are the studies by Jorge Bustemonte and by Wayne Cornelius, a recent study by two researchers from Princeton showing that in their home communities eight out of nine migrants return. In fact, in one community, 90 percent of the migrants were, I suppose you could call them legal migrants, they had the INS form 151 documentation and they used it as a temporary work permit to come into the United States.

Probably more important than any of these particular studies for your bill is the fact that the Mexican population, the Mexican-American population is one of the fastest growing minorities in this country. In fact, the fact that the 1980 census reflects this in question 7, I think is a rather innovative step.

EUROPEAN EXPERIENCE

Now, some people have mentioned, well, why not Haiti, why not the Dominican Republic? To begin with, the numbers involved are much, much different. In Europe, for 20 years they have been experimenting with rotation-type labor. The industrialists have felt that the best system is to bring in a man for 2 or 3 years between 25–32 and then move him out. Germany, Switzerland, and Holland, after 20 years of experimentation with rotation labor has found this to be detrimental to their own internal policy. While they found that a certain amount of rotation labor is needed just to keep the economy growing, because as a direct correlation, as Professor Kinclberger and others have shown between economic growth and immigration, they have come to realize that to stabilize the immigration populations that are already in their own societies and to reduce social disruption, the best form is to approach some type of family reunification scheme which seems to be one of the items which your bill has been directed toward. But they have found that single, married, isolated workers, living in barracks or slum conditions, create many more grave problems for their own society than married men with their families. So, Europe, after 20 years of experimentation is come to a point, which is not too dissimilar than what you are requesting in your particular bill.

Senator KENNEDY. Have you a final comment, a brief one.

ARE MORE STUDIES NEEDED?

Dr. GREGORY. One final comment. In looking over the approach to the study of the whole Mexican immigration problem, we seem to be caught between two positions: One is that we need more facts, the typical objective, academic approach; we have to know how many people are here, what the size of the population is, et cetera.

Senator KENNEDY. That is going to be an argument. Why take this action until we have the facts?

Dr. GREGORY. I don't think we are ever going to have those facts because our situation is so fluid, which leads us to the other side, and that is the normative side. In other words, certain value judgments are going to have to be made about what kind of society, what type of life style we want to live in. The Europeans have realized the continued economic growth is based upon continued importation of immigrant labor. They also realize that this creates certain problems. They are looking for ways of resolving these problems.

But now the problem that faces them: Do they want economic growth and at what cost? How will they treat the particular people who are coming in? In other words, not just what do we know, but what can we do? what should we do? what type of policy do we want? what type of social relationships are we after in this country? We can't just look at the rise and fall of 1 or 2 percent of the GNP and let that make our decisions. We have to come to some conclusions about the quality of life in this country that we are after.

Senator KENNEDY. Thank you for your statement.

[The prepared statement of Professor Gregory follows:]

PREPARED STATEMENT OF DAVID D. GREGORY

I. INTRODUCTION

I would like to take up the question as to whether or not there are sufficient reasons to change a section of our immigration policy (formulated in 1965 to remove the discriminatory aspects to the "national origin system") in order to give preferential treatment to our contiguous neighbors. Are there special relationships among the United States, Mexico and Canada that have been ignored in the 1965 legislation? Does the 20,000 quota per country system recognize the present realities, national interests, and future needs of the U.S. and our contiguous neighbors? While there are very significant developments occurring along our northeastern border with Canada in terms of a new influx of people and capital, most of my comments will be directed toward the consideration of Mexico and the United States.

I believe that there is cause to re-emphasize the existence of a special relationship between Mexico and the United States. The report on "Legal and Illegal Immigration to the United States" prepared by the Select Committee on Population emphasized this special relationship and concluded that Mexico should be treated as a special case. The report quoted President John F. Kennedy's 1962 Mexico City speech in which he stated: "Geography has made us neighbors, tradition has made us friends, and economics has made us partners" (1978:26). While his statement reflects a visionary optimism of the 1960's, its literal interpretation in the 1980's might lull Americans into a false position about the actual condition of this relationship. It makes us take for granted the existence of positive attributes that still have not been fully realized which need the attention and work of people on sides of the border.

While geography has made us neighbors, historic relationships have made us unequal competitors. Until quite recently, American authors like Gene Lyons have rather unfairly compared our frontier to a situation that might exist if Algeria bordered directly on Southern France or Zaire upon West Germany. From 1845 to 1853 our frontier with Mexico has changed dramatically as Mexico rapidly

lost over one-third of its territory to the U.S. through annexation, conquest and purchase. On September 26, 1979, shortly before President Portillo's Washington visit with President Carter, a full page public announcement to the Mexican people was printed in the newspaper *Excelsior*. The announcement listed in chronological order from 1810 to 1941 63 major U.S. interventions and invasions in Mexico. Some people have interpreted this as an open letter to the Mexican government to remind it that Mexico has already contributed substantially to the United States over the past 150 years.

Since the turn of the century international relationships dictated by our contiguous territories has centered more and more upon the problems of immigration (Cornelius 1979; Camara & Kemper 1979; Kiser & Kiser 1979). During this period U.S. policy has alternated between a rather begrudging welcome and repressions resulting in the apprehension and expulsion of a large number of Mexicans in 1920-21, 1930-35, and 1953-54.

Attitudes of recent U.S. administrations have been negative from the adverse reaction of the Nixon administration in 1973 to President Carter's unilateral three-phase approach of 4 August 1977. In evaluating Carter's proposal, Jorge Bustamante (1978:7-10) clearly demonstrated that border enforcement has never been successful in the past (i.e. the massive deportations of the 1930's or President Eisenhower's "operation wetback" in 1954). Its main effect will be to harm existing, mutually beneficial, economic relations. Doubling the border patrol only means doubling the number of apprehensions and expulsions. Emphasis upon police measures causes us to forget that these immigrants are not criminals but simply ordinary people looking for work. Tighter employer sanctions assumes that a massive job displacement is now taking place despite the fact that it has never been causally demonstrated beyond single cases that the undocumented workers significantly add to U.S. unemployment. It is doubtful that such sanctions would change the structural demand in the U.S. economy for Mexican labor. The measure to adjust the status of undocumented immigrants to permanent residents after seven years of continuous occupation primarily benefits non-Mexicans. It also aggravated the overall problem of converting temporary migrants into potentially permanent ones. The five-year temporary alien status is a vaguely defined type of work permit. It deprives the immigrant of any meaningful social security, and does not provide the undocumented worker with any real incentive to register with the INS. The 20 December 1978 recommendations of the House Select Committee on Population, while recognizing our special relationship with Mexico, seem to reflect U.S. public opinion: that undocumented immigrants increase unemployment and that more restrictive immigration measures might increase jobs available for unemployed U.S. citizens.

The U.S. mass media has been setting a negative tone (i.e. "Illegal Aliens; Invasion Out of Control," "Time Bomb in Mexico," etc.). The media make it difficult for Congress to release the actual problem free of constituent pressures. It is also creating a hostile climate that will have a detrimental effect upon Hispanic-American citizen groups themselves. A continuing negative approach can only lead to scapegoatism, increased interethnic rivalry, and social disruption.

The Honorable Hugo Margain, the Mexican Ambassador to the United States, considers the difficulties posed by undocumented Mexican workers, and their treatment by the United States, to be the most critical foreign relations problem—more critical than either oil or tariffs—affecting future bilateral relationships between our two countries. There is increasing evidence, however, that the next decade might well be marked by a recurrence of anti-immigrant activities that will be directed largely toward undocumented Mexican workers (Cornelius 1979). The growing number of people involved and the changing economic and demographic structures of the United States and Mexico requires us to avoid a repeat of the past and focus more clearly upon our special relationship and the future role that migration might play in our mutual development strategies. S. 1763 seems to be a right step in this direction.

Tradition, at its best, has made us ambivalent friends. It is safe to generalize, however, that Mexico has been more concerned with trying to understand us than we them. Until Mexico's acknowledgment of its oil reserves, the United States has tended to take Mexico somewhat for granted. In 1977 around 50 million Americans crossed the border into Mexico. It has been estimated, however, that no more than 2 million ever went farther than 25 miles inland. Of these 2 million, the majority were packaged into pre-arranged tourist excursions.

Octavio Paz, the former Mexican ambassador to India and influential Mexican author, has spent decades trying to unravel the cultural similarities and differ-

ences between the United States and Mexico created by tradition. He says: "our countries are neighbors, condemned to live alongside each other; they are separated, however, more by very profound social, economic, and psychic differences than by physical or political frontiers * * *. These differences are not only quantitative, but qualitative; they pertain to the nature of civilization. What separates us is the very thing that unites us. We are two distinct versions of Western Civilization" (Sept. 7, 1979; *The New Yorker*: p. 136). Carlos Fuentes, the former ambassador to France and international Mexican novelist, parallels Octavio Paz when he stated that America in order to understand Mexico must: "* * * dwell not only on energy, trade and immigration, but on the larger issues at hand. These have to do, in reality, with the cultural substance and national identity of Mexico, with the viability of the Mexican state and the respect due to the design for the future which is universally known in Mexico as the "national project". (*The Guardian*, March 4, 1979: 7)

These actual or proposed cultural similarities or differences—created by tradition have important implications for the harmonious way in which migrants from sending countries make a relatively successful adjustment or adaptation to the economic and social structure of the receiving country. The wider the disparities the greater the potential problems. While there is a need to create a climate of better understanding through education and gestures of good will as embodied in the present bill, the disparities emphasized by the intellectuals are not as extreme as popularly thought.

Like other waves of immigrants before them, the Hispanics have positively added new cultural dimensions to the American amalgam. They are one of the fastest growing minorities in the United States. Their growing importance is clearly seen in the preparation of the 1980 Census in which question number 7 asks every American for the first time if they are of Spanish/Hispanic origin. These Hispanic/American citizens act as an important host group in the acculturation process of new Mexican arrivals.

A recent poll and 3-month survey in Mexico carried out by 16 staff members of the Los Angeles Times reflects not only the ambivalence of the U.S.-Mexican friendship, but also underscores the positive potential for good will shared by the Mexican people. When the Mexicans were questioned about the United States, 75 percent gave the United States a "very" or "somewhat" favorable rating. An equal number, however, said that the United States was more concerned with "dominating" or "exploiting" Mexico than being a "good neighbor." While 81 percent also believed that the United States had more influence over Mexico than it should, the United States was first on the list of "most trusted countries." It outranked Cuba, which was in second place, by more than 3 to 1. (*Los Angeles Times*, Sunday, July 15, 1979:9).

In the remainder of this testimony, I would like to dwell upon why economics should make us partners based upon enlightened, mutual self-interest. It is in the area of economics tempered by demography, that Mexican-American relations should prove most important. While most of what I have to say is not new, it is an attempt to look at our special relationship and its potential for economic partnership in a more holistic way. I am proposing that it is opportune for the United States and Mexico to begin building upon some of the insights to be derived from a closer examination of Western Europe's 2 decades of experimentation with permanent and temporary labor migration. There is a vast literature in this area concerning both its positive and negative relationship to economic and social development. I am not at this time advocating the possible adaptation or rejection of any of the Western European systems of labor importation. While there are many aspects of the European models that could certainly help us improve upon the non-directed and unprotected flow of Mexican nations to the United States, they are by no means all perfect in their present form (Gregory 1978).

II. NEED FOR NEW PARADIGM

The convergence of energy problems, exchange rate instabilities, the persistence of inflation and endemic unemployment in the Americas makes it imperative that we reexamine the relationship between employment, income distribution and social progress in our hemisphere. While there has been a world decline in the growth rate and real GNP since the sixties, some economists believe there are indications for a potential upturn by the mid-eighties (Rose 1978). Ridker and Cecelski in a study of the nature of future limits actually find that an improvement in socioeconomic indicators, among other factors, suggests that

the world as a whole is winning the race between demand and supply. According to their analysis there will be a slowdown in the growth rate of populations and resource consumption. The problems to be faced will deal less with physical limits or the exhaustion of resources and more " * * with their unequal distribution and the transition problems of moving from one resource regime to another in an orderly fashion" (1979:1). Policymakers in the industrialized nations will have to move beyond current, short-term, subjective perspectives which accept continued stagflation and stricter limits to all growth as the norm for the rest of the twentieth century. In particular, they must be ready to deal with changing demographic trends which indicate that the contemporary labor surplus may begin to give way to actual shortages between 1985 and 1990. The U.S. labor force growth which is now around 20 percent is projected at less than 12 percent for the 1980's (Sheppard & Rix 1977). In West Germany the work force is actually expected to decline.

In particular, the future role that permanent and temporary labor migration will play in the developmental strategies of Mexico and the United States should be examined in terms of the possibilities of instituting new forms of cooperation. Some thought has been given to the effect of migration on both the sending and the receiving countries. However, the economic and political consequences of migration on potential modalities of cooperation between Mexico and the United States has been less explored even though migration will tie the future development of these two countries closer together regardless of overt intentions. Whether it is a question of making emigration more useful as a developmental tool (through counseling, vocational training or the use of savings) or of offering valid alternatives (through job creation), it is imperative that the United States should elaborate, with the aid of Mexico, adequate institutional mechanism and means of assisting labor and capital at every stage of the migratory chain: departure, immigration, installation in the host country, family reunion, return to home country, possible re-emigration, et cetera.

The new paradigm should further clarify the fact that contemporary Mexican migration to the United States is not entirely comparable to the nineteenth century flight from Europe. These earlier arrivals came with their families and sought full membership in American society. All of the Mexican migrants, however, are not rejecting their culture or country for which they maintain a deep affection. On the contrary, their move to the United States is a provisional disengagement which uses migration as a means of breaking the equilibrium of poverty in their native regions. The excellent field studies conducted by Jorge Bustamante and Wayne Cornelius show the reverse flow of migration to Mexico to be quite high. In Professor Cornelius' sample the temporary migrants to the United States from 1930 to 1976 outnumbered those Mexicans who settled permanently by a margin of 8 to 1. A recent report by Josh Reichert and Douglas Massey shows that over 90 percent of all legal migrants from their sample in the state of Michoacan return home within 12 months; most are away 9 months or less.

Therefore, we must come to realize that this new flow of people is not to be associated only with the traditional problems of assimilation but rather with formulating labor treaties that better employ, train, safeguard the workers while in the United States and facilitate their reintegration upon returning to Mexico. Such a paradigm would hopefully move some of the jurisdiction from the Department of Justice to the Departments of State in both countries.

We have all been exposed to enough information by now which indicates that the influx of undocumented workers in the United States is not going to abate in the near future. It is a bilateral problem which will not vanish because of a very genuine demand for Mexican workers in a large area of the United States and because of the dynamics of the Mexican economy, unemployment, expanding job pool, and above all the Mexican population growth rate. Americans are only avoiding the real problem and possible benefits that this type of immigration presents by stressing its "illegal" and "undocumented" aspect. This creates a mind-set that unrealistically isolates both the immigrants and the problem and make us believe that it can be solved unilaterally. A unilateral approach by the United States, however, is negative from the Mexican's view of her own interests, besides being antipathetic to the interested groups in the United States.

Aside from the attempts of the Mexican ambassador to Washington to revive the bracero agreements, there seems to be a no-policy situation in Mexico. Dr. Bustamante attributes this to two reasons. First, because outmigration to the

United States is viewed as an "escape valve" for the tensions created by unemployment. Second is the low level of awareness of the general public in Mexico concerning the implications of undocumented immigration for the economic and political stability of Mexico and its border areas (1978 :8).

It is estimated that 800,000 unregistered immigrants are annually entering the United States. At the end of the 1960's, more than 800,000 foreign workers legally immigrated on a yearly basis from the developing Mediterranean countries to the industrialized regions of Western Europe. No other part of the world has experienced such a large-scale, legal movement of temporary workers.

As late as 1976, 7.5 million temporary migrants were included in the workforce of Western Europe. They were accompanied by 5.5 million dependents. Since the mid-fifties the OECD, ILO, EEC and the governments of Europe have evolved programs and policies developing from the concept of the liberalization of manpower movements in the late-fifties, through relaxation of regulations in the sixties, to current ideas favoring the international concentration of manpower policies and recognizing the intricate relationship between migration and the social and economic development in both immigration and emigration countries.

An analysis of the applicability of the 20-year European experiment to the situation in our hemisphere would help Mexico and the United States determine their mutual self-interest. The fundamental question is how to most effectively legalize and thereby organize the migratory chain between the United States and Mexico so that all the phases of migration and the manpower policies of immigration countries could be better related to measures for creating employment and regional development in emigration countries. Such a delicate and complex examination should not only be bilateral and interdisciplinary in nature, but interprofessional as well, including banking, business, industrial and agricultural interests along with those of the usual political and academic focus.

Over the past few years there have also been a number of unilateral attempts by American scholars to reevaluate the Europeans' experiments. Most of them suffer from the fact that their major focus is upon the years following the crises of 1973. They ignore, or treat lightly, the preceding 14 years of rapid European development and do not adequately consider what the course of Germany or France's economic growth would have been without this movement of workers. Nor do they adequately consider what would have been the continuing economic and social stagnation of the temporary workers themselves if they had not been allowed access to the EEC labor markets. Furthermore, because of our American heritage which associates assimilation with migration, there is attentancy for American scholars to focus upon the problems of the minority of workers and their families who remain in the host countries, rather than upon the majority who have returned home.

III. UNITED STATES-MEXICAN INTERDEPENDENCE: POSSIBLE BENEFITS DERIVED FROM A LEGALIZED AND MORE EFFICIENTLY ORGANIZED MIGRATORY CHAIN

A. The United States

1. *The impetus to return home.*—There is no way that the United States can absorb all the potential immigrants from Mexico over the next 20 years. The legalization of this movement, by adopting the most pertinent and successful features of the Western European system of granting temporary work contracts and residence permits (the amount of time allowed depending upon the occupational skill or service required) might well prove to be an inducement to continue to have the migrant return home. In the European case the vast majority of migrant laborers have returned to their countries of origin. As many as 600,000 workers returned to the major OECD sending countries during 1974-1975: Turkey 90,000; Greece 60,000; Yugoslavia 146,000; Italy 235,000; Spain 198,000. The largest return was for Italy, the only Mediterranean country that is part of the EEC and with total freedom of movement between itself and member countries.

Before 1975, the possibility for workers in most cases to renew contracts and reenter the countries of the EEC legally at some indefinite time in the future—or able to send their older children in their place—alleviated the anxiety and fear surrounding the migrant's situation. It also caused the migrant to maintain closer ties and a stronger cultural identification with his own country. The migrants preferred to return home not only because that is where their families and relatives reside, but they also could get more favorable exchange rates upon their currencies earned in the labor-importing countries. Most favorable exchange rates and lower costs of living extended the purchasing power of their earnings.

2. *Public and private pension funding.*—Demographically, the United States, like West Germany, is an aging population which will eventually face a crisis in retirement financing (Sheppard & Rix 1977). By the year 2000 there may be as many as 33 million older Americans who will comprise more than 12 percent of the population. With replacement level fertility and no substantial changes in the death rate, the median age in the year 2000 will be 35.5 years as opposed to 29.4 in 1977. The potential implications of the aging of society are enormous and may well have a profound impact on both the elderly and the workers who must support them. With the increasing number of the aged and the movement towards earlier retirement, the ability and willingness of the working population to continue to assume the burden of support will come into question. Even now 15 percent of the 65-plus population live below the officially defined poverty level and the incomes of many more come close to that level. There are signs that any additional efforts to improve the standards of living of the elderly, if accompanied by tax increases, will be faced with resistance on the part of those who must pay for the improvements. I do not know if anyone has successfully projected future support burdens. Nevertheless, current fertility trends in the United States do not appear to be sufficient to offset the cost of supporting the growing number of the aged. A significant increase, however, in the number of individuals in the labor force would help to offset future dependency costs. The role that legalized temporary contracted Mexican labor in the United States could play within our public and private pensions funds is considerable. Legalization would facilitate the taxing of the migrants' wages and withholding of social security deductions, a percentage of which could be used for their immediate benefit (Piore 1979).

In any case it is necessary to investigate whether or not the net contribution foreign workers make to the economy actually outweighs the cost involved for housing, training, health services, etc. To date, such a cost/benefit analysis has been incomplete and carries a considerable subjective component determined by whether or not the study is carried out during periods of national unemployment or labor scarcity. Representative James H. Scheurer implies that the cost to date of Mexican workers has been too high. Michale Piore believes that our industrial society could not function adequately without our foreign workers. Wayne Cornelius' evidence suggests that migrants pay more into the U.S. Treasury than they themselves collect in benefits. The General Accounting Office is undecided. Nevertheless, it is often overlooked that the employment of migrant workers not only fills existing jobs but may create additional ones in the host country and improve the overall mobility of the native work force.

3. *Competitive lower labor costs.*—While the advanced industrial countries are currently attempting to deal with the problems of unemployment and inflation, within the next decade labor surplus might again give way to shortage. As mentioned in the introduction, population growth is slowing down in the United States and reducing the prospective workers. While the U.S. labor force growth was about 21 percent for the decade of the seventies, it is projected at less than 12 percent for the eighties. In West Germany the work force will manifest a negative percentage from 1985 to 1990. Since 1973 West Germany's population has actually declined by over 900,000.

Mexico, under the direction of President Lopez Portillo's new national family planning program, appears to be reversing Mexico's traditionally high growth rate of 3.5 percent a year, which double population every 18 to 20 years. Victor Urquidi estimates that the 2.5 percent target set by President Portillo for 1982 is "within sight" (Nagel 1978). While Mexico's turnaround is truly dramatic, the difficulty to overcome remains the large number of youths who are about to enter their childbearing years. Forty-seven percent of Mexico's population is currently under 15 years of age.

Population growth and uneven income distribution, while improving, will continue to play an important role in unemployment and illegal migration. Population growth, while being a major factor in Mexican underemployment and unemployment, is also aggravated by Mexico's capital intensive drive that requires only modest inputs of labor. Furthermore, inasmuch as agricultural development has received relatively less attention, jobs are even fewer in the rural areas where 40 percent of the population still lives.

In any event, in Mexico there is an excellent work force of highly motivated young men and women who will perform jobs that U.S. workers will not take. In post-industrial societies the ensuing generations of workers are less interested in agricultural and repetitive industrial employment. They look less at wages

and productivity and seek more leisured occupations. Today professional and managers hold one out of four of the jobs in the U.S. (Ginzberg 1979).

The current trend in energy prices, however, make it highly unlikely that many agricultural and nonservice jobs will be mechanized. The price mechanism may well continue to force industry and business to substitute labor for energy. Temporary contractual Mexican laborers filling vitally needed jobs at the lower level of our agricultural-industrial-service hierarchy could in the next 20 years give America a more competitive stance with countries like South Korea, Taiwan and Japan.

Of course, what has to be studied in more depth is the true "displacement effect" of the legalization of Mexican-U.S. migration, in that even now it appears that over half of all undocumented workers earn wages at or above the legal minimum. We badly need a variety of local impact studies in various regions throughout the U.S.

In Western Europe the economic crisis of 1973 has had little impact on attempts to substitute national workers for migrant workers due to the existence of a dual labor market: one consisting of the national labor force, the other of foreigners. To date, these two markets remain economically complementary rather than competitive. Financial incentives have not been sufficient to induce the unemployed from the national labor force to take over the socially less desirable jobs performed by the foreign work force. While governments have few doubts about the economic costs of this foreign work force, they are beginning to worry more about its political costs.

B. Mexico

The existing nondirected and unprotected flow of Mexican nationals to the United States can certainly be improved upon. Nevertheless, in advocating a closer examination of the European experiment it must be kept in mind that the countries of Western Europe have begun to reevaluate the experiment in a longer term framework. Two conclusions are beginning to emerge: (a) The traditional neoclassical economic model of allocating human resources between nations has severe limitations; (b) labor migration can only provide a temporary solution to problems of unemployment and might best be pursued during only the early phases of economic development.

Therefore, in Mexico programs should be developed to evaluate the overall consequences of international migration and development along the following lines:

1. *Unemployment pressure.*—The legalization of temporary movements between Mexico and the United States of workers could have long-term benefits on Mexico's unemployment situation besides its obvious use as an escape valve. As we have already seen, Mexico's labor force will increase by more than 100 percent over the next 2 decades. Through the legalization of migration, the Mexican Government would be able to more adequately control the flow and the direction of its unemployment throughout the entire nation. Such a control would allow it to more equitably balance unemployment throughout the entire nation. It could reduce its unemployment in urban areas with a less viable industrial base as well as decrease the man/land ratio in key agricultural areas. An unequal process of labor migration, free from government policy, can have demographic consequences which will eventually aggravate the nation's regional problems.

2. *Migrants' remittances.*—The legal transfer of migrants' remittances to banks in Mexico would on a national scale help Mexico with its balance of payments. At present around 63 percent of Mexico's exports are to the United States, while 57 percent of its imports come from the United States. American banks have lent Mexico most of its present 25 billion dollar indebtedness and over 80 percent of its patents are held by U.S. firms.

Equally significant is the fact that returning migrants spend the bulk of their earnings in their place of origin. First they improve their housing, and next they look for investments in small owner-operated businesses. Return migrants to the Mediterranean countries of Europe have virtually brought about a renaissance in village construction. The annual volume of savings transferred to the six major labor sending countries of the Mediterranean in 1976 was around 6 billion dollars.

While remittances secure an external equilibrium between equalizing balance of payments and compensating for deficits in the trade balance, it can threaten the internal equilibrium of a country. Therefore, Mexico must be in a position where it can redirect the traditionally negative aspects of remittance income where: (a) Only a minority of the migrant's earnings are invested in the "pro-

ductive" enterprises which will assist them in future capital formation, and (b) the consumption use of remittances results in inflationary pressures of a demand-pull type followed by higher imports. In any case, programs need to be developed that will give a clear picture of the economic relationship between the flow of migrants and the flow of trade with the ultimate goal being increasing the export of products.

Remittances left to themselves do not create as much employment as they might. The government has to play an active role in directing the savings toward more productive and job-creating ventures beyond merely improving the banking system. While the government might become involved in such projects as "Village Development Co-operatives," it must be sure to integrate such projects into a nation-wide system of regional planning. The European experience has shown that unless the governments become more attuned to problems of political economy at the regional level, there is no real possibility of reversing the persistent imbalance in the regional distribution of jobs and income which originally stimulated migration.

3. *Migration and the training of manpower.*—Migration could open up new paths of social mobility for the Mexican workers by teaching them new skills which would provide them with opportunities upon their return to Mexico. By cooperating with the Mexican Government, American industry could upgrade training, skills and experience of the migrants for the benefit of development in Mexico when the migrants return. The American firms that would like to expand or open up new investment in Mexico could train their workers in the United States. By making sure that the upgrading of skill would actually help Mexico meet its developmental needs, these companies might be in a better position to invest directly in Mexico's future growth. This certainly would help the U.S. companies in transferring certain of their production processes—especially labor intensive one—to Mexico.

We have spoken little of Mexico's petroleum potential because as a capital-intensive industry it will employ relatively few workers. Only if the Mexican Government uses its potential oil revenues in the future to develop small-scale as well as large-scale industries, is there a possibility of increasing the number of jobs available to the returning migrants. On the one hand, migrants who have received training in the United States could use their funds to improve the infrastructure of their rural villages. On the other hand, the Mexican Government could distribute industries throughout the countryside rather than concentrating them in a few key areas thereby accentuating regional differences. In the rural areas they might follow some of the suggestions of Congressman Clarence D. Long for the creation of light-capital technologies that: (a) Are small in scale, easy to install, and durable in operation; (b) are not dependent on high-centralized infrastructures for production, maintenance and repair; (c) make effective use of available resources; (d) meet the needs of local communities; and (e) are labor intensive.

In sum, the adequate training of migrant workers in the United States would be only the prelude to the ultimate transfer of a new production capacity to Mexico. Such a new international division of labor of course would imply considerable changes in customs and trade policies between Mexico and the United States. It could, however, eventually solve the various problems associated with each phase of the migratory chain and turn the United States and Mexico into one of the more competitive, economic, geopolitical regions in the world today.

III. CONCLUSION

In any event, the United States and Mexico should look to each other as potential solutions rather than possible problems. One such solution resides in a better organization of the migratory chain.

In the meantime the remedial solution offered by this bill is an immediate step which in its brevity begins to recognize the special relationship between our two countries. It can begin to ameliorate some of the problems raised by the issue of illegal immigration. Robert McBride has informed me that during his service as Ambassador to Mexico from 1969 to 1974 the quotas for Mexicans were already insufficient and the waiting period was growing steadily. It had particularly adverse effects on any meaningful family reunion program. He believes that this piece of legislation aimed at augmenting the legal quota for contiguous territories would be seen in Mexico as a sign of good will. Its enactment might be expected to take some of the chill out of the air caused by this and other problem.

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Until 1977 I remained largely ambivalent about the long-term effects of labor migration on social and economic development. At a meeting in Granada concerned with "Emigration Problems in the Mediterranean Basin" I met Prof. Giampiero Rellini of the OECD. After discussion with him I began to realize that most of the macroeconomic problems associated with migration have evolved in the areas where there has been the least bilateral cooperation between sending and receiving countries. He also provided me with a draft of the Manpower and Social Affairs Committee Report on "The Migratory Chain." My general approach to the problem of U.S.-Mexican undocumented labor has been positively influenced by Prof. Rellini and the restricted 1976 committee report.

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ECONOMIC IMPACT OF UNDOCUMENTED ALIENS

Senator KENNEDY. Professor Sereseres, let me just ask you about the economic factors of undocumented aliens. I think that is terribly important information that we should have in the record. Have you done studies, or are you aware of studies of others, about the contribution that undocumented aliens or migrants made to our economy, and what has been the economic impact?

Dr. SERESERES. May I preface my comments. I am a little concerned about the direction of the dialog. My impression was we were talking about an issue of increasing legal immigration from Canada and Mexico and somehow we have diverted into the side issue of undocumented workers which is really the concern of another commission. As far as I know, two of the major studies that are reaching some certain conclusions right now are probably going to conclude that the estimations that both Mexico and the United States have come up with regarding undocumented workers in the United States would be far lower than anybody anticipated. My concern is where this bill fits into the broader and more positive dimensions of the United States-Mexico relations.

To answer your question specifically, the studies that have been done locally, particularly in California and in the Southwest, with exception of Vernon Briggs in Texas, have pretty much demonstrated that the undocumented pay their taxes, that they pretty much put a great deal in the system and take very little out. Where you do find discrepancies is for county hospitals and local governments that can't meet their budget and can't find any other way to explain their inefficiency and mismanagement.

But there is still a considerable amount of doubt; part of it is a result of this silent invasion syndrome that developed in the 1960's and 1970's. So, I think the issue in your bill, if it gets caught in that dialog, that kind of debate—

Senator KENNEDY. That is very true, but as you could hear from one of my Senate colleagues here, that happens to be the nature of the debate, and we have to face it.

Dr. SERESERES. Well, if the issue is to what extent will this bill alleviate—

Senator KENNEDY. I don't want to get diverted from what our bill does, but I raise these other issues primarily because those are the ones, whether we like it or not, that are going to be the ones raised on the floor and I think the record that you are making on these this morning has been enormously constructive. But why don't you proceed.

Dr. SERESERES. I would like to pursue three lines of inquiry here regarding the possible contributions of S. 1763.

WHY ARE UNITED STATES-MEXICAN RELATIONS SPECIAL?

The first regards United States-Mexican relations and why they may be special. The second concerns the justification for increasing the allocation, or at least the allowable number of visas per year for Mexico and Canada. It seems like the issue at stake here is the principle of equity for all nations versus the U.S. ability to be responsive to some basic human needs of some specific needs. The third regards the Mexican perspective concerning our fluctuations in immigration laws.

What factors and conditions make Mexico special to the United States, and certainly vice versa? First and foremost is the relationship of interdependence. I don't have to recite all the data: Trade, tourism, investment, border transactions, the flow of people, and most important for the 1980's, the energy relationship that is about to develop.

Second, a condition that makes United States-Mexico relationship unique is the sense that issues have both a domestic as well as a foreign policy dimension. In the case of United States-Mexico relations, the traditional dichotomy between what is international or foreign policy and what is domestic is increasingly blurring. That cannot be said for most other nations.

The third condition that makes the relationship between the United States and Mexico unique is this border interface. Some Mexicans have argued, along with some people in the United States, that bordering nations merit rights to special treatment. Irrespective of how this argument can be developed, it seems to me that the border interface, this 2,000 mile border, represents a unique quality in relationships between the United States and Mexico that are not evident with most other nations on Earth.

SPECIAL RELATIONSHIP JUSTIFIES SPECIAL QUOTAS

If one looks at these three conditions or these three concepts, I would suggest that it does justify an expanded immigration quota for Mexico. Immigration provides a significant issue for testing and proving the basis for future bilateral cooperation between the United States and Mexico.

Hopefully, before the 1980's, both nations will reach a general understanding of their needs to manage and share their natural conditions of interdependence. A flexible, responsive U.S. immigration policy would be but one small step in that direction.

I would now like to raise certain points in reaction to those who are arguing that, in identifying Canada and Mexico for special treatment, you are in effect implementing a most-favored-nation status for these two countries that may be detrimental to the other nations. I think the following are counterarguments that can be made.

First: While it is laudable to make attempts to maintain a sense of equity and universalism in administering the U.S. Immigration Act, we may discover that, in the effort to treat all nations equally, we may not be treating all people equally.

Second: While a universal system of immigration suggests no special deals, we may need to create a more rational policy that accounts for neighbors, keeping in mind that we have made special deals for political and humanitarian reasons in the past: East Europeans in the midfifties, Cubans in the early sixties, the Indo-Chinese, and now the boat people. But a strong argument can be made for moving from equity as an ideal to flexibility which permits responsiveness to some of the basic human needs that we are talking about today.

Also, one cannot allow a rigid concern for protecting a universalistic ideal in principle to contribute to the maintenance of a rationale policy. We cannot wish away our neighbors, or ignore their importance to the U.S. society.

HUMAN RIGHTS AS BASIS OF LAW

Very recently, Pope John Paul, in his address of the Organization of American States commented that social organization is at the service of man, and not vice versa. I would argue that such a thought could be applied to existing U.S. immigration policies. For example, are we not capable of designing policies to satisfy basic human needs? Our focus of concern, in other words, should be on human rights, human needs, and on the individuals; not on abstract principles such as equity and universalism.

The fact is that there are countries where the United States has stronger interests than others, even under the influence of universalistic principles. We must recognize the existence of a hierarchy of U.S. interest which changes as the shape of the world changes.

CAN'T TAKE NEIGHBORS FOR GRANTED

Historically, the United States has taken its neighbors for granted; we could afford to in the past. The question now remains, can we afford to ignore them in the future? Mexico and Canada are like no other two sets of nations on Earth. They never were. If one seeks to argue against the specialness of these two nations, is it possible to point to any other two nations on Earth that have such impact on the U.S. economy, on U.S. culture, and on U.S. society in general?

It seems to me that the challenge that is facing the committee, as well as the Senate as a whole, in examining this bill was best expressed by President Lopez Portillo during his visit, and I will quote him.

We must draft policies that will be valid both among ourselves and our treatment of others. We must not permit misconceptions about cost and burdens nor principles about equity and parity to stand in the way of issues of human need * * *.

In this case, the unification of families.

I have already mentioned the Mexican view and I will just summarize two points: They are aware of this bill and in talking to them, the general consensus is that it is a gesture of good will, that, in fact, it will probably not make a dramatic impact on the flow of undocumented workers from south to north, that they are interested in returning to the levels of the midseventies, that its roughly 50,000 to 60,000 per year.

When we look back at the change in the status of the quota for Mexico as unjustified, they see the measure as a reaction as an American domestic reaction to what was perceived as a silent invasion. At that point in time, Mexico was not in the position to protest, because of its economic and financial condition. For Mexico, an increase in the allowable number of visas would be an effort on the part of the United States, at least from their perspective, to correct a historical mistake.

Senator HEFLIN [acting chairman]. Thank you.

[The prepared statement of Professor Sereseres follows:]

PREPARED STATEMENT OF PROF. CAESAR D. SERESERES

INTRODUCTION

The United States has traditionally promoted a "special relationship" with its neighbors to the south, and for decades Mexico accepted the idea. But recently the "special relationship" has lost meaning in both nations.

Rooted in close cooperation during World War II, the "special relationship" signified that the United States would allow for a relatively open and unfortified border, close consultation over problem issues, and some advantageous treatment for Mexico in such areas as finance, trade, and immigration. For Mexico, successful negotiations of the Chamizal boundary issue in 1963 and of the Colorado River salinity dispute in 1972 represented major achievements that symbolized good border relations. Limitation of the border industrialization program in 1965 helped to minimize resentment against the United States for having ended the bracero program in 1964.

But Mexico has recently focused on other experiences to mark violation of the "special relationship." The most galling experiences included Operation Intercept in 1969, which constituted a near-closure of the U.S. border in order to compel the Mexican Government to fight narcotics activities within Mexico, and subsequently the U.S. enactment in 1971 of a 10 percent import tax surcharge worldwide, without exempting Mexico. These were followed by various protectionist trade measures that restricted Mexico's access to U.S. markets, and later by passage of the Immigration and Nationality Act of 1976, which in effect reduced the allowances for legal migration from Mexico. Such unilateral actions by the U.S. Government, often taken suddenly without consulting Mexico, convinced many Mexicans that the "special relationship" was dead.

Since the change of administrations in both countries during 1976, the newly elected presidents have affirmed on three separate occasions their interests in returning to a "special relationship" that reflects the growing realities of bilateral interdependence. Presidents Carter and Lopez Portillo have agreed to coordinate policies on major issues and to fashion new mechanisms for managing relations. However, it remains to be seen whether bilateral objectives can compete with the major policy issues confronting the U.S. Government, both domestically and worldwide. It further remains obscure just what ought to be the basis for a renewed "special relationship" between the two nations for the 1980's and 1990's.

WHY SHOULD MEXICO BE TREATED DIFFERENTLY

Incentives are needed at this time to help both governments proceed with the fashioning of a new special framework for bilateral cooperation. Mexico and the United States, despite being neighbors, are very different countries, with very different needs and identities at stake. Unfortunately, from the perspective of Washington, so many competing priorities have made it easy to treat Mexico-related issues as domestic policy problems, or subsume them (and thus neglect them) under worldwide policy problems, as is the current case with U.S. immigration policy.

Recognizing that political, bureaucratic, and psychological constraints exist, incentives are needed, symbolic as they may be, for both nations to work toward a new framework for managing the growing interdependency between Mexico and the United States. A U.S. Government decision to permit an increased number of Mexican citizens to immigrate to the United States would certainly constitute such a measure. However, such a step requires a conceptual rationalization.

Three concepts, interdependence, intermesticity, and the "rights of border nations," serve to separate U.S.-Mexico relations from the maze of global-oriented policies and the more parochial domestic interests which confront the U.S. Government. Each concept suggests why Mexico is "special" to the United States:

Interdependence.—U.S.-Mexico relations are special because of the growing "interdependence" between the two nations, their societies and economies. Mexico represents the fifth most important trading partner of the United States, an important location for U.S. private investment, and a source of oil and gas imports that will assume strategic significance.

Intermesticity.—U.S.-Mexico relations are special because of the growing "intermesticity" of the issues. That is, the linkages between issues are so deep that the traditional dichotomy between international and domestic affairs becomes artificial in the case of U.S.-Mexico relations. The legal and illegal immigration of Mexican citizens to the United States represents one of the most intermestic of all issues involving the two nations. (Within the context of the U.S. political system, the rapidly growing Mexican-American population constitutes an emerging intermestic constituency.)

Border nation rights.—U.S.-Mexico relations are also special because the two nations share a political border for some 2,000 miles. There are those on both sides of the border who argue that bordering nations merit certain rights to

special treatment. How the notion of "border nation rights" can be conceptualized from a U.S. perspective remains an unasked question. But it is clear that the border interface represents a unique quality in U.S. foreign relations.

Resting U.S.-Mexico relations on the concepts of interdependence, intermeshing, and the rights of border nations would thus justify an expanded immigration quota for Mexico. However, irrespective of the numerical increase in allowable immigration by Mexicans, it should be emphasized that such a measure will only contribute to the managing of the issue of immigration flows between Mexico and the United States and not resolve the problems associated with the most persistent movement of peoples across international borders.

Immigration provides a significant, as well as troublesome, issue area for testing and proving the bases for future bilateral cooperation between the United States and Mexico. Needless to say, U.S. relations with Mexico have much more at stake than immigration. Improving U.S. access to Mexico's oil and natural gas production has already surpassed immigration as a priority issue. Hopefully, before we are too far into the 1980's, both nations will reach a general understanding of their needs to manage and share their natural conditions of interdependence. A flexible, responsive U.S. immigration policy would be but one small step in that direction.

WHY INCREASE THE VISA ALLOTMENTS FOR MEXICO AND CANADA?

The following points need to be discussed in order to ascertain the validity of S. 1763, particularly that portion which seeks to increase the number of annual visas made available to Mexico and Canada, contiguous neighbors of the United States.

No. 1. That while it is laudable to make attempts to maintain a sense of equity and universalism in managing U.S. immigration policies (i.e., 20,000 per country and an established preference system), it may be that in the effort to treat all nations equally we may not be treating all peoples equally.

No. 2. That while a universal system of immigration suggests no special deals, we may need to create a more rational policy that accounts for neighbors. A strong argument can be made for moving from the ideal in order to be responsive to basic human needs.

No. 3.—One cannot allow the concern for a universalistic ideal to contribute to the maintenance of irrational policies; we cannot wish away the neighbors to the north and south, nor their growing importance to the United States.

No. 4. Pope John Paul, in his statement before the Organization of American States, observed that "social organization is at the service of man, not vice versa" such a statement is easily applied to U.S. immigration policies, that is, are we not capable of designing policies that are responsive to immediate human needs?

No. 5. The focus of concern should be on human rights, human needs and man, not on abstract principles of equity.

No. 6. There are countries where the United States has stronger interests than others, even under universalistic principles.

No. 7. There exists a hierarchy of U.S. interests which changes as the shape of the world changes.

No. 8. In the past the United States took its neighbors for granted, we could afford to, but this is no longer the case; our neighbors are changing, the United States is changing, and the world is changing.

No. 9. Mexico and Canada are like no other set of nations, they never were, can we continue to treat them as we have in the past?

No. 10. The increasing impact of Mexico and Canada on the U.S. economy and society must be reflected in policy terms.

No. 11. If one seeks to argue against the "specialness" of these two nations, is it possible to point to any other two nations which have such an impact on the U.S. economy, culture, and society?

No. 12. The challenge facing this committee was recently expressed by President Lopes Portillo: " * * * we must draft policies that will be valid both among ourselves and in our treatment of others."

Senator HEFLIN [acting chairman]. We now have Mr. Resnick, Mr. Gordon, and Mr. Perez who have firsthand knowledge on how

our immigration process functions. Their testimony will document need for passage of this draft legislation.

I welcome Charles Gordon. He is the coauthor of the treatise "Immigration Law and Procedure," and also former General Counsel to the Immigration and Naturalization Service.

Mr. Kalman Resnick, Legal Services Center for Immigrants, is presently the lead attorney in the case of *Sylvia v. Levy* and has extensive knowledge on the nature and the character of the prospective immigrants who will benefit by the proposed increase in the visa ceiling for Mexico.

Finally, I welcome Mr. Al Perez, associate counsel, Mexican-American Legal Defense and Educational Fund.

Mr. Gordon, would you like to begin?

PANEL OF ATTORNEYS:

STATEMENTS OF CHARLES GORDON, ATTORNEY; AL PEREZ, ASSOCIATE COUNSEL, MEXICAN-AMERICAN LEGAL DEFENSE FUND; AND KALMAN RESNICK, ATTORNEY, LEGAL SERVICES CENTER FOR IMMIGRANTS

Mr. GORDON. Thank you, Mr. Chairman. My name is Charles Gordon. As you said, I was formerly General Counsel of the Immigration and Naturalization Service and now I practice law as a member of the firm of Carliner & Gordon.

I want to say that I appreciate the opportunity and your invitation to appear and testify on the proposed bill. I have long felt that in many respects the immigration and nationality laws are antiquated and irrational and urgently need revision.

The bill under consideration contains a number of desirable provisions. While it is not, and not intended to be, the major overhaul, I support it as a significant step in the right direction. In my statement today, I shall comment on a number of sections and shall offer some suggestions which may be useful to your committee.

Sections 3 and 4, we have heard a lot about them today, propose a separate quota for Mexico and Canada. While listening to Senator Huddleston and to a couple of the other speakers, I jotted down some notes based on my own experience which may be helpful to the committee.

MEXICO HISTORICALLY TREATED SEPARATELY

As you know, Mexico, for many years, until quite recently, enjoyed freedom of access. People could come, there were no restrictions on immigration and they freely crossed the border. The 1965 law, implemented in 1968, established a quota for the Western Hemisphere. That law did curtail immigration from Mexico, but many did come.

In 1976, Congress, in a supposedly benevolent law combined the quotas, established the quota for the Western Hemisphere as a part of the permanent law. In doing so, they imposed a 20,000-a-year visa limitation. Now, the theory was that everybody was going to be benefited and everybody was going to be treated generously and equally. But the fact was that one nation, Mexico, was treated very ungenerously, because at the time the 1976 law was enacted, Mexico had legal immigration of over 40,000 a year, some 41,000. As soon as this law

became effective in 1976, legal immigration from Mexico was reduced in half, that is the quota immigration, to a maximum of 20,000.

MEXICO TREATED UNFAIRLY BY 1976 BILL

Now, to me, this does not make sense for a number of reasons. People spoke, and Senator Huddleston spoke earlier, about the need to deal equally and fairly with all people. But the fact was that we were not dealing equally and fairly with Mexico, (1) because of the historic nature of the crossings of the border that were taking place, and (2) that Mexico at the time, unlike other nations, was enjoying a volume of immigration that was reduced by this law instead of implemented and by the fact that we were then confronting—and still are—a very serious problem of illegal migration from, primarily, Mexico.

So, at a time when we were confronted with a need to deal with a problem of illegal migration, we cut down the opportunities for legal migration. This to me was illogical, didn't make sense, and was contrary to our national interests.

It seems to me that restoring the volume of legal immigration from Mexico to a level it was at the time of the 1976 law is not only reasonable and responsible, it would enlarge the opportunities for legal migration and would, thus, help to alleviate the problem and pressures for illegal migration. And it would also, in my view, be a relatively easy and effective way to promote our amity with our Mexican neighbors.

REMOVE ARBITRARY PROVISIONS BARRING ENTRY TO UNITED STATES

The next statement that I want to comment on is section 5, which would prescribe a 5-year limit on the need to obtain permission to reapply for aliens who were deported or removed from the United States at Government expense. Commissioner Crosland commented on this. This is an administration proposal and it is put forward as a device to help alleviate some of the unnecessary paperwork that the Immigration Naturalization Service is confronted with.

It seems to me that this is one of the many instances where the law arbitrarily makes permanent bars to entry. I cited as one example, and you will find examples, similar examples throughout the law. It illustrates, in my view, the need for removing perpetual grounds for exclusion and deportation and prescribing reasonable periods of limitation. It seems to me that the administration has proposed 5 years, I would propose 3 years. It seems to me that 3 years after a person is deported is sufficiently reasonable time and that he could then apply for immigration like any other immigrant and if he qualifies, then he would be able to gain reentry to the United States.

DEPORTATION

I next address section 7. This expands the places to which an excluded alien can be sent. The present requirement that the excluded alien be returned to the country "whence he came" has long been regarded as a relic of another age, when there was steamship travel and

a person was put back on the boat and sent back to the country from "whence he came." The proposed expansion of potential destinations is desirable. I would go even further and give the excluded alien and would assimilate the pattern which you will find in the deportation law with alternative destination, alternatives based on nationality, place of birth, the place from whence the person came, and I would also do something in addition. I would give the excluded alien an opportunity to select his own destination. I don't think the Government of the United States has any interest in requiring that he be sent to any particular place, simply if he chooses to go elsewhere.

I next come to section 8. This relates to a very troublesome area of the law. Section 241(f) which deals with waiver of deportability based on visa misrepresentations.

Senator KENNEDY. I think on these technical aspects, which you are commenting on, we will have the opportunity for the staff to examine those kinds of questions in detail. Could you, perhaps, give a summation of your views on the thematic questions which are before us. You heard both in the opening part of the hearing, I think, a spokesman who probably summarized what would be the nature of the opposition and I would be very much interested in your response, and obviously the details of either your support or criticism of particular provisions of the bill. The staff will have a chance to examine those and I will, too. Maybe if you would summarize just your own basic sense about the legislation.

Mr. GORDON. In your absence, Mr. Chairman, I addressed the question with which you are much concerned, that is the question of the special quota for allocation for Mexico and Canada.

Senator KENNEDY. Fine.

Mr. GORDON. My feeling was that I expressed in my written statement and my oral statement that what we have done is absorb theory above fact. The fact is that Mexico did have legal immigration of 45,000 when they changed the law in 1976, and the only country which suffered a reduction in immigration as a result of the 1976 law was Mexico whose legal immigration was cut in half. It is my feeling, that I expressed before in your absence, that not only is this a slap in the face of Mexico, but I think singling them out for discriminatory treatment, but also counter to our own interests in encouraging legal immigration when there is such an enormous pressure from Mexico for illegal entry.

I want, if I may, Mr. Chairman—

Senator KENNEDY. Well, I will give you a couple more minutes.

VISAS FOR INVESTORS

Mr. GORDON. Let me express one point which is in my written statement but not in the committee bill nor the administration proposal, but seems to me to be a matter of great concern; it is to me and I think it may be to the committee, and that is the question about the business investors, people who come to this country at a time when the quota opportunities were open and made substantial investments in the industry and businesses in the United States. Now, in the present law, we do have a third preference and a sixth preference which deals with people who come here for employment—the third preference, the

professionals, the sixth preference, people coming for other employment. There is no preference in the law for people coming to operate a business enterprise. The regulations do recognize that the business investor, the people coming to invest, are entitled to exemption from the certification requirements.

At one time, business investors would come here and invest and they were assured that they would get residence very soon and many did come. Many are trapped in the United States, and particularly, many people from Iran, among whom I have many clients from that country. But these people came at a time when they were encouraged to invest, when the quota situation was favorable; they would come under the nonpreference section of the quota and they registered on the consular waiting list. They brought their families, operated business, invested substantial sums of money, and a sudden change in the quota system has left them stranded.

NO NONPREFERENCE VISAS AVAILABLE

As a result of the combination of the Eastern and Western Hemispheres, the quotas which were declared last year in 1978, several hundred thousand nonpreference immigrants from the Western Hemisphere were dumped onto the nonpreference quota. The number now waiting is unbelievable; it is about 370,000, of whom 180,000 are from Mexico. So, these people came to the United States and made investments who are here, who are contributing to the economy of the United States, who were led to believe that they would soon be getting permanent residence after registering on the quota waiting list but are left in a very deplorable situation.

I urge the committee to pay some attention to this problem and, perhaps, come up with legislation. Legislation that has been proposed by the Association of Immigration Nationality lawyers and you, Mr. Chairman, I believe, have a proposal by that group, and I urge that the committee consider it.

Senator KENNEDY. We have met with some of those business groups on this issue.

Mr. GORDON. I think that is a very serious problem that needs consideration.

On the whole, I thank you, Mr. Chairman, for giving me this time. On the whole, as my statement shows, I feel this is a very good bill. It goes some distance in alleviating what I believe are inequities, arbitrary provisions, endless exclusions of deportation and, particularly, I urge the committee to address the question of suspension of deportation. I think you have indicated, Mr. Chairman, by earlier observation, that this is one of the needless instances of paperwork, paper shuffling which Congress has to do, which serves no purpose. It is only a historical relic and it would be a service, I think, to the cause of decent immigration legislation to eliminate it.

[Prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF CHARLES GORDON

I appreciate your invitation to testify on the proposed Immigration and Nationality Efficiency Act of 1979. I have long felt that in many respects our immigration and nationality laws are antiquated and irrational and urgently

need major revisions. The bill under consideration contains a number of desirable provisions. While it is not, and is not intended to be, the major overhaul I envisage, I support it as a significant step in the right direction.

In my statement today I shall comment on a number of sections and I shall offer some suggestions which may be useful to the committee.

Sections 3 and 4 propose a separate allocation, within the overall numerical quota limitation, for Canada and Mexico. As General Counsel of the Immigration and Naturalization Service I supported such a separate allocation, and I support it now. Such a provision would be a gesture of amity to our friendly neighbors, and it would deal with facts rather than theories. The 1976 legislation incorporated the Western Hemisphere quota into the basic laws and thus automatically imposed an annual limitation of 20,000 on immigration from Mexico. The actual effect on Mexico of a law that was intended to be generous was a reduction of over 50 percent in legal immigration from Mexico. It seems to me that this reduction in the opportunities for legal immigration from Mexico was irrational at a time of vast migration pressures from that country and deep concern on our part over the problem of illegal entries. I believe restoration of Mexico's previous level of 40,000 immigrants would be a reasonable and responsible act and would contribute to the current efforts to improve our relationships with Mexico.

Section 5 would prescribe a 5-year limit on the need to obtain permission to reapply for aliens who were deported or removed from the United States at Government expense. This is a sensible change. The present provision is merely punitive, and frequently bars the return of aliens with close relatives in the United States and who are otherwise eligible. Unfortunately, the Immigration Service often is ungenerous in refusing permission to reapply for entry. This is one of many instances where the law arbitrarily erects permanent bars to entry. It illustrates the need for removing perpetual grounds of exclusion and deportation for past conduct or disability, and prescribing reasonable periods of limitation. It seems to me that a 3-year requirement for permission to reapply would be adequate. At the end of that period the prospective immigrant would still have to establish his eligibility under the immigration laws.

Section 7 expands the alternative places to which an excluded alien could be sent. The present requirement that the excluded alien be returned to the country "whence he came" has long been regarded as a relic of another age. The proposed expansion of potential destinations is desirable. I would go even further and give the excluded alien an opportunity, similar to that afforded in deportation proceedings, to select his own destination. It seems to me that the United States should have no interest in requiring that the excluded alien be sent to any particular place, if he chooses to go elsewhere.

Section 8 amends section 241(f), of the act, which deals with waiver of deportability based on visa misrepresentations. I agree that in its present form section 241(f) is confusing and has been productive of controversy and litigation, including two Supreme Court decisions. As General Counsel of the Immigration and Naturalization Service I was involved in much of this litigation and often urged amendment of section 241(f). It seems to me that to some extent the problem has been caused by the excessive severity of this ground of exclusion and deportation, which continues perpetually. Courts often were impelled to adopt generous interpretations of the statute, in order to promote family unity. Many of the difficulties would be avoided, in my opinion, by establishing a time limitation and giving greater authority to waive excludability and deportability.

The proposed amendments include the following elements:

1. The waiver is made mandatory instead of discretionary. I agree, but I would extend the waiver authority to all who are deportable for misrepresentation, instead of restricting the benefits to those with the specified family ties;
2. The requirement that the beneficiary of the waiver be "otherwise admissible" is defined to eliminate the inadmissibility for visa defects and absence of a labor certification. This reasonable modification will end some of the current controversy.

3. Specific provision is made to benefit those inadmissible for innocent misrepresentations. This is certainly desirable, since it seems unjustifiable to give one guilty of intentional deception greater benefits than one whose misstatement was innocent. Indeed, an early judicial holding, thereafter adopted by the Board of Immigration Appeals, found that section 241(f) waivers benefited those who had entered irregularly on the basis of innocent misstatements. See *In re Hon*, 289 F. Supp. 204 (S.D.N.Y. 1968); *Matter of Lim*, 13 IN 169 (1969). However, this

view apparently was rejected by dicta in *Reid v. INS*, 420 U.S. 619, 629-630 (1975), and has now been repudiated by a recent decision of the Board of Immigration Appeals. *Matter of Raqueno*, Interim Decision 2713, (1979). I support the more reasonable approach mandated by the proposed amendment.

Section 9 eliminates the cumbersome and unnecessary procedure requiring congressional approval of each case in which the Attorney General directs suspension of deportation under section 244 of the act. The constitutionality of this provision has been questioned, and a constitutional challenge has been under consideration by the United States Court of Appeals for the Ninth Circuit for some time.

Suspension of deportation was initiated in 1940. Because it was a novel dispensation, Congress apparently wished to retain some control. In the succeeding 39 years there has been abundant opportunity to evaluate the administration of this process. In addition, many new forms of discretion have been authorized, without any provision for direct congressional participation. The need for legislative ratification of a suspension grant has long since disappeared, yet the law still requires the pursuit of this awkward, wasteful, obstructive, and time-consuming process.

I strongly favor the elimination of the unnecessary provisions for legislative participation in the suspension process. Moreover, I believe the various discretionary remedies authorized by the statute are unnecessarily complex. I would like to see a simplification and consolidation of the discretionary remedies, so that the Attorney General would be authorized to waive any ground for exclusion and deportation, under prescribed standards.

I invite the committee's attention to another undesirable feature of the suspension statute. In a carryover from past attitudes of severity, the statute requires that the applicant for suspension of deportation establish that his expulsion would result in "extreme hardship" in one category, and "exceptional and extremely unusual hardship" in the other. The sponsors of the 1952 McCarran-Walter Act declared that they wished to limit suspension to situations in which deportation "would be unconscionable." S. Rep. 1137, 82nd Cong., 2d Sess., p. 25.

In my view these extreme observations and requirements do not represent current attitudes. Nevertheless retention of the hardship requirements has resulted in much controversy and many harsh determinations. I note that there is no hardship prerequisite for the consideration of other discretionary determinations, for example, registry under section 249, waiver under section 212(c), and adjustment of status under section 245.

The hardship requirement in suspension cases to some extent overlaps the provision for the exercise of discretion. I suggest that the uprooting of ties and interests developed over many years, in itself is an adequate premise for the consideration of discretionary relief. Elimination of the specific hardship prerequisite would mean that hardship would be considered as one element in the exercise of discretion, together with the severance of family ties, gravity of the violation or offense, conduct in the United States, and other circumstances.

Section 14(c) eliminates the ineligibility for citizenship (and consequent ineligibility for immigrant status) of aliens who obtained relief from the military draft on the basis of a treaty. I favor this provision, but note that again, it addresses only a portion of the problem posed by the permanent disqualification of those who, at one time, sought relief from military service. This perpetual disqualification has caused severe hardships and has generated much litigation, including several Supreme Court decisions.

I believe a humanitarian approach would recognize that circumstances change, that those who have claimed exemption in the past often have married American citizens and have American children and grandchildren, and that the permanent bar is unjustifiable. I would favor a modification which would limit the disqualification and would authorize the Attorney General to waive it.

Sections 16, 17, and 18 eliminate the archaic requirement for two witnesses in naturalization proceedings. This provision is another meaningless survival form of a different era, and it has resulted in unwarranted inconvenience and expense to the naturalization applicant and his witnesses. There can be no sound objection to its elimination, since today there are more effective methods for obtaining relevant information concerning the naturalization applicant, through F.B.I. checks and through investigations, when deemed necessary.

I offer a number of additional suggestions for the committee's consideration. While they are not covered by the administration and committee proposals, my long experience has demonstrated that the best way to achieve needed revisions is to include them in a legislative package currently under consideration :

1. *Business Investors.*—The 3rd and 6th preference in section 203 of the act favor persons coming to the United States for employment, but provide no preference for persons coming to invest in and operate a business enterprise. The regulations, in 8 C.F.R. 212.8(b), recognize the inapplicability of labor certification requirements to persons who make substantial investments in a business they will operate. However, such individuals have been relegated to the non-preference category, to the extent that it is available.

At one time such business investors could readily obtain immigrant status, since the nonpreference category of the quota was available. However, the nonpreference category closed down early in 1977 and it has been unavailable since then. Since the State Department initially indicated that the nonpreference category would soon start moving, many aliens invested and started to operate business enterprises in this country, qualified and registered on the consular waiting lists, and reasonably anticipated that they would be reached shortly. However, this expectation has not been realized, and a considerable number (including many from Iran) have remained suspended without lawful status in the United States. Their situation became hopeless when the Eastern and Western Hemisphere quotas were merged last year, adding several hundred thousand Western Hemisphere aliens to the already overburdened nonpreference waiting list.

The situation of these unfortunate investors merits consideration of this committee. In addition, I urge the committee to consider the expansion of the 3rd preference to include persons who make a substantial investment in a business that they will operate in the United States. Such legislation was suggested earlier this year by the Association of Immigration and Nationality Lawyers but this suggestion has not yet been acted upon. I believe the economic and employment benefits to the United States through the encouragement of such investments are apparent, and I urge that legislation to deal with this situation be included in the pending bill.

2. *Parents of Permanent Residents.*—The second preference in section 203 of the act is allotted to spouses and children of lawful permanent residents, but no provision is made for the parents of such residents. This omission is inconsistent with the principle of family unity proclaimed in various provisions of the act. The expansion of this preference to include parents would primarily benefit older and retired persons who want to spend their remaining years with their children and grandchildren. I hope you will include an amendment of the statute which will enable them to do so.

3. *Parents of Students.*—The F category provides for temporary admission of spouses and children of students, but makes no provision for their parents. I have encountered many instances in which young children have been seen sent to the United States as students (sometimes because of disturbed conditions in countries such as Iran) and a parent, usually the mother, wishes to stay with them but cannot find any legal basis for remaining except as a temporary visitor. I suggest consideration of expanding the F student status to include the parents of students. The parents would be here temporarily, would not be permitted to work, and would undertake to return to their country when the child's student status ends.

Senator KENNEDY. Mr. Resnick?

Mr. RESNICK. I want to thank you for the opportunity to come to the committee today. I represent a nonprofit legal rights center funded to provide legal assistance.

Senator KENNEDY. Excuse me, but I will give you and Mr. Perez each 3 minutes, because I have to leave at 12, and so I will divide the remaining time between you, if that is OK, and let you proceed.

Mr. RESNICK. As a nonprofit legal rights center funded to provide legal assistance to families seeking to reunite under our immigration laws, we support the two primary objectives of S. 1763. First, by eliminating the unnecessary and costly reporting requirements and procedures, we feel that the bill will allow the Service to devote more time and resources to speeding up the process of adjudicating applications for immigration benefits.

NEED FOR INCREASED QUOTAS

The second objective, increasing the contiguous country quotas, will address the problem of the denial of reunification occurring for thousands and thousands of Mexicans. This is a result of the number of changes in the immigration law, the 1965 amendment, the 1976 amendment, and the 1978 amendments, all of which leave the situation now where in odd years, only 1,800 visas are available to Mexico and in even years there are the full 20,000 which are available but only available to first and second preference.

This week I spoke with William Garner who is the director of the immigrant visa control and deporting division of the State Department. As of January 1, 1979, these are figures that have been increased since then, but we don't have the latest data though, there were 255,886 Mexicans who qualified to immigrate almost all of whom, on the basis of relatives who are U.S. citizens or permanent residents. Included were 48,000 or more second preference, 16,000 or more fifth preference, that is brothers and sisters of U.S. citizens, and 7,000 fourth preference, who are the married sons and daughters of U.S. citizens.

There are also 180,000 persons in nonpreference status, primarily the parents of U.S. citizen children who qualified to apply for reasons under the law in effect prior to 1977.

All of this can be seen in the Visa Bulletin for the month of October with visas being unavailable for almost every category. First preference is current but second preference is backlogged to January 1, 1971, and for third, fourth, and fifth and nonpreference visas are totally unavailable for Mexico and will be the rest of this fiscal year. That is, during this fiscal year 1980, not a single brother or sister of a U.S. citizen could immigrate from Mexico or the married sons and daughters of Mexican-U.S. citizens would also not be able to immigrate.

These delays must be addressed and we feel that the bill that is being proposed is an opportunity to address these delays, speed up the process to reunite these families. We are not talking about the undocumented individuals in this country or the undocumented alien problem itself. We are talking in this bill about reuniting families, families who qualify to be reunited under immigration laws, and providing a basis for doing that for citizens of Mexico who face these interminable delays.

Thank you for the opportunity, and I will be submitting for your files a statement which will contain some of the figures from the Department of State and the other agencies that we have documenting these delays.

Senator KENNEDY. Mr. Perez?

We are glad to have you here.

Mr. PEREZ. Thank you, Mr. Chairman. I want to introduce, for the record, Ingrid Benick who helped me with this testimony.

I represent MALDEF and we have been involved, for the past few years, in immigration matters and we have done some work recently filing *Doe v. Plyler* which challenges the State statute in Texas that prevents free education to undocumented children. We filed a petition with the Department of Justice asking them to prohibit local

police officers from enforcing immigration laws and recently, I went to Mexico with another group of Mexican Americans to meet with Mexican President Lopez Portillo. Because of this involvement, we are very happy to have S. 1763 be introduced in the Congress and we want to thank the chairman for his personal efforts in this matter.

I think the Bureau, recognizing some deficiencies which are eventually translated into human sufferings and this bill, hopefully will resolve some of these.

BILL RECOGNIZES SPECIAL RELATIONSHIP WITH MEXICO

I would like to focus on the quota provisions. When we went to Mexico, we expressed to Lopez Portillo, the Mexican President, that we, in Mexico, had a very special relationship with this country and vice versa and we thought that no other country had so much of a history and sidekick of the United States as Mexico does and vice versa, and he expressed an understanding of the issues and thought that he would make them a priority.

I believe that the future of this country and Mexico are related and will be, for the future, inseparable, and I think that this bill recognizes that. For example, on the 2,000-mile border between Mexico and the United States there are 10-15 million Mexican-Americans who are Americans of Mexican descent in this country. There are massive economic and linguistic, social, and cultural ties between Mexico and the United States, and Mexico has the massive undeveloped natural resources which this country needs.

I should think it would be instructive to know that between 1820 and 1975 approximately 47 million people migrated to the United States from all over the world and, Mr. Chairman, it should be interesting that 4.7 million were from Ireland, about 10 percent of the total. Prior to the 1976 amendments, I set out some figures there, but the number of legal immigrants coming from Mexico, if you take the latest figures, 1976, after the quota was 20,000, that means that you knocked off 42,000 people from the legal immigration in 10 years—42,000 times 10 gives you 420,000 people that will be excluded from Mexico from 1977 to 1987. You have almost one-half a million people excluded that would have otherwise come here because of the amendments of 1976.

As you know, the Select Commission on which you served prepared a memorandum recently which stressed that this restriction has severely curtailed the immigration from Mexico. Generally, what we are looking at, Mr. Chairman, is that the quota provision of this, as far as the United States-Mexican relationship, includes the provision for Mexico to have more people coming here. I think this is in our national interest.

BILL RECOGNIZES NORTH AMERICAN CONCEPT

The cause that we are looking at is that North American concept that involves not only the United States but also includes Mexico and Canada. I think the future of these three countries compel this kind of relationship.

The other reason for supporting the quota provisions of S. 1763 is the basic underlying principle involved in immigration, the family

reunification. We feel this is a humanistic principle and as opposed to other countries where they use different variables for admitting immigrants, the United States has determined that their major criteria will be familiar relationships. For example, in Canada, one of the elements for immigration is where the person will settle. If the person settles in the sparsely populated areas of Canada, then that person will be given preference over other immigrants.

PRINCIPLE OF FAMILY REUNION

Immigrants.—S. 1763, by providing added immigrant visas, I think advances the family reunification principle. The increased numbers will expedite, not only the admission of second preference, but the reunification of the applicant with their families.

The last principle will be one that we feel is very dear to our organization. The more legal immigrants that come here, the easier it is for our organization to deal with the civil and constitutional rights of people of Mexican and American descent, U.S. citizens, people of Mexican descent who are here documented and people of Mexican descent who are here undocumented. There is a direct relationship, Mr. Chairman, between the number of people that are here and the way the undocumented aliens are treated, and the way that our community, Mexican-Americans who are citizens, are treated. Therefore, we prefer that the people who come here, come here with as many rights as possible, and we feel that this bill, by allowing more quotas for Mexico, will increase legal immigrants and decrease the undocumented worker coming here.

I think that sometimes we in the Southwest feel that we are being overrun by the Irishmen, by the Italians, by the Austrians, the Canadians, the Russians. There are more Russians that come here legally, Mr. Chairman, in the last 156 years, more Russians here legally than Mexicans. There are more Canadians, 4.4 million Canadians, than there are Mexicans. So I don't think Mexico has been treated fairly in the past and I don't think they are being treated favorably now. We welcome all those people and I think that Mexicans should also be welcome.

Finally, I want to thank you for the opportunity and I want to recognize, specifically, Mr. Tinker and Ms. Hernandez for their very helpful assistance in immigration matters. I will be pleased to answer any questions.

Senator KENNEDY. Thank you. We will submit some questions if we can. That was very fine and helpful testimony.

[The prepared statement of Mr. Perez follows:]

PREPARED STATEMENT OF AL I. PEREZ

Mr. Chairman and members of the committee, my name is Al Perez and I am the MALDEF associate counsel in Washington, D.C. I want to thank you for the opportunity to testify on the Immigration and Nationality Efficiency Act of 1979, (S. 1763).

For the past 5 years our organization has spent countless days and hours working in the area of immigration. Our focus has generally been on the human rights elements of immigration policy and immigration enforcement. This involves the constitutional and civil rights of people caught up in the sometimes cold clutches of immigration law and immigration authorities.

Among other activities we have:

- (1) Filed a petition with the White House seeking rescission of Executive Order 11935 which denies federal jobs to over 400,000 Mexican legal immigrants residing in the United States;
- (2) Filed *Doe v. Plyler* challenging a Texas school district's policy of placing a head tax on undocumented children seeking to attend public school;
- (3) Filed a petition with the Department of Justice seeking a policy prohibiting local police officers from enforcing immigration laws;
- (4) Will be cocounsel on a case in Texas seeking to enjoin local police officers from enforcing immigration laws;
- (5) Presented congressional testimony arguing against an amendment that would prohibit legal services attorneys from providing legal assistance to undocumented workers;
- (6) Travelled to Mexico City to meet with President Jose Lopez Portillo to urge him to give more attention to the treatment of Mexican people in the United States.

Because of our involvement with immigration issues, we are very happy to see the introduction of S. 1763. In our judgment this bill recognizes and provides remedies for some of the deficiencies (which are inevitably translated into human suffering) of our immigration laws. The bill has two major components: (1) It provides certain changes to make the Service more efficient, (2) increases quotas for contiguous countries. Since there appears to be broad consensus and support for making the Service more efficient, I will not focus on the efficiency portion of S. 1763. I would, instead, like to focus on the quota provisions.

S. 1763 seeks an unspecified increase in immigrant visas for countries contiguous to the United States. The practical effect of this provision is to increase the numerical quota for Mexico. We support this provision for the following reasons: (1) Improves U.S.-Mexico relations, (2) implements family reunification, and (3) promotes civil and constitutional rights. I will address each in turn.

I. UNITED STATES-MEXICO RELATIONS

About 1 month ago, I was part of a group of Mexican-Americans who travelled to Mexico City to meet with President Jose Lopez Portillo. The main topic of discussion was immigration. We stressed to President Lopez Portillo the unique ties that the United States had with Mexico. There is no other country that is so much in the history and psychic of the United States as is Mexico. It is probably also true that there is no other country that is so much in the history and psychic of Mexico as is the United States. This reality has generally been ignored or categorized as folklore. Now, however, this reality has caught up with the present and is fast catching up with the future. President Lopez Portillo said he fully understood these relationships and indicated that he intended to make them a priority for his administration.

I believe that the futures of the United States and Mexico are inextricably linked. These countries share a 2,000-mile border; they have warred against each other; roughly one-half of the United States land mass at one time belonged to Mexico; there are 10-15 million U.S. residents of Mexican origin; they have massive economic, social, linguistic, and cultural ties; just one border point of entry (San Ysidrio) handles more international traffic than all the international airports in the country put together; Mexico has massive undeveloped natural resources and the United States needs these resources; and finally Mexico can help stabilize the political environment of not only Latin America but also of the Caribbean basin.¹ These relations compel a favored-nation status for Mexico, particularly with regard to the numerical quota, a quota that at 20,000 is much too low.

Between 1820-1975 this country admitted 47 million legal immigrants² from the rest of the world. Of this number, approximately 1.9 million were from

¹ To some extent, these elements also characterize U.S.-Canadian relations. Thus, Canada should be viewed on the same foreign relations context as Mexico.

² It might be of interest to the Chairman to know that almost exactly 10 percent (4.7 million) of the 47 million were from Ireland.

Mexico. Prior to the 1976 amendments, the approximate number of legal immigrants admitted from Mexico for the preceding 10 years was as follows:

Year:	Total	Year:	Total
1976 -----	62,000	1970 -----	44,469
1975 -----	62,205	1969 -----	44,623
1974 -----	71,586	1968 -----	43,563
1973 -----	70,141	1967 -----	42,371
1972 -----	64,040	1966 -----	45,163
1971 -----	50,103		

Thus, prior to the 20,000 person quota Mexico, de facto, had a 62,000 person quota. The difference, 42,000 means that in 10 years almost half a million (420,000) Mexicans will be denied legal entry.³ These are extremely large numbers given that in 156 years (1820-1975) only 1.9 million Mexicans came here as immigrants. These figures indicate that for a contiguous country, Mexico has historically not really been a sending country.⁴

We support the quota provisions of S. 1763 and also support the chairman's proposal of 35,000 immigrant visas per contiguous country with those visas unused by one country going in the next fiscal year to the other country. Since Canada only uses approximately 5,000 to 6,000 immigrant visas per year, the practical effect of S. 1763 is to increase Mexico's quota from 20,000 to fifty thousand.

II. FAMILY REUNIFICATION

The basic principle underlying legal immigration is family reunification. The closer familial ties an immigrant-applicant has with a person legally in the United States, the better the applicant's chances are of being admitted. This principle is humanistic in nature; that is, the United States admits immigrants on the basis of what is the humane thing to do for the applicant and for the applicant's family in the United States. While other countries (that is, Canada and Australia) also consider familial ties, this element is just one of many that are considered. For example, Canada looks closely at the contributions an applicant can make to the Canadian national interest (that is, settle in unpopulated areas, vocational and linguistic skills, et cetera). The United States has expressed a preference for family reunification. We support this principle. Consequently, it is important that any proposed legislation advance this basic principle. The current law does not provide the immigrant visas needed to implement the family reunification principle. For example, it has been estimated that there is a 7- to 9-year backlog on the second preference category. This category is for "spouse and unmarried sons and daughters of an alien lawfully admitted for permanent residence." Obviously such long delays do not promote the family reunification principle and also contributes to the flow of undocumented persons.

S. 1763, by providing added immigrant visas, advances the family reunification principle. The increased numbers will expedite the admission of second preference applicants and will expedite the reunification of the applicants with their families. As indicated above, the practical effect of S. 1763 is to increase the quota for Mexico to about 50,000; this closely equals the number of immigrants Mexico was sending prior to the 1976 amendments. Former INS Commissioner, Leonel Castillo, testifying before the U.S. Commission on Civil Rights, was asked about the Mexican quota; he responded by saying, "I think the current quota per country, 20,000 per country, is wholly unrealistic for Mexico and should be at the very minimum doubled."⁵

It is apparent that the 1976 amendments have placed severe restriction on legal immigration from Mexico. Current law involving quotas is creating a situation that is inconsistent with the basic immigration principle of family reunification. It should be changed; S. 1763 is an excellent beginning.

³ A recent Memorandum by the Select Commission on Immigration and Refugee Policy concluded that "the traditional high level of immigration from Mexico has been severely curtailed by the application of the 20,000 per year country ceiling included in the 1976 immigration amendments."

⁴ In the same 156 years, for example, Russia sent 3.3 million immigrants to the United States.

⁵ Hearings Before the United States Commission on Civil Rights, Immigration Policy and Procedure, November 14-15, 1978, Volume I: Testimony, p. 142.

III. CIVIL AND CONSTITUTIONAL RIGHTS PROBLEMS

MALDEF's major work involves the protection of the civil and constitutional rights of persons of Mexican descent specifically and Hispanics generally. We seek to assure that U.S. citizens of Mexican descent, documented aliens of Mexican descent, and undocumented aliens of Mexican descent are given the full protection of the laws, particularly laws dealing with civil and constitutional rights. It has been our experience that the less "legal standing" a person has the more that person suffers from abuse and exploitation. It has also been our experience that there is a direct link between the treatment of Mexican aliens, whether documented or undocumented, and the treatment of U.S. citizens of Mexican descent. That is, the more society allows abuse and discrimination against Mexican aliens, the more abuse and discrimination will be heaped on U.S. citizens of Mexican descent. Thus, MALDEF is concerned about the legal posture of Mexican aliens living in the United States and also is concerned about the relations of that posture to the position of U.S. citizens of Mexican descent.⁶ That is why we initiated the actions specified on page 1 above. Just recently MALDEF got involved in protesting the neighborhood sweeps being conducted by INS in the Los Angeles area. We found these sweeps inconsistent with the law and inconsistent with the human rights of people. (See exhibit I attached.)

Since an increased legal posture increases the protections afforded immigrants, MALDEF favors persons coming here with as many rights as possible. We feel that an increase in immigrant visas for Mexico will lead to a decrease in the number of undocumented workers coming here from Mexico.⁷ More of the former and less of the latter will strengthen our community's ability to exercise and protect its full rights and privileges. We hope that S. 1763, by increasing the legal quota, will result in a decrease in the number of persons coming here undocumented.

I cannot overstate the seriousness of the problems we are facing. Institutional America is closing in on the Mexican community in this country; Chicanos are being caught in the middle. We cannot tolerate injustices against alien or citizen.

Speaking for MALDEF and for our constituency, I wish to commend Senator Kennedy for introducing S. 1763; it is one bright spot in an otherwise gloomy situation. I also want to recognize and thank your immigration staff—Mr. Tinker and Ms. Hernandez—for their excellent cooperation and assistance on immigration matters.

I will be pleased to answer any questions.

EXHIBIT I

[Western Union Mailgram]

MEXICAN LEGAL DEFENSE AND EDUCATIONAL FUND,
San Francisco, Calif., October 11, 1979.

President JIMMY CARTER.

DEAR PRESIDENT CARTER: Neighborhood sweeps by the Immigration and Naturalization Service (INS) of persons thought to be Mexican immigrants living in Los Angeles, as reported in yesterdays L.A. Times, must be brought to an immediate halt if our Nations Hispanic community is to be allowed the rights and privileges afforded other Americans, and if our already delicate relationship with Mexico is to be kept from further erosion.

These sweeps are both morally and legally objectionable, and work counter to professed goals of your administration.

Neighborhood sweeps are illegal. In order to detain, question or arrest any person suspected of being undocumented, INS must have specific factual information giving the INS basis for suspecting the individual. Neighborhood sweeps

⁶ As stated above, this concern was fully set out to President Jose Lopez Portillo when we met with him last month. In response, President Lopez Portillo agreed to the establishment of a permanent mechanism; this mechanism—comprised of Mexican government officials and representatives of U.S. Hispanic groups—would provide a forum for the exploration of these issues.

⁷ We do not now take a position on the broader question of U.S. immigration policy vis-a-vis Mexico; that is open border versus closed border, common market concept, free zone concept, and so forth. These questions are not germane to S. 1763; as the chairman has suggested we will await the work of the Select Commission on Immigration and Refugee Policy for guidance in these broader questions.

are incompatible with the fundamental requirement that officers have some cause to suspect individuals as individuals not as members of a community group.

There is no basis in Federal law, as recognized by former Attorney General Griffin Bell and former INS Commissioner Leonel Castillo, for State and local police officers to engage in sweeps or other Federal law enforcement activities. The L.A. Times clearly suggests that local police officers are working closely with INS officers. We have additional information that suggests a similar connection between the INS and the Chicago police department.

The renewal of neighborhood sweeps will have a disastrous effect on the 1980 census. The Census Bureau and organizations like Maldef have been working vigorously to encourage all persons to be counted in 1980. The Bureau is bound by law to keep the information it collects confidential, but how can we convince people of that when they are being taken by force from their neighborhoods. You have professed concern for a more nearly accurate census count in 1980, and particularly, a fair count of minorities. Unless these sweeps and raids are stopped immediately, the considerable efforts of the Census Bureau and Maldef will be wasted, to the great financial detriment of cities and whole states.

Direct attacks on persons of Mexican origin, as these sweeps may be said to be, are a deep affront to the relationship of mutual understanding and cooperation you have said you want to develop with Mexico, to allow these sweeps to continue would be, in effect, to widen the vast rift already separating our two countries.

Lastly, these sweeps defy all efforts to adopt humane, reasonable immigration law that reflects the reality of the current situation. The U.S. government provides as many incentives and enticements for Mexican immigrants to work here as it does obstacles to the preservation of their humanity.

As long as human beings of any origin are treated like cattle within our borders your commitment to human rights rings hollow.

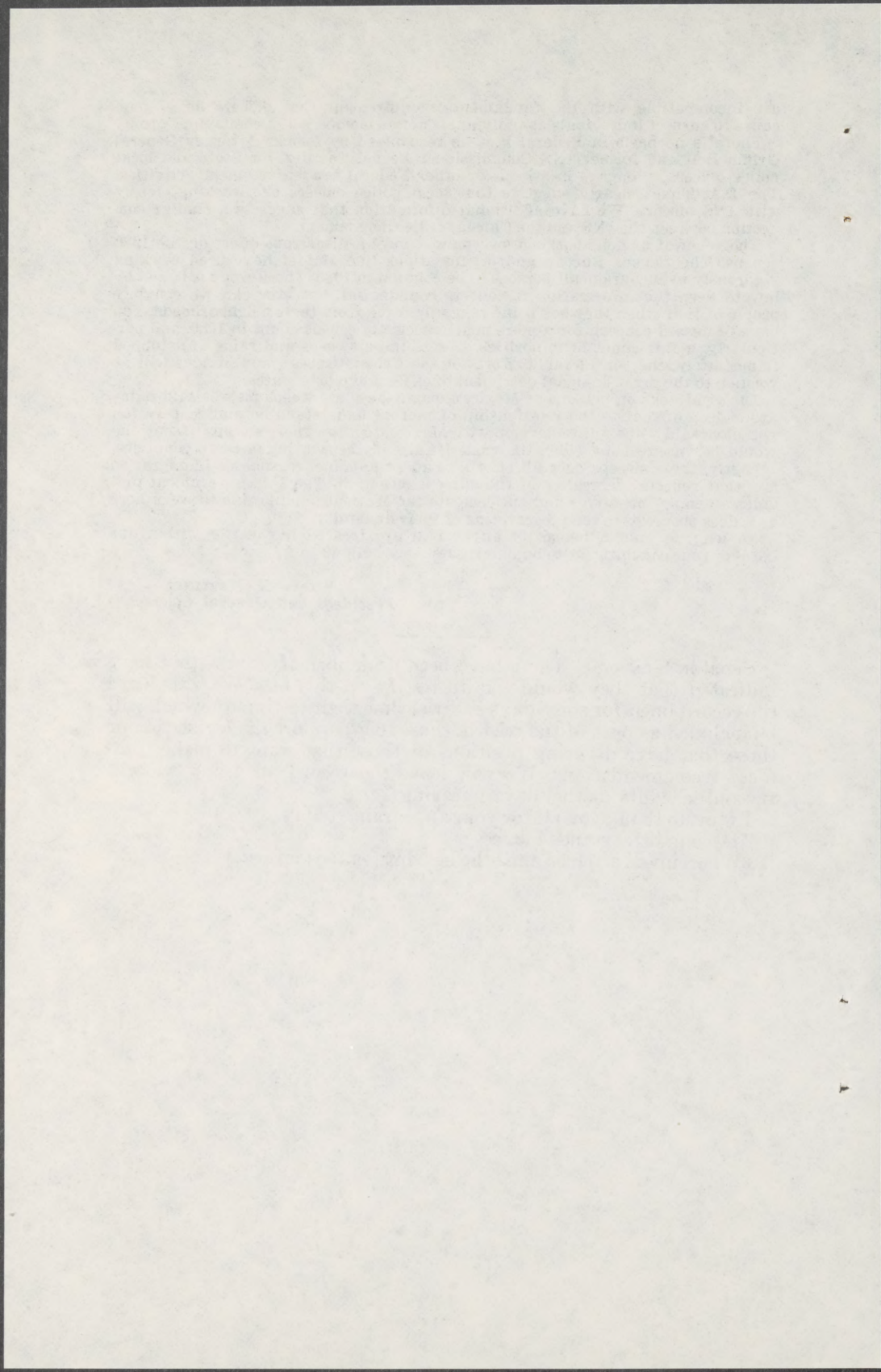
VILMA S. MARTINEZ,
President and General Counsel.

Senator KENNEDY. There have been a number of groups that have indicated that they would like to testify on this bill. We will leave the record open for some days and welcome their testimony which will be included as part of the record, those that support the legislation or those that have differing positions or those that want to make technical recommendations. We will leave the record open and we will try and schedule another day of hearings.

I want to thank you all for your appearance today.

The committee stands in recess.

[Whereupon, at 11:53 a.m., the hearing was adjourned.]



IMMIGRATION AND NATIONALITY EFFICIENCY ACT OF 1979, S. 1763

FRIDAY, OCTOBER 26, 1979

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2228, Dirksen Senate Office Building, Senator Dennis DeConcini (acting chairman) presiding.

Present: Senator DeConcini.

Also present: Antonia Hernandez, counsel.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DeCONCINI. The hearing will come to order.

This is the second and final day of hearings on S. 1763, the Immigration and Nationality Efficiency Act of 1979, introduced by Senator Kennedy, in collaboration with the administration, on September 18, 1979.

The purpose of this legislation is to bring urgently needed reform to our immigration law. This bill is strictly remedial in nature.

First: It removes many unnecessary, costly, and outdated provisions, at an estimated savings of \$1.5 million each year.

The passage of this bill will facilitate the administration of the immigration process, providing the American people and our prospective immigrants, with an efficient service that is humane and flexible.

Second: This bill addresses the question of increasing the number of annual visas made available to our contiguous neighbors, Canada and Mexico, to relieve a serious and unfortunate backlog that has developed in visa numbers for immediate members of permanent resident aliens and U.S. citizens.

The aim of this bill is to reunite families. Presently there is a 9-year backlog in second preferences. Spouses and children of lawful, permanent resident aliens must wait up to 8 years.

Last Wednesday, October 1, 1979, Senator Kennedy received testimony from the administration through Mr. David Crosland, Acting Commissioner for the Immigration and Naturalization Service. As previously noted, this committee and the administration worked closely in drafting this bill. Favorable testimony was also given by the academic community, a panel consisting of an economist, social scientist, and political scientists.

The committee also received favorable testimony from Mr. Charles Gordon, former General Counsel for INS and coauthor of the treatise,

"Immigration Law and Procedures;" Mr. Kalman Resnick, presently cocounsel in the Silva B. Levy case, and Mr. Al Perez, associate counsel to the Mexican-American Legal Defense and Education Fund.

The purpose of the hearing today is to provide the private sector an opportunity to comment on this legislation.

We are honored to have representatives from the business community, the voluntary agencies, environmental organizations, church groups, and the rank and file employees of the Immigration and Naturalization Service.

Our first witness this morning will be Senator Cranston from California. Senator Cranston has been deeply involved and interested in this area for some time. He is cosponsor of S. 1763, and a longtime supporter of humane and flexible immigration reform.

Senator Cranston, we are pleased to have you here today. Please proceed.

STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Thank you very much, Mr. Chairman.

I am delighted that you are chairing this hearing because your State and my State share similar problems and opportunities that relate to this legislation. I know that your understanding of it will be of great help in moving some very important legislation along.

I am very grateful for this opportunity to appear before you to speak in support of the Immigration and Nationality Efficiency Act of 1979.

SPECIAL IMPACT OF BILL ON CALIFORNIA

The State of California will benefit greatly from prompt enactment of the Immigration and National Efficiency Act of 1979.

California is the preferred destination for immigrants from all over the world. My State is home for virtually twice the number of immigrants now living in New York which was once the melting pot of the Nation.

Our State, like your State, shares a common border with Mexico. Ours is with Baja California, our neighboring State to the South.

Our Pacific shores welcome and have welcomed, since the fortyniners, immigrants from Asia and the Pacific community. Today as well as yesterday, immigrants to California contribute heavily to our growth and economic vitality.

The dynamic economy of California, which is the envy of the world, is supported vitally by the skills and labors of newcomers to our land.

The proof of this can be found in the simple act that the California economy, or the past 3 years, has produced new jobs faster than our work force has grown from all sources: Natural population increase, migration from other States, and immigration—legal or otherwise.

In brief, a productive society is productive because of its people, their skills, strengths, and ability to contribute.

BILL REMOVES MANY LEGAL OBSTACLES

The Immigration and National Efficiency Act of 1979 addresses several legal issues adversely affecting the immigrant population of California and elsewhere.

First: In many ways, all of them technical, the bill promises to assist in resolving the legal status of many immigrants in California and in other States. My State has a large Hispanic population. But of all immigrant groups to the United States, immigrants from Mexico have the lowest percentage of aliens seeking to become citizens. This is not due solely to disinterest on their part, it is in good part because the Immigration and Naturalization law imposes substantial obstacles in the way of becoming a citizen.

For example, the continuous residency requirements which may have been reasonable years ago in the Northeastern States are impractical on our Southwest border where a tradition of coming and going across the border has existed for many years, as you well know.

RELIEVES BURDENS ON IMMIGRATION SERVICE

The bill will relieve INS of other cumbersome and unnecessary requirements which delay the citizenship process. For example, the law now requires a prospective citizen to produce two witnesses to vouch for his or her character. Taking the testimony of the witnesses is time consuming and expensive for all concerned.

The Service does not rely on the witnesses in any event. As a spokesman for the Service once said, "No one brings in a witness who will testify against them."

Eliminating the witness requirement will speed up the naturalization process considerably, as well as save money.

The contiguous neighbor provisions of the bill are substantially similar to a bill, the Contiguous Neighbor Amendments of 1977, which I introduced in the 95th Congress.

These provisions establish a new immigration visa pool for Canada and Mexico which will reflect realistically the number of immigrants seeking lawful admission to the United States and who are otherwise eligible to immigrate.

I said in 1977 that this was emergency legislation; this still is the case.

BACKLOG IN SECOND PREFERENCE

Mr. Chairman, there is a serious backlog problem affecting lawful immigration from Mexico. Families are waiting to be reunited, many thousands of them in a legal limbo.

Many experts point out that many of these individuals are living within the United States as illegal aliens. This is not a healthy condition for good family life. The twilight world of an unlawful alien who is living with members of his family, who themselves are lawful residents, leads to the growth of an underclass of citizens who may present significant social costs in the future.

The way to avoid these difficulties is to act to legalize their status as rapidly as possible.

The contiguous neighbor provisions of S. 1763 is one effective way to do this.

Mr. Chairman, the backlog crisis is serious enough to warrant immediate one-time-only action.

If, as many have suggested, permanent legislation on the contiguous neighbor provision should be postponed until the final report of the

Commission on Immigration, then I urge the committee to act promptly to report legislation temporarily increasing visa numbers available to our contiguous neighbors in order to reduce the unconscionable backlog now existing.

This is a humanitarian requirement as compelling as the needs of the refugees from Vietnam, Laos, and Cambodia.

CONCLUDING COMMENTS

In summary, Mr. Chairman, S. 1763 is a matter of urgent priority for the people of my State. Thousands of Californians have waited for months and years to be reunited with their families. Thousands of Californians live with husbands and wives and children whose legal status is uncertain. Their needs to be established lawfully in the United States must be answered.

They are making substantial contributions to our State and its economy; they pay their way. They are often referred to, as I am sure in your State, as "undocumented taxpayers."

They deserve to be able to receive the benefits which they earn by their labor. S. 1763 will make this possible. I urge prompt favorable action by the committee.

Senator DECONCINI. Senator Cranston, thank you very much. Indeed, this is a very pressing problem in the States of Arizona and California and other border States. Your leadership in this area has been demonstrated time and time again, and, indeed, calling to the attention of this committee and this body the importance of the emergency is well taken.

I can assure you that your testimony will have great influence on this committee. We thank you very much.

Senator CRANSTON. Thank you, a great deal. I appreciate that response.

[The prepared statement of Senator Cranston follows:]

PREPARED STATEMENT OF SENATOR ALAN CRANSTON

Mr. Chairman, good morning and thank you for the opportunity to appear here before the Committee on the Judiciary to speak in support of S. 1763, the Immigration and Nationality Efficiency Act of 1979.

The State of California, which I am privileged to represent in the Senate as its senior senator, will benefit greatly from prompt enactment of the Immigration and Nationality Efficiency Act.

California is the preferred destination for immigrants from all over the world. My State is home for virtually twice the number of immigrants now living in New York, once the melting pot of the Nation.

Our State shares a common border with Baja California, our neighboring state to the south.

Our Pacific shores welcome, and have welcomed since the forty-niners, immigrants from Asia and the Pacific community.

Today as well as yesterday, immigrants to California contribute heavily to our growth and economic vitality. The dynamic economy of California which is the envy of the world is supported mightily by the skills and labor of newcomers to our land. The proof of this can be found in the simple fact that the California economy, for the past 3 years, has produced new jobs faster than our work force has grown—from all sources, natural population increase, migration from other states and immigration, legal or otherwise.

Mr. Chairman, in brief, a productive society is productive because of its people, their skills, strengths and ability to contribute.

The Immigration and Nationality Efficiency Act addresses several legal issues adversely affecting the immigrant population of California and elsewhere.

First, in many ways, all of them technical, the bill promises to assist in resolving the legal status of many immigrants in California and in other States.

Our State has a large Hispanic population. But of all immigrant groups to the United States, immigrants from Mexico have the lowest percentage of aliens seeking to become citizens. This is not due solely to disinterest on their part. It is in good part because the Immigration and Naturalization law imposes substantial obstacles in the way of becoming a citizen. For example, the continuous residency requirements which may have been reasonable years ago in the Northeastern States are impracticable on our Southwest border where a tradition of coming and going across the border has existed for many years.

The bill will relieve INS of other cumbersome and unnecessary requirements which delay the citizenship process. For example, the law now requires a prospective citizen to produce two witnesses to vouch for his or her character. Taking the testimony of the witnesses is time-consuming and expensive for all concerned. The Service does not rely on the witnesses in any event. As a spokesman for the Service once said, "No one brings in a witness who will testify against them."

Eliminating the witness requirement will speed up the naturalization process considerably, as well as save money.

The contiguous neighbor provisions of the bill are substantially similar to a bill, the Contiguous Neighbor Amendments of 1977, which I introduced in the 95th Congress. These provisions establish a new immigration visa pool for Canada and Mexico which will reflect realistically the number of immigrants seeking lawful admission to the United States and who are otherwise eligible to immigrate.

I said in 1977 that this was emergency legislation.

This still is the case.

Mr. Chairman, there is a serious backlog problem affecting lawful immigration from Mexico. Families are waiting to be reunited, many thousands of them in a legal limbo. Many experts point out that many of these individuals are living within the United States as illegal aliens. This is not a healthy condition for good family life. The twilight world of the unlawful alien who is living with members of his family, who themselves are lawful residents, leads to the growth of an underclass of citizens who may present significant social costs in the future.

The way to avoid these difficulties is to act to legalize their status as rapidly as possible.

The contiguous neighbor provisions of S. 1763 is one effective way to do this.

Mr. Chairman, the backlog crisis is serious enough to warrant immediate one-time-only action.

If, as many have suggested, permanent legislation on the contiguous neighbor provision should be postponed until the final report of the Commission on Immigration, then I urge the committee to act promptly to report legislation temporarily increasing visa numbers available to our contiguous neighbors in order to reduce the unconscionable backlog now existing.

This is a humanitarian requirement as compelling as the needs of refugees from Vietnam, Laos, and Cambodia.

In summary, Mr. Chairman, S. 1763 is a matter of urgent priority for the people to my State. Thousands of Californians have waited for months and years to be reunited with their families. Thousands of Californians live with husbands and wives and children whose legal status is uncertain. Their needs to be established lawfully in the United States must be answered. They are making substantial contributions to our State and its economy. They pay their way. They deserve to be able to receive the benefits which they earn by their labor. S. 1763 will make this possible. I urge prompt favorable action by the committee.

Senator DeCONCINI. Thank you.

We now welcome Mr. Maurice A. Roberts. Mr. Roberts was the former Chairman of the Board of Immigration Appeals and is presently editor of Interpreter Releases.

Today he is representing the American Council of Voluntary Agencies.

STATEMENT OF MAURICE A. ROBERTS, AMERICAN COUNCIL OF VOLUNTARY AGENCIES

Mr. ROBERTS. Thank you, Mr. Chairman.

Let me introduce the persons who are seated at the table with me and all of whom are from various voluntary agencies represented by the ACVAFS.

At the extreme left is the representative from World Relief, Dianne Lawson. Next to her is Jane Chaplin, of the International Rescue Committee. To my immediate right is William Males of HIAS, and at the extreme right, but only literally, is Theron Van Scoter, of the staff of the American Council of Voluntary agencies.

I have left a copy of this statement with the committee. I ask leave to have it made a part of the record.

Senator DECONCINI. Without objection, the statement of Mr. Roberts will be inserted in the record at the conclusion of the oral presentation.

Mr. ROBERTS. Thank you, Mr. Chairman.

Senator DECONCINI. If you care to summarize, Mr. Roberts or any other testimony from witnesses you brought with you, please proceed.

Mr. ROBERTS. I will not read the entire statement. I would like to present part of it.

Senator DECONCINI. Fine.

VOLUNTARY AGENCIES SUPPORT S. 1763

Mr. ROBERTS. It is my privilege to present testimony on behalf of the membership of the American Council of Voluntary Agencies for Foreign Service, commonly known as ACVAFS, and particularly the 12 voluntary agencies which are listed in our statement. I will not repeat their names here. I have already named the representatives of those agencies who appear with me. We are grateful for your invitation to testify on S. 1763, the proposed Immigration and Nationality Efficiency Act of 1979.

While the ACVAFS and its member agencies are now heavily involved in refugee resettlement, we retain a deep interest as well in the provisions of our immigration and nationality laws which affect aliens and citizens generally. Most of our member agencies are now, and have been for years, engaged in various forms of assistance to the foreign born, including immigration counseling, family reunification and preparation for citizenship. All the representatives who accompany me here today have vast experience in this field. My own involvement in immigration and nationality matters goes back without interruption to 1941, and the details of that background are set forth in the written statement.

NEED FOR IMMIGRATION REFORM

Our immigration and nationality laws were last codified in 1952 and are in need of examination in the light of our experience since then.

This major responsibility has been reposed by Congress in the Select Commission on Immigration and Refugee Policy whose report and recommendations are due in March 1981. Exhaustive analysis and

studies in depth are required before a comprehensive code suitable to the needs of our times can be achieved. It would be imprudent, however, to defer all action pending a major overhaul of the entire statutory scheme. We join Senator Cranston in commending the committee for so promptly holding hearings on S. 1763, which contains obviously desirable improvements which need not and should not be deferred.

I shall comment here briefly only on a few of the proposed changes.

SUPPORT INCREASED QUOTAS

Sections 3 and 4 propose an increase from the present 20,000 annual limit in the number of visas which may be made available under the preference system to natives of Canada and Mexico. We agree with this proposal in principle. We support this change as a stopgap measure to meet a temporary need. Ultimately, following studies in depth, the Select Commission will make its report and recommendation to the Congress, and a definitive legislative program will emerge.

This will take some time.

1976 LEGISLATION PENALIZED MEXICO

The realities of the situation which have been referred to in detail by Senator Cranston and which I shall not repeat, call for interim solutions. Legal immigration from Mexico, which had been running at the rate of about 40,000 annually under the limitations of the prior law, was suddenly reduced about 50 percent by the 1976 amendments which, as you will recall, Mr. Chairman, were suddenly enacted at the close of the Congress in that year.

Ironically, that legislation was intended to benefit Western Hemisphere aliens by giving them the same system of visa preferences available to natives of the Eastern Hemisphere, including preferences based on close family relationships. Instead, as it has worked out, the newly imposed per country limitation of 20,000 has only aggravated the situation insofar as concerns Mexican family reunification.

As it has worked out, the Mexican spouse or child of an alien, lawfully admitted to the United States for permanent residence, must now wait at least 8 years before a visa number can become available which will permit them all to live together legally in the United States.

PENDING BILL RESTORES MEXICO'S QUOTA

The proposed legislation, which would temporarily restore legal immigration from Mexico to around its previous level, would be in keeping with the underlying policy of our immigration laws, that of family reunification. We are pleased to note that the proposed change would not prejudice the numbers available to other countries.

DEPORTATION OF CERTAIN ALIENS

I would like to comment on one additional item in the proposal, and on this we have some slight reservations. I refer now to section 8 of the bill.

For the most part, we support it. Section 8 would amend section 241(f) of the act, which waives deportability for certain aliens with close family ties here, who obtain their visas by fraud. The present provision, which has been the subject of much controversy and litigation for many years, is badly in need of revision. The proposed amendments set to rest many of the disputed points.

First: Relief is provided only for aliens who are admitted as immigrants with visas or equivalent documents. For a time, some courts had construed the present provision as also providing relief for aliens who had been admitted as nonimmigrants, and the change is a proper one.

Second: The proposal also specifies the grounds of inadmissibility stemming from the fraud that are waived; that is, visa deficiencies and absence of a labor certification. The present provision, which lacks such specificity, has resulted in much litigation and conflicting court construction.

Third: The proposal would make this remedy available to an alien whose misrepresentation was innocent as well as to those guilty of intentional deception. Under the most recent adjudication by the Board of Immigration Appeals, only the latter, those guilty of intentional fraud, can benefit from this provision.

We support the provisions of section 8, insofar as they would clarify the three issues I have just mentioned. However, we oppose one additional change which section 8 would bring about.

Under the present law, relief from deportation is absolute for those aliens who qualify. It is not made dependent on the favorable exercise of administrative discretion. The proposal of this bill would make the waiver discretionary rather than mandatory.

In view of the carefully circumscribed limitations on the waiver, and I am referring now to the close family ties here and admissibility under the immigration laws, we see no reason to recede from the present provision in this regard.

In the interest of conserving the committee's time, I will skip over the rest of the prepared statement.

My colleagues and I are satisfied that the bill under consideration serves a real need which should prove mutually beneficial to the INS in carrying out its responsibilities and to the aliens whom our respective agencies serve.

With the one reservation we have noted concerning the proposal to make section 241(f) relief discretionary rather than mandatory, we endorse the bill in its entirety.

That concludes our formal statement. We appreciate this opportunity of presenting our views, and we will be pleased to answer any questions you may have.

Senator DeCONCINI. Mr. Roberts, the committee appreciates your testimony and your witnesses here. We have no questions specifically for you. There may be need to be in contact with you and members of your panel at a later time as we approach the markup.

We appreciate the comprehensiveness of your testimony and also the expertise that you bring here today. Thank you very much.

ONE-TIME ACTION TO MAKE SECOND PREFERENCE CURRENT

Mr. MALES. May I make just one comment or suggestion, rather. While all the voluntary agencies fully endorse the statement Mr.

Roberts has made, unfortunately most of the representatives of the voluntary agencies could not be here. They are all over the world, concerned with the Indo-Chinese refugee situation.

With regard to the contiguous territory provisions, even if that passes, I don't think that is going to solve the second preference situation with regard to the Mexicans.

This committee might want to consider a one-time situation by bringing in second preference aliens and make it current on a one-time basis and thereafter let them come in on a normal situation.

Senator DeCONCINI. Well, you know, that is being considered by the committee, I know, and the staff, a one-time allotment basis. There certainly is some merit. I guess the problem that comes to my mind is, how do you justify doing it only once. I realize this legislation is remedial in nature and not intended to be a long-term solution.

I would have some qualms about those you leave out that don't make it that one time. Then how do you justify not doing something for them the next time?

Mr. MALES. Except with the Mexican situation, which is worse than practically any other situation.

Senator DeCONCINI. Indeed it is. Your point is well taken. Thank you.

Mr. MALES. Thank you.

Mr. ROBERTS. Thank you.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF MAURICE A. ROBERTS

Mr. Chairman, my name is Maurice A. Roberts. It is my privilege to present testimony on behalf of the membership of the American Council of Voluntary Agencies for Foreign Service, Inc. (ACVAFS), particularly the following of its member agencies: American Council for Nationalities Service, American Fund for Czechoslovak Refugee, American Jewish Joint Distribution Committee, Church World Service, HIAS, International Rescue Committee, Lutheran Immigration and Refugee Service, Migration and Refugee Services, United States Catholic Conference, Polish American Immigration and Relief Committee, Tolstoy Relief, and Young Men Christian Association.

We are grateful for your invitation to testify on S. 1763, the proposed Immigration and Nationality Efficiency Act of 1979. While the ACVAFS and its member agencies are now heavily involved in refugee resettlement, we retain a deep interest as well in the provisions of our immigration and nationality laws which affect aliens and citizens generally. Most of our member agencies are now, and have been for years, engaged in various forms of assistance to the foreign born, including immigration counseling, family reunification, and preparation for citizenship. All the representatives who accompany me here today have vast experience in the field.

My own involvement in immigration and nationality matters goes back without interruption to 1941. I was an official of the Immigration and Naturalization Service from 1941 to 1955. Between 1955 and 1968, I was a trial attorney and then head of the Immigration Litigation Unit in the Criminal Division of the Department of Justice. From 1968 until my retirement in November 1974, I was Chairman of the Board of Immigration Appeals. Since then, I have been Editor of Interpreter Releases, an information service on immigration and nationality matters published weekly by the American Council for Nationalities Service, one of the member agencies of ACVAFS. I am a frequent lecturer and writer on various subjects in this field.

Our immigration and nationality laws were last codified in 1952 and are in need of reexamination in the light of our experience since then. This major responsibility has been reposed by Congress in the Select Commission on Immigration and Refugee Policy, whose report and recommendations are due in March 1981. Exhaustive analysis and studies in depth are required before a comprehensive code suitable to the needs of our times can be achieved. It would be

imprudent, however, to defer all action pending a major overhaul of the entire statutory scheme. We commend the committee for so promptly holding hearings on S. 1763, which contains obviously desirable improvements which need not, and should not, be deferred. We shall comment briefly on some of the proposed changes.

Sections 3 and 4 propose an increase from the present 20,000 annual limit in the number of visas which may be made available under the preference system to natives of Canada and Mexico. We agree with this proposal in principle. We support this change as a stop-gap measure, to meet a temporary need. Ultimately, following studies in depth, the Select Commission on Immigration and Refugee Policy will make its report and recommendations to the Congress and a definitive legislative program will emerge. That will take some time. The realities of the situation call for interim solutions.

Legal immigration from Mexico, which had been running at the rate of about 40,000 annually under the limitations of the prior law, was suddenly reduced about 50 percent by the 1976 amendments. Ironically, that legislation was intended to benefit Western Hemisphere aliens by giving them the same system of visa preferences available to natives of the Eastern Hemisphere, including preferences based on close family relationships. Instead, the newly imposed per-country limit of 20,000 has only aggravated the situation insofar as concerns Mexican family reunification. As it works out, the Mexican spouse or child of an alien lawfully admitted to the United States for permanent residence must now wait at least 8 years before a visa number can become available which will permit them to live together legally in the United States. The proposed legislation, which would temporarily restore legal immigration from Mexico to around its previous level, would be in keeping with the underlying policy of our immigration laws, that of family reunification. We are pleased to note that this change would not prejudice the numbers available to other countries.

Section 5 would eliminate the need, after 5 years, for an alien who had been deported from United States at Government expense, to obtain permission to reapply. The present provision, which has no time limitation, is unduly restrictive. This permanent bar serves no useful purpose and only involves the Immigration and Naturalization Service (INS) in unnecessary procedures. The alien who seeks to return must still meet all the eligibility requirements of the immigration laws. At the end of 5 years, the additional requirements of special permission to reapply should be dispensed with.

Section 6 would provide for a 2-year, nonrenewable period of validity for a reentry permit, in place of the present 1-year limit. This change would obviate much needless work on the part of INS personnel and free them for more important responsibilities.

Section 7 would provide the INS with alternatives in executing exclusion orders which are comparable in most respects to those now available in deportation cases. Under present law, the excluded alien can be sent only "to the country whence the alien came," a restriction which experience has demonstrated to be unduly restrictive both to the INS and the alien.

Section 8 would amend section 241(f) of the act, which waives deportability for certain aliens with close family ties here who obtained their visas by fraud. The present provision, which has been the subject of much controversy and litigation for many years, is badly in need of revision. The proposed amendments set to rest many of the disrupted points: (1) Relief is provided only for aliens who were admitted as immigrants with visas or equivalent documents. For a time, some courts had construed the present provision as also providing relief for aliens who had been admitted as nonimmigrants. (2) The proposal also specifies the grounds of inadmissibility stemming from the fraud that are waived, that is, visa deficiencies and absence of a labor certification. The present provision, which lacks such specificity, has resulted in much litigation and conflicting court constructions. (3) The proposal would make this remedy available to an alien whose misrepresentation was innocent, as well as to those guilty of intentional deception. Under the most recent adjudication by the Board of Immigration Appeals, only the latter benefit from this provision. *Matter of Raqueno*, Interim Decision 2713 (1979).

We support the provisions of section 8 insofar as they would clarify the three issues just mentioned. However, we oppose one additional change which section 8 would bring about. Under the present law, relief from deportation is absolute for those aliens who qualify and is not made dependent on the favorable exer-

cise of administrative discretion. The proposal would make the waiver discretionary rather than mandatory. In view of the carefully circumscribed limitations on the waiver (close family ties here, admissibility under the immigration laws, et cetera), we see no reason to recede from the present provision in this regard.

Section 9 and 10 would make final the action of the Attorney General in suspending deportation under section 244 of the act, thereby eliminating the present requirement of reference to Congress and congressional approval of each case. Such provision for direct congressional participation may have been justified when this remedy was first created in 1940. Since then, Congress has had ample opportunity to assess the administrative experience with this process. Moreover, in the many new forms of discretionary adjustment of status created by Congress since then, no reservation of congressional participation has been deemed necessary. Indeed, this reservation of a congressional veto power in suspension cases has been subject to serious attack on constitutional grounds, and the issue is now awaiting decision following oral argument in the U.S. Court of Appeals for the Ninth Circuit in *Chadha v. INS*, No. 77-1702. We support the proposed change.

Section 11 would amend section 244(f) of the act to codify two recent Board of Immigration Appeals decisions construing the present provisions as making eligible for suspension of deportation exchange visitors not subject to the 2-year foreign residence requirement and natives of contiguous countries or adjacent islands.

Section 12 would amend section 248 of the act to permit change of nonimmigrant status on the part of exchange visitors not subject to the 2-year foreign residence requirement, and to preclude such change of nonimmigrant status to aliens admitted as fiancées or fiancés under section 101(a) (15) (k).

Sections 2 and 14 would eliminate the ineligibility for citizenship (and resulting ineligibility for immigrant status) of aliens who obtained relief from military service under the terms of a treaty between the United States and their country of nationality.

Sections 16, 17, and 18 would eliminate the historic requirement for two witnesses in naturalization proceedings. This requirement, which has been in our naturalization laws since the early days of the Republic, is an archaic relic of the olden times which has no present justification. Relevant and more meaningful information with respect to the applicant's eligibility for naturalization is now available through other sources. Elimination of this requirement will save unnecessary inconvenience and expense on the part of the naturalization applicant and his witnesses, and will conserve the time of INS personnel.

My colleagues and I are satisfied that the bill under consideration serves a real need. It should prove mutually beneficial to the INS in carrying out its responsibilities and to the aliens whom our respective agencies serve. With the one reservation we have noted concerning the proposal to make section 241(f) relief discretionary rather than mandatory, we endorse the bill in its entirety.

That concludes our statement. We appreciate this opportunity of presenting our views and will be pleased to answer your questions.

Senator DeCONCINI. Our next witness is Mr. Jim Gorson, director of facilitation, Air Transport Association of America.

Mr. Gorson will give testimony concerning the proposed amendment to expand the authority to waive certain requirements or granting nonimmigration business and tourist visas for visitors coming from countries where visa fraud is very low.

The committee has already received testimony from former Ambassador Sneider favoring this amendment.

Mr. Gorson, your statement is appreciated immensely. It will be printed in the record at the conclusion of your oral remarks.

You may proceed.

STATEMENT OF JAMES GORSON, DIRECTOR OF FACILITATION, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. GORSON. Thank you, Mr. Chairman.

With me on my left is Ms. Linda Pinegar, director of Federal legislation of the Air Transport Association.

I am director of facilitation of the Air Transport Association. As you suggested, in the interest of time, Mr. Chairman, I can simply summarize my remarks.

ATA has for many years joined with the travel and tourism industry to advocate legislation which would waive the visa requirements for tourists from countries with a reciprocal visa waiver policy.

VISITOR VISA REQUIREMENTS OUTDATED

Over one-half century ago, as a World War I security measure, the United States imposed a requirement upon most visitors to obtain a visa from the American consulate abroad.

The requirements of this prescreening process have been rendered generally obsolete by a major increase in tourism abroad, a reduction in travel time by a factor of three, and the fact that over 35 other countries require no visitor visas from American tourists, mostly at the urging of the United States after World War II.

In 1968, President Lyndon Johnson's industry and government special task force on travel stated that:

Present entry procedures for vacation and business visitors to the United States are outmoded. They serve only to project an adverse image of this Nation's willingness to receive foreign guests.

Now consistent with this view, President Carter, in his first address to the United Nations in March 1977, announced that the United States was now moving to liberalize travel opportunities to America.

VISA REQUIREMENTS DISCOURAGE TOURISM TO UNITED STATES

The imposition of time-consuming entry requirements discourages tourism to the United States, poses an increasingly expensive staffing burden on our consulates abroad and give visitors the impression that this Nation is greeting them grudgingly rather than graciously.

We therefore request that S. 1763 be amended to empower the Attorney General and the Secretary of State acting jointly and on a selective country basis, to exempt citizens of other countries on the basis of reciprocity, under a visa requirement for a visit to the United States which does not exceed 90 days. Such an amendment would also prohibit the visitor from seeking to adjust his or her nonimmigrant status. Attached to my statement is a draft of a possible language for such an amendment.

It should be noted that the present law already grants visa waivers to visitors who are nationals of contiguous foreign countries or adjacent islands where reciprocity is granted to visitors from the United States. As a practical matter, this means that 95 percent of foreign travelers to the United States today are not required to have a visa.

VISA WAIVER AFFECTS ONLY SMALL PORTION OF TOTAL VISITORS

Therefore, if visa waiver legislation is enacted, only a minor portion of the total visitor population will be affected.

However, these new additional no-visa travelers would pay significantly more in transportation costs to visit this country due to their overseas geographical location which would be a major restraining factor not present in the case of contiguous countries where it is possible to drive or even walk across the border into the United States.

For many countries of the world, the present law has resulted in delays and long lines at U.S. consulate offices for visitors applying for visas. It can logically be concluded that many persons who would otherwise visit the United States have avoided the irritation and frustration of applying for a visa and have opted instead to visit countries which do not have such a requirement. Why travel to the United States when it is so much easier to visit visaless Spain.

We believe that elimination of the visa requirement on a selective country basis will stimulate business, economic development and employment and will improve international relations. We believe these objectives can be accomplished without lessening the security of the United States and without compromising our immigration laws.

That concludes my summary remarks, Mr. Chairman. I will be glad to respond to questions if there are any.

U.S. POLICY TO FACILITATE TOURISM

Senator DeCONCINI. Thank you.

You state in your statement that U.S. policy to facilitate visitor travel, that it is our policy. Where is that policy actually enunciated?

Mr. GORSON. Yes, sir. The International Travel Act of 1961 states its purpose is to—and I can quote from the act, to “strengthen the domestic and foreign commerce of the United States * * * by encouraging foreign residents to visit the United States and by facilitating international travel generally.”

Now under the terms of this act, the Secretary of Commerce is directed, and I quote from the act again, “to encourage the simplification, reduction or elimination of barriers to travel * * *.”

Of course, elimination of the visitor visa for citizens of selected countries would do away with one major barrier to travel.

OTHER COUNTRIES' POLICY ON VISAS

Senator DeCONCINI. Do other countries in North America waive the visitor requirement, for example, Canada, or do you know what their experience has been?

Mr. GORSON. Yes; indeed. In the case of Canada they have historically waived the visa requirement for most of the Commonwealth countries. I think the only ones excluded today are Pakistan, Rhodesia, and Nigeria.

Canada also does not require visitor visas of citizens from some 20 European countries. They do not require visas from the citizens of such countries as Turkey, Singapore, or even Japan.

In recent discussions with Canadian Immigration, they have told me that referrals of nonvisa visitors to a secondary examination have been on the average of only 6 or 7 percent.

Certainly Canadian Immigration has experienced minimal difficulties with citizens of those countries which will be given possible consideration for the same no-visa privilege by the United States; namely, selected Western European countries and perhaps Japan.

Senator DeCONCINI. I have no further questions. Thank you very much.

Mr. GORSON. Thank you, Mr. Chairman.

[The prepared statement of Mr. Gorson follows:]

PREPARED STATEMENT OF JAMES R. GORSON

My name is James R. Gorson. I am director of facilitation of the Air Transport Association of America. I appreciate this opportunity to make the following comments on visa waiver legislation in conjunction with this committee's consideration of S. 1763, the Immigration and Nationality Efficiency Act of 1979.

ATA, representing virtually all of the scheduled airlines of the United States, the majority of which provide air transportation between the United States and foreign countries, has for many years joined with the travel and tourism industry to advocate legislation which would waive the visa requirement for tourists from countries with a reciprocal visa waiver policy. In light of current congressional interest in a national tourism policy and the desire of the chairman and members of this committee to establish sound and reasonable immigration policy, it is our belief that consideration should be given to an amendment to S. 1763, which would provide relief on a selective basis from the burdensome visa requirement for visitors to the United States.

Over a half century ago, as a World War I security measure, the United States imposed a requirement upon most visitors to obtain a visa from an American-consul abroad. The requirements of this prescreening process have been rendered generally obsolete by a major increase in tourism abroad, a reduction in travel time by a factor of three, and the fact that over 35 other countries require no visitor visas from American tourists (most at the urging of the United States after World War II.) In 1968, President Lyndon Johnson's Industry-Government Special Task Force on Travel stated that "present entry procedures for vacation and business visitors to the United States are outmoded. They serve only to project an adverse image of this Nation's willingness to receive foreign guests." Consistent with this view, President Carter, in his first address to the United Nations in March 19, announced that the United States was moving now to liberalize travel opportunities in America.

The imposition of time-consuming entry requirements discourages tourism to the United States, poses an increasingly expensive staffing burden on our consulates abroad, and gives visitors the impression that this nation is greeting them grudgingly rather than graciously. We therefore request that S. 1763 be amended to empower the Attorney General and the Secretary of State, acting jointly and on a selective country basis, to exempt citizens of other countries, on the basis of reciprocity, from the visa requirement for a visit to the United States which does not exceed 90 days. Such an amendment would also prohibit the visitor from seeking to adjust his or her nonimmigrant status. Attached to my statement is a draft of possible language for an amendment.

Concern has been expressed that relaxing the visa requirement could lead to congestion at immigration booths at U.S. airports-of-entry and to an increase in the number of aliens illegally employed in this country. We believe these possibilities are minimal in view of the limited application of our proposed amendment to S. 1763, augmented by the Immigration Service implementing regulations which will be required to carry out its intent. Such implementing regulations would specify: (1) That tickets for transportation of visitors without visas are to be on a round-trip basis, or to a third country destination; (2) that such tickets be nonrefundable within the United States; and (3) that such visitors execute affidavits stating that he or she is not ineligible for admission under other provisions of the Immigration and Nationality Act. When visitors enter through a waiver from the visa requirement, these implementing regulations

would, in our opinion, make the incidents of illegal immigration no more frequent than the incidents which occur when visitors enter with a proper visa, and would require no longer inspection time by immigration officers for each visitor than is required today.

It should be noted that the present law already grants visa waivers to visitors who are nationals of contiguous foreign countries or adjacent islands where reciprocity is granted to visitors from the United States. As a practical matter, this means that 95 percent of foreign travelers to the United States today are not required to have a visa. Therefore, if visa waiver legislation is enacted, only a minor portion of the total visitor population will be affected. However, these new additional no-visa travelers would pay significantly more in transportation costs to visit this country due to their overseas geographical location, which would be a major restraining factor not present in the case of contiguous countries where it is possible to drive, or even walk across the border into the United States.

For many countries in the world, the present law has resulted in delays and long lines at U.S. consulate offices for visitors applying for visas. It can logically be concluded that many persons who would otherwise visit the United States have avoided the irritation and frustration of applying for a visa, and have opted instead to visit countries which do not have such a requirement. "Why travel to the United States, when it is so much easier to visit visa-less Spain?"

While it is difficult to quantify the number of additional visitors that can be expected if a visa waiver provision is adopted, we are convinced that the economic growth and good will which will result are well worth the effort. Moreover, we believe that the national objective of promoting and facilitating travel to the United States is consistent with other national needs and goals. Thus, we believe that the elimination of the visa requirement on a selective country basis will stimulate business, economic development and employment, and will improve international relations. We believe these objectives can be accomplished without lessening the security of the United States and without compromising our immigration laws.

Elimination of the unnecessary and cumbersome barriers to the entry of foreign visitors to the United States is long overdue, and we urge prompt favorable consideration of this measure to assure that such barriers to foreign visitors be removed.

ATTACHMENT

PROPOSED AMENDMENT TO S. 1763, IMMIGRATION AND NATIONALITY EFFICIENCY ACT OF 1979

Sec. 2. Section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) is amended to read as follows:

"(B) on the basis or reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or of nationals of other foreign territories, for periods not to exceed ninety days and with no further renewal, extension or adjustment in status allowed, or".

Senator DeCONCINI. Our next witness is Mr. Dale Swartz, an attorney with the Lawyer's Committee for Civil Rights Under the Law.

STATEMENT OF DALE SWARTZ, AND NANCY WOLF, LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER THE LAW

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

I appreciate the opportunity to testify this morning on S. 1763. I would like to introduce Ms. Nancy Wolf who works in our office and provided substantial assistance over the last few days in preparing this testimony.

We have prepared a written statement and would like to have it entered into the record.

Senator DeCONCINI. We will insert it into the record at the end of your oral testimony.

You may summarize.

Mr. SWARTZ. A few points I would like to emphasize. We believe that sections 3 and 4, of S. 1763, which provisions increase the quotas available to Canadians and Mexicans who seek to immigrate to the United States indeed are remedial and humanitarian in purpose.

FAMILY REUNION FUNDAMENTAL PRINCIPLE OF IMMIGRATION

From the humanitarian perspective it is important to emphasize the very serious human problems that both aliens lawfully in the United States and of families who have remained in their home countries as a result of the substantial backlog, particularly in second preference.

Family reunification as many witnesses have emphasized is indeed one of the fundamentals, if not the fundamental purpose of our immigration laws. That purpose is not being realized as a result in large part of the unforeseen effects of the 1976 amendments. The 1976 amendments have created the backlog. Substantial numbers of persons, particularly from Mexico were able to emigrate to the United States on an average of 62,000 a year prior to 1976.

As many of these people who are now seeking to reunite their families and who are the victims in effect of a backlog created by the United States with the enactment of the 1976 amendment. The problems these people face are multifaceted. The separation from their family, that in and of itself is a very serious human problem. It creates great hardship for many, many people.

CURRENT LAW ENCOURAGES ILLEGAL IMMIGRATION

It leads often to unlaw immigration. Persons feeling the pressure of being apart from their families from 6, 7, or 8 years, realize the backlog is moving very slowly, often simply yield to that pressure and will come to the United States unlawfully.

This pattern has been rather graphically described in a recent Washington Post article which we have attached to our testimony which describes the story of an immigrant from Mexico whose family remained behind and who were subjected to this backlog and ultimately unlawfully immigrated.

IMPACT UPON LAWFUL U.S. RESIDENTS

The consequences of this also impact upon the aliens who are lawfully in the United States. For example, many in effect live as if they were undocumented, even though lawfully here, for fear of exposing the family members who have unlawfully emigrated in order to be reunited with their family.

So, we have persons who are lawful, permanent residents who are unable to report crimes of which they may be victims for fear that doing so may expose their family members to the Immigration Service. They may find difficulties getting jobs, again for fear of exposing the family members. We have situations where siblings may be subjected to different kinds of treatment because one is documented and one is undocumented.

This problem is illustrated in Texas, for example, where there are State laws that provide the undocumented alien children are not able to attend public school.

We have situations where, within a single family, certain children may be U.S. citizens by virtue of birth whereas they have siblings who are undocumented but have immigrated for the purposes of reuniting with their families, and those older siblings are unable to attend the public schools; they are subjected to different kinds of treatment. Again, this creates tension within families. Enactment of S. 1763 would at least be a beginning toward alleviating that kind of problem.

The other very real human difficulty is that persons lawfully here face as a result of their families unlawfully immigrating. The purpose and the spirit and importance of family reunification is also set forth and articulated in international human rights agreements. I refer specifically to the Helsinki Accords.

HELSINKI ACCORDS AND PENDING BILL

I think that S. 1763 again takes a significant step toward bringing the United States into compliance with the purposes and principles of this fundamental human rights document.

The Accords state in the third part:

The participating states will deal in a positive and humanitarian spirit with the application of persons who wish to be reunited with members of their family.

Special attention is given to requests of an urgent character such as requests submitted by persons who are ill or old.

The participating states will deal with applications in this field as expeditiously as possible.

The Helsinki Accords recognize the depth of the concept of family reunification. They establish family reunification in effect as a human right. S. 1763 will help to promote the realization of these goals.

Senator DeCONCINI. Do you feel that without this legislation the United States may be in violation of the Helsinki Accords?

Mr. SWARTZ. I think it may be—to be fair, technically, the Helsinki Accords are not legally binding. They are not in the nature of a treaty that has a force of law. The Accords certainly establish principles which the United States have agreed to attempt to promote.

I think at least in spirit, if not a legal matter, yes, I think so.

Senator DeCONCINI. It might even be an interpretation of what is necessary to promote it?

Mr. SWARTZ. Correct.

I might just further elaborate, as I mentioned earlier, I think it can be argued that the United States is in effect responsible itself for substantial backlog, particularly as it relates to Mexico. Prior to the 1976 amendments, 60,000 immigrants average a year from Mexico; again, it is often these people, people who have entered the United States prior to 1976 who are now unable to reunite with their families because of unforeseen consequences of the 1976 amendments.

I think it could be argued that at least the spirit of the Helsinki Accords are being violated.

SELECT COMMISSION ON IMMIGRATION

Just one final point I would like to make in summary, and that relates to the work of the Select Commission and how this legislation

would fit in. I would agree with previous witnesses that this legislation is needed now. It is a limited measure. It is remedial in character. It would not interfere with the work of the Select Commission.

Indeed, I think it may well contribute to or promote the work of the Select Commission by giving us a bit of an experience base for looking at the problem of unlawful migration and how best to deal with the realities we are now faced with—hundreds of thousands of unlawful immigrants in the United States. A limited measure, let's see how it works. It may again provide some insights and data to the Select Commission that it would find useful in addressing the overall and broad problem of undocumented migration.

Senator DeCONCINI. Thank you. We have no questions. We appreciate your support of this legislation and calling to our attention several important aspects.

Thank you.

Mr. SWARTZ. Thank you.

[The prepared statement of Mr. Swartz follows:]

PREPARED STATEMENT OF DALE SWARTZ

I. INTRODUCTION

Mr. Chairman, members of the committee, my name is Dale Swartz. I am the director of the Alien Rights Law Project, Washington, D.C. I want to thank you for the opportunity to testify on the Immigration and Nationality Efficiency Act of 1979, S. 1763.

The Alien Rights Law Project began operation in March of 1978 under the auspices of the Washington Lawyers Committee for Civil Rights Under Law. The Washington Lawyers Committee serves as the local affiliate of the National Lawyers Committee for Civil Rights Under Law, which was founded in 1963 at the request of President Kennedy to enlist leaders of the private bar in the effort to secure racial justice in the South.

During the past 10 years, the Washington Lawyers Committee has organized panels of attorneys to work on individual cases and law reform in the areas, among others, of education, equal housing and employment opportunity, and the parole process. More than 650 volunteer attorneys from over 80 area law firms have worked on these projects, expending in 1978 alone well over 20,000 hours of their donated time. During the past 18 months, over one hundred volunteer attorneys drawn from Washington area law firms provided an estimated 20,000 hours of volunteer legal services on a variety of matters the project has undertaken. This representation has been provided on diverse and significant matters affecting hundreds of thousands of persons, and has included representation before Congress, Federal agencies, State and local governments, and the Federal courts.

The availability of substantial numbers of volunteer attorneys has enabled the project to provide representation to a variety of client organizations on many issues facing the Nation in immigration and refugee law and policy. Some of these issues are briefly described below.

(1) A 16 count complaint seeking preliminary and permanent injunctive relief has been filed in *Haitian Refugee Center, et al. v. Civiletti, et al.* (D.S.D. Fla.) on behalf of a class of approximately 5,000 Haitian nationals seeking political asylum in INS district office in Miami, Fla. The complaint alleges that defendants have violated rights accorded the named plaintiffs and class members under the U.N. Protocol Relating to the Status of Refugees, the U.S. Constitution and the Immigration Act and regulations promulgated thereunder. The court has entered a preliminary injunction prohibiting deportation of Haitian asylum applicants pending a full trial on the merits.

(2) On behalf of a coalition of 16 public interest groups, a memorandum has been submitted to the White House, the congressional leadership and the Select Commission on Immigration and Refugee Policy urging deferral of congressional action on proposed legislation which would severely restrict the eligibility of lawfully admitted permanent resident aliens for Federal, State

and local public assistance programs based on need. If enacted, these bills would undermine principles of family reunification which have been a traditional basis of U.S. immigration laws, and would enforce severe hardships on lawfully admitted indigent aliens.

(3) On behalf of the Mexican American Legal Defense and Educational Fund, a major law firm and project staff have submitted to the Department of Justice an extensive memorandum arguing that State and local police are constitutionally prohibited from enforcing Federal immigration laws. Local police enforcement activities and abuses are a serious problem in the Washington area as well as in the Southwest and California, and increase tension between the police and the community. These State and local police activities also contribute to the reluctance of undocumented aliens to report crimes of which they are victims because of a fear that if they do so the local police may report them to the INS.

(4) We also have submitted an amicus brief on behalf of the National Education Association in *Doe v. Plyer*, a case pending in the fifth circuit involving an appeal from the decision of the U.S. district court invalidating on equal protection grounds the policy of a local Texas school district requiring undocumented alien children to pay tuition to attend the public schools. In many cases certain family members may attend public schools because they are citizens by birth whereas their older siblings are undocumented aliens and therefore barred from public schools.

(5) Finally, on behalf of the Helsinki Watch Committee for the United States, a newly formed private organization that monitors domestic compliance with the Helsinki Final Act Agreements, project staff prepared a written submission and testified before the Joint House-Senate Commission on Security and Cooperation in Europe (The Helsinki Commission). The testimony identified provisions of the immigration laws, practices of the Immigration Service, and other practices or policies adopted by the Federal Government which raise serious questions regarding U.S. compliance with the Helsinki Accords.

It is from this perspective that I would like to share with you our views on S. 1763.

II. GENERAL STATEMENT OF SUPPORT FOR S. 1763

The Washington Lawyers Committee for Civil Rights Under Law strongly supports the enactment of S. 1763. S. 1763 is remedial in nature. It does not propose any major reforms of the Immigration and Nationality Act. That task has been assigned to the Select Commission on Immigration and Refugee Policy. However, the Commission is not expected to complete its work until the spring of 1981. The Commission's policy recommendations will not be translated into legislation until 1982 at the earliest. In the interim, there are certain inequities in the present law which need to be remedied. S. 1763 addresses certain of these inequities and resolves them in the national interest. Thus, we agree with the views expressed by both the bill's sponsor, Senator Kennedy, and the Department of Justice, that this legislation is needed now and should promptly be enacted into law.

Most of the provisions of S. 1763 are technical in nature, making certain changes in the law and procedure to improve the efficiency of the INS. I believe that most parties interested in this bill would agree that this is a worthy goal. I will thus focus my remarks on those provisions of the bill that would increase the visa quotas for our contiguous neighbors, Canada and Mexico.

III. THE PRACTICAL EFFECTS OF ENACTMENT OF SECTIONS 3 AND 4 OF S. 1763

Section 4 of S. 1763 will increase the number of visas made available annually to Canada and Mexico while Section 3 will raise the number of visas available annually worldwide to reflect the larger allocation made to our contiguous neighbors. If any visa numbers remain unused by a contiguous country in a given fiscal year, these will be made available to the other contiguous country in the subsequent fiscal year. The practical effect of sections 3 and 4 will be twofold. First, the number of visas made available to Mexico and Canada annually will be increased, which will ease the bottleneck of applicants waiting to enter the United States legally. Second, the number of visas made available to noncontiguous countries will not be reduced in any way.

We support enactment of sections 3 and 4 of S. 1763 because implementation of these provisions: (a) Will advance the goal of family reunification which is the underlying philosophy of U.S. immigration law, (b) will contribute indirectly to ameliorating the problem of undocumented aliens, (c) will improve bi-

lateral relations with Canada and Mexico, and (d) will promote the basic civil and constitutional rights of permanent residents and U.S. citizens of Hispanic origin.

IV. ARGUMENTS IN SUPPORT OF ENACTMENT OF SECTIONS 3 AND 4

(1) The passage of S. 1763 will advance the goal of family reunification, which is the highest priority of U.S. immigration law and policy. This principle is expressed in the preference categories of section 203 of the I&N Act (18 U.S.C. § 1153) for immigrants seeking to enter the United States as permanent residents. Four of the seven preference categories are based on family ties. The closer the family ties an immigrant applicant has with a person legally in the United States—that is, a spouse, child or sibling, the better the applicant's chances are of being admitted.

Our commitment to the goal of family reunification is shared by other members of the world community. This principle was most recently affirmed in the Final Act of the Helsinki Accords Agreement to which 35 nations are signatories. The third part of the Accords is titled "Reunification of Families." It states in part—

"The participating states will deal in a positive and humanitarian spirit with the application of persons who wish to be reunited with members of their family * * * with special attention being given to requests of an urgent character such as requests submitted by persons who are ill or old. They (the participating states) will deal with applications in this field as expeditiously as possible." [Emphasis added.]

S. 1763, by providing additional immigrant visas, will advance the goal of family reunification by expediting the admission of immigrants who seek to join their families already here. Many have waited years for the right to realize this universal dream.

Current U.S. immigration law is inhibiting rather than fostering the objective of family reunification. Currently there simply are not enough visas available for applicants with U.S. family ties. For example, as of October 1979, visas are hopelessly backlogged for at least 8 years for all Mexican applicants who seek to enter the United States under the second preference (spouses and unmarried children of legal U.S. permanent residents) and are completely unavailable for those applicants wishing to come to the United States under the fourth (married children of U.S. citizens) preference, the fifth (brothers and sisters of U.S. citizens over age 21) preference, and nonpreference (including alien parents of U.S. citizens under age 21 who have a priority date prior to January 1, 1977).¹

A dramatic illustration of the suffering that is caused by the long waits for visas needed to join family members is found in a recent Washington Post article (October 22, 1979; attached to this prepared testimony). The article tells the story of a legal resident of the United States since 1965. He returned to his Mexican hometown to marry and upon his return to the United States learned he would have to wait at least 7 years for his Mexican bride to join him in the United States. Instead of waiting the 7 years, he sought and found an all too common alternative; his wife crossed the border to join him.

The situation described in the Washington Post article is not an isolated case. INS sources estimate that 48,000 Mexican husbands, wives, sons and daughters of legal U.S. residents are currently waiting for visas to enter the United States to join their families. They, and their lawful U.S. resident family, currently have a wait of 8 years or more. The passage of sections 3 and 4 of S. 1763 would provide a humane solution to their plight. Moreover, we are much to blame for the problem.

Prior to the 1976 amendments to the Immigration Act the approximate number of legal immigrants admitted from Mexico for the preceding 10 years was as follows:

1976 -----	62,000	1970 -----	44,469
1975 -----	62,205	1969 -----	44,623
1974 -----	71,586	1968 -----	43,563
1973 -----	70,141	1967 -----	42,371
1972 -----	64,040	1966 -----	45,163
1971 -----	50,103		

¹ Parents of lawful permanent resident aliens are not eligible to immigrate based on family ties.

This pre-1976 pattern significantly explains the current backlog in recent preference visa applications from Mexico. It is many of these 600,000 lawful residents of the United States of Mexican descent who now seek to reunite with their families. S. 1763 is urgently needed to remedy the severe hardships these families remained behind.

An argument raised in objection to these proposals is that the backlog in the second preference could easily be diminished if the lawful permanent resident chose to become citizens, thereby making their relatives eligible for "immediate relative status" and immigration outside of the quota system. This argument, of course, would apply only to those lawful permanent residents who have enjoyed more than 5 years of that status, with a continual legal residence in the United States. Also that becoming a U.S. citizen is by no means a simple matter. It takes an average of 1 year for a petition of naturalization to be processed and granted. In fact, the naturalization process is so cumbersome that this bill itself (sections 14-20) attempts to simplify the process. Also, a petition to classify relatives for immediate relative status, can only be filed after the petitioner becomes a naturalized citizen, also entails efforts, legal advice and in many cases an unreasonable delay. Naturalization would thus benefit only those who have waited for seven years or more. More importantly, although naturalization is and should be encouraged, it would be unfair to do so, continuing to penalize in such a drastic manner those lawful permanent residents who, for whatever, reasons, choose not to abandon their citizenship of origin.

(2) I also think this bill is an important step toward improving relations with Canada and Mexico. Our country is recognizing the need for a redefinition of relations, particularly with Mexico, as shown in the recent meeting between Presidents Carter and Lopez Portillo. Congress can make a significant contribution to goodwill and cooperation towards our neighbors by showing increased concern for the treatment of their citizens while in our midst. The modest provisions of S. 1763 may thus have an enormous potential in securing better bilateral relations.

It must also be said that the bill's potential to positively affect our relations with Canada is not speculative. In the near future, economic conditions may make the present quota for Canada insufficient. In this respect, it is worth noting that the Province of Quebec is observing a consistent pattern of capital migration to the United States, and a larger flow of labor might be anticipated.

(3) Enactment of S. 1763 will also help limit undocumented immigration to work manageable levels. As noted, a large number of undocumented immigrants enter without inspection only to avoid excessively long waiting periods before obtaining a visa for which they are eligible. S. 1763 will thus promote expeditious family unification, allow substantial numbers of undocumented aliens to regularize their status and eliminate one of the incentives for unlawful immigration, the "pull factor" represented by the basic drive to join family.

S. 1763 clearly will not solve the overall problem of undocumented immigration, a matter that should properly be deferred for the Selection Commission's long-term proposals. S. 1763 is but a limited yet essential measure needed to remedy or alleviate hardships caused by the 1976 amendments. Further, S. 1763 may provide important data and insight in that it is in effect a limited approach to prevent the multifaceted phenomena of the undocumented migration.

Yet, inevitably, before 1982 there will be some actions taken to control the problem of undocumented immigration. For example, in contrast to the limited approach of S. 1763 there are plans under study to develop a large-scale temporary worker's program similar to today's H-2 and bracero programs of the past. The plans for an expanded H-2 program are fraught with difficulty. They will have an adverse effect on domestic wage levels and displace identifiably underemployed domestic workers, hinder unionization efforts and increase social and racial tensions. It is clear to us that section 3 and 4 of S. 1763, is the preferable way.

(4) Our support of this legislation is also importantly linked to the Lawyers' Committee's experience of the past 16 years. If enacted, S. 1763 will significantly promote basic civil and constitutional rights of U.S. citizens and permanent resident aliens of Hispanic origin. As discussed by previous witnesses, in all areas of the country, citizens and permanent residents of Hispanic origin are suspected of being undocumented immigrants. They are subject to abuse from not only the INS but also other law enforcement bodies. Indeed, thousands live as if undocumented for fear of exposing family members who have suffered at the hands of eight years of visa backlogs. The status quo also causes de facto deportation of U.S. citizen children.

S. 1763 will likely ease the social and racial tensions derived from the presence of the "undocumented," promote the fundamental rights of thousands of U.S. citizens and permanent residents of Hispanic descent. These realities illustrate the depth and reach of the family reunification principles. S. 1763 consistent with the humanitarian spirit of the Helsinki Accords will alleviate a vicious cycle of human hardship.

V. ADDITIONAL COMMENTS

I should also like to address some of the criticism that S. 1763 has drawn from organizations opposed to Sections 3 and 4.

One contention is that the bill will have the effect of discriminating in favor of persons of a specific national origin, reminiscent of the "national origin system" of the past. Yet, the fact that all countries still keep their pool of 20,000 visas to draw from indicates there is no adverse effect on other nationalities. But more importantly, I think this bill allows a desirable degree of flexibility to respond to specific problems. Just as we respond to pressing humanitarian concerns in Indochina by allowing entries of refugees beyond the quotas, in this case we would be adjusting our present system to a particular human reality. In fact, the present situation discriminates against Mexican immigrants in that because of the impact of the 1976 amendments on the visa system, they have to face unconscionable delays to be reunited with their families, which immigrants from other countries, in most cases, do not face such delays. S. 1763 will significantly even the chances of immigrants to get their visas after waiting roughly the same time. In short, S. 1763 justifiably addresses a matter of unique humanitarian concern.

In the testimony distributed a week ago by the "Federation for American Immigration Reform" (FAIR), there are repeated references to parents of permanent residents as subjects of the "second preference" category. It must be noted that section 203(a)(2) (8 U.S.C. 1153(a)(2)) does not include parents of permanent residents in the second preference.

Indeed, such persons are not eligible for visas under any other provision of the law. Also, it is said by FAIR that S. 1763 will have the effect of lengthening the waiting lists of all second preference applicants. The increments for contiguous countries would only leave the situation embargoed for other second preference applicants. It is also not accurate to say that entrants under the other preference categories will later contribute to the backlog if the second preference (by petitioning for their spouses and children), because it is their right to bring in the whole family with them.

Finally, it must be clear that S. 1763 is not just a device to alleviate the long waiting list for the second preference applicants from Mexico. As shown in the visa bulletins for all the past fiscal years, Mexican applicants under the fourth and fifth preferences have had cutoff dates every month, and the sixth preference was listed as "current" for very short periods. In 1 year, the cutoff date for the fifth preference, for example, has moved only from May 8, 1977 to November 1, 1977. This means that, the system remaining the same, fourth, fifth and sixth preference applicants will have an indefinite but no means short period to wait.

VI. CONCLUSION

For the foregoing reasons, the Alien Rights Law Project of the Washington Lawyers' Committee for Civil Rights Under Law firmly supports enactment of S. 1763.

ATTACHMENT

[From the Washington Post, Oct. 22, 1979]

LONG WAIT FOR IMMIGRATION VISAS SPURS BITTERNESS, ILLEGAL ENTRIES

By Donnel Nunes and Christopher Dickey

When Luis Garcia got married in his Mexican hometown two years ago, he thought he might have a little trouble getting a visa for his wife to come live with him here in the Washington area.

But Garcia, a legal resident of the United States since 1965, was stunned to learn just how slowly the wheels of immigration turn. It would take six or seven years to get a visa for his wife, he was told, and during that time she would not be permitted to visit him in the United States.

So Garcia (not his real name) did the only thing he felt he could do under the circumstances: he brought his wife across the border illegally.

Garcia and his wife are but two of tens of thousands of people who have had to come to terms with restrictive American immigration quotas that while ostensibly designed to unify families, have kept them apart or forced them to break the law to be together.

Today, Garcia and his wife live with their 8-month-old son—a U.S. citizen by virtue of being born here—in a recently purchased suburban Maryland home filled with new furniture, a large stereo and pictures of their wedding. But the tranquil scene is deceptive, for Garcia is convinced that his wife will be discovered one day and deported.

"I knew there would be a problem," he said recently as he changed the oil on one of his two cars. "But we have had to learn to live with a bigger problem."

Demand for the 250,000 immigrant visas issued annually worldwide by the United States has gotten so high that this month, for the first time in memory, all spouses, sons and daughters of legal foreign residents here—who are supposedly in a highly "preferred" category for admittance—face a delay ranging from five-months for European applicants to eight years for Mexicans, according to State Department documents.

The backlog faced by Mexicans has become a factor in strained U.S.-Mexican relations, according to recent testimony before the Senate Judiciary Committee, and also contributes directly to the increasing flow of illegal Mexican immigrants—such as Mrs. Garcia—into the United States.

More than 48,000 Mexican husbands, wives, sons and daughters of legal residents of the United States—a handful of whom live in the Washington area—currently are waiting for visas. "Most of them," according to Vernon D. McAninch, the official responsible for issuing visas at the U.S. Embassy in Mexico City, "are already in the U.S. illegally. If they can't go legally, they go illegally."

"We're in the worst shape of any country in the world" in the second preference category, McAninch said. "It's just another thing that encourages further illegal immigration * * * It's quite clear that the present immigration law is not coping with the problem."

So pressing is that particular backlog that a Senate committee is holding hearings into a bill introduced by Sen. Edward M. Kennedy (D. Mass.) that would increase the number of visas allocated to Mexico and incidentally, Canada. But many, including some Immigration and Naturalization Service employees embittered by laws that cast them in the role of heavies, say such changes would not go far enough.

"We say that basic immigration policy is to reunify families," said Michael G. Harpold, president of the union that represents immigration employees. "Well now, everyone knows you can't reunify your family if you're from Mexico, India, China—most of the countries of the world, as a matter of fact."

"Maybe you can understand, when we tell the people in the immigration service that the national policy is to reunify families, it's a lie," Harpold said.

The problem is not limited to Mexicans, however. Under the complex U.S. system of awarding visas to individuals based on their family relationships to U.S. residents or citizens or the individual's job skills, the brothers and sisters of American citizens fall into a low preference category.

As a result, several Chinese-American families in the Washington area must wait as long as six years before their brothers and sisters from mainland China can come to the United States.

Particularly difficult is the problem faced by the Liu family in suburban Maryland. Earlier this year Chan Kwan Liu, the 62-year-old brother of Shi Chuen Liu, a Langley Park restaurant owner, finally won permission to leave China.

But when Chan Liu arrived in Hong Kong in March with his wife and youngest child (the other two children did not qualify for American visas and had to remain behind), he discovered that it would be five to six years before their visas would be issued.

Now his brother Shi Liu, an American citizen, must send about \$500 a month to Chan to support his stranded family in Hong Kong, where they may have to wait for years before they can come to the United States.

"My uncle Chan quotes an old Chinese saying all the time now," said Hung Kai (Teddy) Liu, who runs his father's restaurant here. "He says, 'The crows are black anywhere around the world.' That means governments are just as bad everywhere. But I tell him, the law is the law."

The history of American immigration laws is checkered at best. No serious attempt was made to regulate immigration here until 1875, when Chinese con-

tract laborers were barred from entering the United States. Then, about the time of World War I, quotas were developed that relied, among other things, on pseudo-scientific "findings" that more than 80 percent of the Russian, Hungarian and Jewish immigrants of the time were "feeble-minded."

It was not until 1952 that Congress removed race as an expressed criterion for immigration. Not until 1965—in the wake of the domestic civil rights movement—was discrimination on the basis of national origin ended.

After 1965, a quota of 170,000 visas a year was set for the Eastern Hemisphere, from which no country was allowed more than 20,000 visas in any one year. The Western Hemisphere was allotted 120,000 visas annually with no national limitations. As a result, by 1976 Mexicans were accounting for half of the Western Hemisphere quota for immigrant visas.

This ended abruptly in 1977 when the 20,000 visas-per-country limitation was extended world-wide. Overnight, Mexico's quota was cut by two-thirds.

Since then the wait for visas by Mexican families has doubled and trebled, frustrating State Department officials and posing grave problems for enforcement of existing quotas along the almost 2,000-mile-long Mexican-American border.

Al Velarde, an official with the U.S. Catholic Conference, which helps Mexicans with immigration problems in El Paso, says that thousands of Mexicans faced with the eight-year wait for visas are taking the same course followed by Luis Garcia and his wife.

For Garcia, the issue is both economic and personal.

"I came here because there are better opportunities here," said the 28-year-old construction worker. "I was 14. My brothers lived here. One was in the Army. I asked them to bring me in and they did."

Senator DECONCINI. Our next witness is Mr. Roger Conner, executive director, the Federation for American Immigration Reform.

STATEMENT OF ROGER CONNER, EXECUTIVE DIRECTOR, THE FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. CONNER. Thank you, Mr. Chairman.

Senator DECONCINI. Mr. Conner, we will put in the record your full statement. If you would summarize, we would appreciate it.

Proceed, please.

Mr. CONNER. Thank you, Mr. Chairman.

My name is Roger Conner. I am the executive director of the Federation for American Immigration Reforms, better known as FAIR.

I wish, first of all, to thank the committee and its staff for making available, both to myself and other people from the private sector, the opportunity to comment on the provisions of this bill.

Mr. Chairman, rather than repeat my statement, I would like to comment on four points, if I may.

First: That we have a special relationship with Mexico.

Second: That immigration should not be used as a tool of foreign policy.

Third: That the principal arguments in favor of the bill need careful evaluation.

Finally: That the bill needs to be evaluated in light of other immigration policies of the United States.

First, Mr. Chairman, we wish to emphasize that we recognize that the United States has a special relationship with Mexico, owing to cultural ties, mutual history, geographic proximity, trade relationships, and so on.

We also believe that we should be working on improvement of our relationship to Mexico in meaningful ways, such as by reducing limi-

tations on the import of Mexican vegetables or the import of Mexican produced railroad cars, things that would benefit Mexico.

Owing to our geography and history, we have a special immigration relationship with Mexico. In the period 1971 to 1977, for example, 15.1 percent of legal immigration into the United States came from Mexico, though Mexico has less than 2 percent of the world's population.

In 1978, after the imposition of the per country limitation, which previous witnesses have referred to, Mexico still had more immigrants to the United States than any other country in the world, exclusive of refugees.

The reason we have a special relationship with Mexico, the reason that Mexico will always have a special immigration advantage is because our law is heavily weighted in favor of the admission of relatives of recent immigrants.

Since we have more immigrants from Mexico than any other country, we are always going to have a special immigration relationship with Mexico.

SHOULD MEXICO HAVE SPECIAL ADVANTAGES?

So, the question presented by this bill is not whether we will have a special relationship with Mexico. We always will. It is not whether Mexico is going to have some advantages in immigration. It always will, so long as we favor relatives. The question is whether the existing advantage should be enlarged.

Now one of the principal arguments which has been advanced in the hearing thus far in favor of enlarging Mexico's existing advantage is that it would advance pragmatic foreign policy, foreign policy objectives in our relationship with Mexico.

First of all, it is not clear whether the Mexican people would view this in a favorable light. The majority in a poll, which I am sure the Senator is aware of, taken by the Los Angeles Times, opposes illegal immigration from Mexico to the United States. They are well aware that through immigration they lose some of their most energetic and talented people. Indeed, the suggestion that it is good for them for us to take people from Mexico, to take more people, implies to many of them that they cannot take care of their own. So it is not clear that the Mexican people will thank us for this gesture.

PROBLEMS OF IMMIGRATION AS A TOOL OF FOREIGN POLICY

But all importantly, if we are to use immigration as a tool of foreign policy, how can we respond to these people, to the nationals from the Philippines when they point out that they fought alongside us in World War II and the Vietnam war; that they are a significant trading partner, and they too have long waiting lines, in some categories longer waiting lines than Mexico?

How can we respond to the people in Haiti, with desperate poverty, seeking more admissions to the United States from there?

How can we respond to people from Africa who point out that the largest minority in the United States hails from that continent, yet Africa has a fraction of per capita migration that Mexico does.

This approach of singling out certain nations for special treatment, different rules, was rejected by the 1965 amendments to the Immigration and Nationality Act. These amendments, of which Senator Kennedy was the floor sponsor or the floor manager, eliminated the national origin system.

The national origin system benefited countries from which we had received past immigrants. Many people defended that system on the grounds of the claimed racial superiority of Northern Europe. But many others defended that system on the grounds of preexisting cultural ties between the United States and places like Ireland. At the time, we placed Ireland and other European countries on the same footing as other countries throughout the world. It was claimed we had unfavorably and unfairly treated them, just as representatives of Mexicans now say that we unfairly treated them by placing them on the same footing as the rest of the world in 1976.

The arguments in 1965, that certain countries should be benefited or the nationals of certain countries should be benefited, was rejected, and all countries were placed on the same immigration footing to live by the same rules. We think that was a wise decision. So, in our view, immigration should not be used as a tool of foreign policy.

WAITING LINES WILL ALWAYS EXIST

Last, there have been two important arguments advanced in favor of the bill, which deserves comment. The first argument is that the bill will eliminate a response to long waiting lines in Mexico. It is important to define this problem before we can talk about how to solve it. We are not talking about spouses of naturalized U.S. citizens. As the chairman knows, they enter outside the quota altogether. The only waiting line that has been referred to in the testimony, with the single exception of Mr. Resnick, on which I will comment in a moment, has observed that there is a long waiting line for second-preference admissions from Mexico, spouses of permanent resident aliens.

We checked with the State Department in the Visa Information Department, the Division of Consular Affairs, and they advised us that as of January 1979, the waiting line is approximately 48,000 people in second preference from Mexico.

Now the way the bill is structured presents the committee with a dilemma, however. If this bill passes, in order to increase second-preference admissions from Mexico, second-preference admissions from other countries must be reduced. Furthermore, since the immigration laws formula imposes a limitation on the total number of preference admissions from throughout the world, the entire increase in the quota that goes to Mexico will not be allocated to entrance in second preference.

In other words, the bill, attempting to address a waiting line in second preference for Mexico, will result in longer waiting lines in other countries—though we recognize that Mexico's second-preference line is as long as any other countries—but it will result in longer waiting lines for other spouses of recent immigrants; and it will also permit people to come into the country in preference categories in other than second preference, in third, fourth, fifth, and sixth preference. In

these categories, there are several countries which have longer waiting lines than Mexico's.

Finally, the largest single group that was identified by previous witnesses, particularly Mr. Resnick, will not be reached at all by this bill. The largest group addressed by Mr. Resnick was parents of minor U.S. citizens. Parents of minor U.S. citizens from Mexico do not enjoy a preference. They come in nonpreference. So, unless the bill is going to be redesigned to permit the entry of nonpreference immigrants, that class will not be reached at all.

Long waiting lines are a result of a system that was set by Congress in 1924—and modified twice since—which placed limits on total immigration into the United States. There are more people who want to come to the United States than any number that I think reasonable people would accept. So long as there is a limit that is lower than the number of people who want to come, there are going to be waiting lines. So, we do not believe that the bill as designed will accomplish its objectives of eliminating the second preference waiting line, as the gentleman from HIAS mentioned a moment ago.

What it will do, is admit people in lower preference categories, and let them in ahead of the nationals of other countries.

REDUCTION OF ILLEGAL IMMIGRATION QUESTIONED

The second argument that has been advanced in support of the bill is that it will somehow reduce illegal immigration. The Senator is aware of the situation on the Arizona border. Last year, or in the year ending 1978, 954,778 Mexican nationals were apprehended for being in this country in violation of the immigration laws. To increase the quota by 35,000 or 60,000 is not going to solve that problem.

Last, I would like to comment on the bill in the context of our current immigration situation. As the chairman is aware, illegal immigration into the United States is a substantial problem and it is growing. The only national poll taken on this question, 91 percent of the respondents believed that strong measures should be taken to curb illegal immigration.

Legal immigration is at the highest levels since the early part of this century. Recent decisions by the President, under the parole authority, have resulted in increased admissions of refugees. Again, the recent Roper poll indicated that a substantial majority of Americans opposed such increases.

SELECT COMMISSION

A Select Commission on Immigration and Refugee Policy has been set up to examine two questions overall. One is: Should immigration levels into the United States be raised, lowered, or left the same?

This bill preempts the commission by raising total immigration in section 3.

The second question they are to answer is how we will allocate the necessarily limited number of admissions into the United States. The bill as drafted preempts them on that question by reallocating admissions in favor of Mexico and Canada, countries which are already favored in immigration law.

Thank you, Mr. Chairman. I would be happy to respond to any questions which you may have.

ANY IMMIGRATION PROBLEMS VIS-A-VIS MEXICO/CANADA

Senator DeCONCINI. Mr. Conner, thank you for your testimony.

Do you acknowledge that you believe and your organization believes that we have a severe problem, that we ought to attempt to do something now with our neighbors to the north and south? Or do you feel the problem is not severe?

Mr. CONNER. As to our neighbor to the north, I am not aware of any problem. As to our neighbor to the south, if the problem is defined as more people wanting to come to the United States than our immigration laws will permit, then we have a serious problem, one that can only be responded to with a rather comprehensive revision of the law, unless we are going to allocate all of the available immigration slots to Mexico, which I don't think anyone proposes.

MEXICO'S SPECIAL PROBLEMS

Senator DeCONCINI. You talk about a special relationship we have with Mexico, and I presume that you have no objection to that and promote that relationship. Surely you are aware of 40 percent underemployment or unemployment in that country; the inflation rate of perhaps 30 percent or more, of one of the highest birth rates, and still you don't feel that those are necessary reasons for us to try to address this problem?

Mr. CONNER. Those are necessary reasons to address the problems as you label them, Mr. Chairman, of unemployment, inflation and population growth in Mexico. This bill addresses none of those.

If we are concerned about unemployment in Mexico, then we will encourage importation into the United States of Mexican crops which will supply jobs to hundreds of thousands of Mexicans, not to a trickle to be admitted to the United States; or the admission of Mexican railroad cars, for which there is a backlog on order, a backlog of a need for railroad cars in the United States. But importation limitations prevent the creation of jobs in Mexico to supply us with needed railroad cars.

Those are the ways to respond to those problems.

Senator DeCONCINI. Are you saying that if we permit a greater number of Mexican nationals to come into this country that are now unemployed, it will not be of assistance to Mexico? By taking them off unemployment rolls in Mexico?

Mr. CONNER. Well, the research by Wayne Cornelius on this score suggests that most of the migrants from Mexico are actually not unemployed. They are people who have jobs in Mexico. That is the way they accumulated the money necessary to move to the United States.

UNEMPLOYMENT PRESSURES IN MEXICO

Senator DeCONCINI. Are you telling me that the people who come across in the Yuma sector and the Douglas sector of Arizona are employed in Mexico?

Have you ever talked to any of them?

Mr. CONNER. Yes, when I was down with Herb Walsh, he took me down to the border and I had a chance to talk with some of them and get his views on the subject. Many of those people are in great need. But this bill doesn't address—

Senator DeCONCINI. Did you find that they were employed when you talked to them?

Mr. CONNER. They weren't employed at the time they came across the border.

Senator DeCONCINI. I have not found, and I have talked to dozens in the past 1½ years and I have yet to find one that will admit that he was just recently employed in Mexico. The abiding reason to come across undocumented into the United States, was to find some employment.

So, I have difficulty finding any substance to indicate that if we do anything by permitting more Mexican nationals to come in here it wouldn't be of some assistance to Mexico. That may not be the justifiable reason to do it, but I think your conclusion that that is not going to help is unfounded.

Mr. CONNER. Well, I think that your—the statement is well taken. If I—what I said or it sounded what I said, that it would be no benefit, the remittances back to Mexico would benefit. We are not taking that position.

ATTITUDE OF MEXICAN GOVERNMENT

Senator DeCONCINI. I see. I did misunderstand you. I agree that there are a number of other things and efforts that this country ought to do toward our relationship with Mexico. Your remarks toward special trade and vegetables and other items, as well as boxcars, are certainly helpful, along with textiles and other tariff barriers. I think that all is well taken.

You make reference that the poll that we are aware of, indicates that a number of Mexican nationals or maybe even a majority even don't have any great feeling toward greater numbers coming across.

However, it has been my experience, and I wonder if it has been your experience, that the Mexican Government itself doesn't take an attitude of curtailing by any stretch of imagination the flow of Mexican nationals into this country. Quite frankly, they are quite sensitive about it. It has been my experience, including talking to the President of Mexico that they consider it very necessary for their economic stability and maybe in the realm of "foreign assistance," by the number of dollars that come back through it.

Do you have a different experience from Mexican governmental officials?

Mr. CONNER. The Mexican Government officials with whom we talked take the only position perhaps that they can, which is that just as Mexico determines its immigration policy with regard to its neighbors, and has a very limited one—for example, it is very difficult for Americans to get work in Mexico—they agree that the United States should determine U.S. immigration policy. While they are certainly not in some of their private expressions concerned about the remittances back to Mexico and what would happen if they lost those remittances, in what they said to us, they have very decidedly

mixed feelings about it, because they are not sure that what is happening is not in the long-term disinterest of the people in Mexico as they lose some of their most energetic, talented and capable people.

FAMILY REUNIFICATION PROBLEMS UNDER CURRENT LAW

Senator DECONCINI. Mr. Conner, would you agree that the long waiting line of immediate family members of permanent residents, aliens, is undisputed evidence that the law is not achieving its stated purpose of the reunification of families?

Mr. CONNER. Well, Mr. Chairman, I can't agree as stated. Let me explain why. First of all, the law states a number of objectives. The mathematicians will tell you that it is mathematically impossible to optimize four or five objectives at once. That is what this law tries to do. Family reunification is one objective. It is not the sole objective because, for example, some relatives must pass labor certification before they can be admitted because protecting the American labor force is another objective of the current law.

So, if we take the current law and say the sole objective is family reunification, we can say that as to India, Korea, the Philippines, Antigua, Hong Kong, St. Christophers, Nevis, and St. Vincent, it is not accomplishing its objectives because there are waiting lines in all those countries for relatives of people in the United States. But the law as passed does not make family reunification the sole objective.

Senator DECONCINI. What alternative remedial solution would you offer to allow immediate family members to join their families?

Mr. CONNER. If we are talking about spouses of resident aliens and minor children of resident aliens from Mexico which is what the previous witnesses have talked about, we are talking about a total of 48,000 people, and if the committee wanted to try to eliminate or substantially shorten that waiting line without requiring those people to choose the option of U.S. citizenship—

BACKLOG IN FOURTH AND FIFTH PREFERENCE FOR MEXICO?

Senator DECONCINI. What about brothers and sisters? Some of the other categories, fourth and fifth preferences?

Mr. CONNER. Well, the waiting list for fourth and fifth preference from Mexico at this time is approximately 2 years.

Senator DECONCINI. Well, we are advised as of October 1979, that is in contradiction to your exhibit attached to your statement which refers to the visa availability as of July 1979—that in fact, the second preference on the waiting list is January 1, 1971.

The third, fourth and fifth and sixth preferences are unavailable, which only underscores to me that the problem is indeed more severe as to Mexico than any other country listed in that bulletin.

Mr. CONNER. Mr. Chairman, that is October 1979. The reason we specifically selected the July 1979 visa services bulletin, we were aware of two later ones. The October 1979, bulletin is at the end of the fiscal year. The reason those numbers were unavailable is not because there is a 14-year waiting line in Mexico, it is because it was at the end of the fiscal year and the visa system is like the stadium in that it fills up in different tiers and it fills up faster on some tiers than others.

What the fact is as of October 1979, that visa numbers are unavailable in third preference from Mexico does not mean that people on third preference are experiencing extremely long waiting lines. The waiting line is still only 2 years as you begin this next fiscal year.

AVAILABILITY OF VISA NUMBERS FOR MEXICO

Senator DeCONCINI. Now wait a minute. Are you telling me that the bulletin of October 1979 is inaccurate?

Mr. CONNER. No, I am saying that it is accurate as of the last month in the fiscal year of 1979, but it does not mean that there is a long waiting line, longer than 2 years, for fourth and fifth preference admissions and third preference admissions from Mexico.

Senator DeCONCINI. Well, it doesn't say that it is 1 or 2 years; it says that it is unavailable. Your list of July 1979 indicates that Mexico for the fourth preference is February 1978, fifth preference is November 1977. The October one shows that they are unavailable.

How do you dispute that? Perhaps I should ask the INS to answer that question, which we will, if you don't have an answer. But obviously, your representations in July are quite different than those in October. It seems to me like we have to go with the latest information. Now if it changes next month or next quarter, fine, that is what we have to base our decision on.

But you are representing to us now something that isn't accurate.

Mr. CONNER. Well, the representation is, if you see the title on the table which we submitted.

Senator DeCONCINI. Yes.

Mr. CONNER. Is the waiting list?

Senator DeCONCINI. Right.

Mr. CONNER. It is not available visa number. The point we tried to make with our table, and we selected this because it is one that most accurately presents it to the committee, because the committee's question which is how long does a person from Mexico, in fourth preference, or fifth preference, or sixth preference, have to wait.

If we had included the October list that you have, that you are referring to, it would have left the committee with the impression that they would have to wait indefinitely, which is inaccurate, Mr. Chairman.

Senator DeCONCINI. Oh, well, maybe you bring something to my attention now. Are you indicating that your exhibit here, entitled "Waiting list," and it says source, "Visa Service Bulletin, July 1979," is something different than what I have here which says "visa numbers for October 1979." These are different documents. We are comparing apples to oranges and not apples to apples?

Mr. CONNER. We are comparing an apple from July and an apple from October. And an apple at the end of the fiscal year when it comes to—if you are trying to use this visa services bulletin to determine the length of waiting lines, you use the October bulletin, it is very misleading. It implies that the waiting line is—that seats are used up.

Senator DeCONCINI. To the degree that the October is the more fresh apple, is that a fair statement?

Mr. CONNER. That is a very accurate statement that it is a fresher apple.

Senator DeCONCINI. Thank you.

ALTERNATIVE SOLUTIONS IN THE FUTURE

I am interested, Mr. Conner, in your look into the future. Would you agree that your immigration policy must be realistic as well as fair?

If so, how do you suggest that we legally accommodate the very real pressures for entry from contiguous countries, particularly Mexico? What do you think we ought to do with this problem?

Mr. CONNER. Well, I—

Senator DeCONCINI. Other than previous references to increasing economic assistance by jobs and importation barriers?

Mr. CONNER. It is our view, Mr. Chairman, that the United States cannot solve the economic problems of Mexico by immigration to the United States. At this time we don't see that immigration is going to be a substantial way to improve immigration policy, or is a substantial way to improve our relationships with Mexico.

What you are saying is, as we look toward the future, do we believe that after the Select Commission on which you sit is finished with its work, that we and they would be recommending that Mexico should have a permanently higher quota than other nations in the world, or perhaps no quota?

Our current view of that is that the resolution of that issue in the national origins debate in 1965 was correct. There are immigration pressures from Mexico; public attention focuses on them; your State is close to the Mexican border. Massachusetts has many Irish. California, after the wave of migration from refugees, is going to have many legal resident aliens and many citizens with relatives in Southeast Asia who are going to argue for increased admissions from those countries.

In our view, you can't answer that question without asking what your policy is going to be in immigration policy when more people want to come from throughout the world than we can accommodate. How do you allocate that fairly?

In our view, at least as we see it now, the allocation of that on a per-country basis is going to be necessary so that there is some sort of rough sense of equity between countries throughout the world, so that one or two or three countries don't take 70 or 80 percent of legal immigration.

What that means, as a practical matter, is that not as many people are going to be able to come to the United States from Mexico as want to come, just as not as many people can come to the United States from Hong Kong as want to come, just as many who want to come from the Philippines cannot come. Indeed, from the entire third world.

Senator DeCONCINI. I don't think anyone would dispute that this country can't open its borders just absolutely uncontrolled to everyone, at least I can't accept that.

NEED FOR REMEDIAL ACTION

You make your reference to the Select Commission. Their report is a good year away or more before we will have our report, and maybe more than 2 years or more before any comprehensive legislation is in the process of grinding through this institution.

It just appears to the Senator from Arizona that the particular problem facing Mexico warrants at least an attempt, and I don't say that this bill is the answer, but an attempt to make some redress to alleviate the pressures and problems that we have in that part of the country. I appreciate your objection to the bill. That is what this process is about. I find that your solutions or suggestions here, at least part of the statement I made, really doesn't give us any alternative except to wait and see what the Select Commission does, or to move in the area of trade, favorable trade preference. That takes an immense amount of time.

In the meantime, we have a real humanitarian problem that we need to address. I don't think that this bill will even begin to address it, or really solve the problem. It is only a remedial bill and somewhat of an escape perhaps, but you are talking about human lives here and relations with Mexico and Mexican citizens. I think it is important for us to move in some way, even if we don't solve all the problem.

If you have any other short-range suggestions, this committee would welcome hearing them, about what you think we should do about this problem over the next year or two, while we wait for the Select Commission report.

Mr. CONNER. Mr. Chairman, we talk about what the problem is. It is fuzzy; but if the problem is a long waiting line for second preference admissions from Mexico, if that is what we are talking about—Mr. Resnick, who testified earlier and was a lawyer in what is known as the *Silva* case, and as a result of the *Silva* case, 150,000, or on that order, additional opportunities from this hemisphere were permitted by the Federal courts, and the courts allocated only 66,000 of that total to Mexico, the rest to be allocated to this hemisphere on a first-come-first-served basis.

Now if the committee wishes to shorten the second preference waiting line by a legislative resolution of the *Silva* case different from that the court has ordered, such as, for example, making some of those numbers, instead of being available to other people in the Western Hemisphere, available to shorten waiting lines for the second preference from Mexico, it seems to me that this is the sort of rifle shot solution as opposed to shotgun solution.

We have some other ideas along that line which we would be eager to discuss with you or members of your staff or members of the committee staff.

ONE-TIME REDRESS?

Senator DeCONCINI. Would you support a one-time allocation like that?

Mr. CONNER. Given the *Silva* case, since it does not result in an increase in total immigration, that is the caveat; I don't think we have a problem with it.

Senator DeCONCINI. What if it did? What if the legislation was a one-time allocation that did grant a greater number than the *Silva* case and greater than the total number permitted; what would your position be on such legislation?

Mr. CONNER. I guess I would like to reserve on that and see what the proposal is. If it is 10 people or 1,000 more people than the avail-

able *Silva* numbers, that is one thing. If it is 500,000 more, that is quite a different matter.

Senator DECONCINI. What if it were 100,000 more?

Mr. CONNER. At this time, as I sit, here and respond to you, I would have to say that that is a large increase—at a time when we have added 400,000 legal immigrants and 200,000 refugees—now we are asking another 100,000.

At this time, it doesn't seem appropriate to us, particularly in response to the views of the American people to the extent we can ascertain them, particularly when to go beyond the 80,000 or so *Silva* numbers would get us into admitting nonpreference Mexicans, when there are people waiting for preference admissions from the Philippines with 12-, 13-year waiting lists.

That, Mr. Chairman, it seems to me, gets beyond remedial legislation and begins to sound like one group of potential migrants is being substantially favored over other potential groups of migrants.

Senator DECONCINI. Thank you very much, Mr. Conner.

Mr. CONNER. Thank you, Senator.

Senator DECONCINI. At this time, in the record, I would like to have inserted the visa numbers for October 1979, following Mr. Conner's statement, and the latest month before the hearing transcript is printed.

[The prepared statement of Mr. Conner and visa immigrant charts follow:]

PREPARED STATEMENT OF ROGER CONNER

I. INTRODUCTION

Thank you, Mr. Chairman, for this opportunity to present a statement to the Committee on the Judiciary during its consideration of S. 1763, the Immigration and Nationality Efficiency Act of 1979. I am Roger Conner, executive director of the Federation for American Immigration Reform (FAIR). FAIR is a national membership organization that advocates comprehensive reform of the present immigration laws and policies, and an end to illegal immigration. FAIR was founded in 1978 by John Tanton, M.D., a former president of Zero Population Growth, and has recently opened a Washington office.

FAIR supports needed remedial reform of our immigration laws, which need not await the report of the Select Commission on Immigration and Refugee Policy. We support those portions of this bill which make technical changes to prevent abuse of student visas, which simplify verification of qualifications for citizenship, and which save tax dollars by simplification of the mechanical operations of the Immigration and Naturalization Service.

FAIR cannot support, and hopes that this committee will eliminate, sections 3 and 4 of S. 1763. These sections are neither minor nor remedial changes in the Immigration and Nationality Act. Rather, they make two substantial changes in immigration policy: Section 3 increases total immigration, and section 4 takes a step backwards, toward the "national origin" system abolished in 1965, by allocating that entire increase to Canada and Mexico.

II. THE INCREASE IS UNNECESSARY

The proposed increase in immigration levels is unwarranted. Legal immigration is now at the highest level since the imposition of numerical limitations in 1924. Illegal immigration is so far out of control that official estimates of its size vary by orders of magnitude. We realize that there is substantial debate in this country over the magnitude and consequences of this flow. Some claim that few migrants come to stay, or that we can absorb a million or more migrants—some temporary, some permanent—each year, without strain.

FAIR believes that the number of migrants is substantial, worsening energy shortages, inflation, unemployment, and underemployment among disadvantaged

Americans. Legal immigration reaches over 400,000 a year, and the administration intends to add almost 200,000 refugees to that total next year. There is no accurate estimate of illegal immigration, but there were more than a million apprehensions of aliens illegally within the country in each of the past 2 years. The number of apprehensions has been growing at an alarming pace, and yet the Judiciary Committee has yet to hold a single hearing on bills designed to control illegal immigration or to strengthen the enforcement powers of the Immigration and Naturalization Service.

On these issues there is much debate. The Congress has established a Select Commission on Immigration and Refugee Policy to resolve them.

Congress should not increase immigration to the United States until it receives the Select Commission's report.

III. THERE SHOULD BE NO FAVORITISM

Enlargement of the already disproportionately large share of immigration received from Mexico and Canada would discriminate against potential immigrants from other countries.

Section 202 of the Immigration and Nationality Act places numerical limitations on the number of immigrants any country can send to the United States. It replaced the "national origin" system under which a few countries had received most of the immigration quota. This reform measure was based on the laudable principle that no immigrant should be considered more valuable to the United States because of the country from which he came, and that no potential immigrant should gain special advantage by being born in a favored country. Section 202(a) states that * * * no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in * * * this title; *Provided*, that the total number of immigrant visas * * * made available to natives of any single foreign state * * * shall not exceed 20,000 in any fiscal year."

Section 4 of S. 1763 sets a new, unspecified higher quota for immigrant visas from Mexico and Canada, and also permits a further increase for either country if one does not use its full allotment. We agree that we should have a special and harmonious relationship with Canada and Mexico. But the effect of our immigration laws already is to favor these countries. For example, Canadians who fit one of the seven preference categories face no wait at all, even those in the lowest categories. Between 1971 and 1977, Canadian immigration has exceeded that of all but six nations in the world, though 28 nations have larger populations.

We also have a special immigration relationship with Mexico, even disregarding our unofficial toleration of illegal immigration in massive numbers. Mexico has sent more immigrants to the United States than any other country in recent years. With 2 percent of the world's population, Mexico had more than 15 percent of our legal immigration from 1971 to 1977. By comparison, the twelve largest less developed nations, with 2.463 billion people received only 16 percent in the same period. Mexico sent us ten times the number of legal immigrants as the entire continent of Africa. If we take per capita admissions as a rough index of the opportunities for migration from different countries, the odds of a Mexican being able to migrate to the United States are 3 times that of another Latin American, 19 times that of an Egyptian, 45 times that of an Indian.

Together our two contiguous neighbors have far outstripped the 20 largest developing nations in the world in immigration to the United States. These two nations, with 90 million people in 1979, sent 2,081,322 people to the United States from 1951 to 1977. The 20 largest developing nations of the world sent only 1.3 million during the same period.

The effect of our current immigration laws, whether intended or not, has been special, perhaps even preferential, treatment for immigrants from Canada and Mexico. But we also have special relationships with other countries throughout the world. How can we explain to the million in those countries who have little or no chance of reaching the "golden door" that we cannot admit more from their nations, but can increase allocations for two of the nations already most favored?

It has been argued that, notwithstanding the existing "special relationship," increased admissions from Mexico are necessary to facilitate "reunification of families." It should be noted that spouses and minor children of naturalized citizens enter outside the quota, without a wait. Waiting lines are relatively short

or nonexistent for unmarried children of U.S. citizens (first preference), professional and artists (third), married children of citizens (fourth), brothers and sisters of U.S. citizens (fifth), and needed workers (sixth).

The only category with a long waiting line is spouses, children, and parents of permanent resident aliens. Mexico has a 9-year backlog for this preference category. Of course, it takes only 5 years to qualify for U.S. citizenship. The families of those who become naturalized citizens enter outside the quota system altogether. Thus, many of those on the 9-year waiting list are the families of those who have elected not to become citizens of the United States rather than Mexico.

Reducing the length of waits for spouses of recent immigrants is, nevertheless, a desirable goal. But S. 1763 will, paradoxically, *lengthen* the lines for second preference in countries other than Mexico while providing only short-term help to those from Mexico.

Section 203 of the Immigration and Nationality Act requires an allocation of all visas worldwide according to the preference system. Only 40 percent of all visas worldwide according to the preference system. Only 40 percent of the worldwide total of quota immigration is allocated to first and second preference immigrants combined (first preference allocations which are unused are reallocated to second preference immigrants). So any attempt to increase second preference admission from Mexico will result in an increase in the worldwide second preference waiting time by making prospective second preference admittees from other countries wait longer. In addition, because of the worldwide limit on second preference, many of the increased Mexican admissions will necessarily come from third, fourth, fifth, and sixth preference categories. Some will have spouses and children who would then qualify to apply for second preference, which will increase the backlog further.

So section 4 of S. 1763, which purports to ease waiting time for citizens of one country, would actually increase the time both for those it hopes to aid and for those from other nations as well.

IV. WE CAN SHORTEN SECOND PREFERENCE LINES

Second preference waiting lines from Mexico can be shortened without increasing immigration totals. Section 202(e) of the INS states that, if a country uses all of its available visas in any one year, in the following years its visas will be allocated among the preferences by the same percentages used worldwide in allocation. As a result, for the year in which 202(e) applies to Mexico, only 20 percent to 40 percent (if there are no first preference applications) of Mexico's 20,000 visas may be allocated to second preference. The reason for this reform was to equalize opportunities among the preferences for those few countries which are regularly oversubscribed. The result, for Mexico, is a substantially longer wait for second preference admission as compared to third through sixth preference.

If the committee concludes that the waiting lines for second preference from Mexico are unduly long, a remedial approach would be to exempt Mexico from section 202(e) until a better balance is established. However, we must add that increasing second preference admissions from Mexico, by whatever device, can only mean longer lines for spouses, children, and parents of recent immigrants from other countries, and there are several countries other than Mexico with multiyear waiting lines.

V. CONCLUSION

Sections 3 and 4, increasing total immigration and Mexican and Canadian quotas, should be deleted from S. 1763. The Senate should recognize the great danger in this bill. By granting a special series of privileges to nations just because of their location, S. 1763 begins a return to the old "national origins" system. Under this system, each nation was assigned an individual quota for immigration—Asian countries being allowed the lowest, Northern European countries the highest. The value of an immigrant was in his race and national origin, not in himself.

By decreeing, as we do with this bill, that one immigrant is to be treated differently because he comes from a close neighbor, we would be institutionalizing the same type of partiality that it took a generation to halt. Such a step is neither necessary nor desirable.

A comprehensive response to this problem is in sight, however. The Select Commission on Immigration and Refugee Policy, on which four members of this committee serve, is already at work on some of the tough problems of immigration policy. The Select Commission has scheduled many hearings around the Nation to provide an opportunity for the public and experts to present views on the subject. The Commission will issue its report in early 1981. Plainly needed legislation need not await their report, but the allocation of visas within the overall immigration ceiling and the total level of immigration are basic matters which should not be altered before the Select Commission has an opportunity to speak. Sections 3 and 4 of S. 1763 should be removed from the bill, and the remainder of the bill passed.

Thank you for the opportunity to present the position of the Federation for American Immigration Reform to this committee.

APPENDIX

Mr. Chairman, I prepared and delivered to this committee written testimony for its hearing on October 17, 1979. The testimony at that hearing raised several questions to which Senator Huddleston of Kentucky requested a response from the Federation for American Immigration Reform. Since the answers to these questions clarify our objections to sections 3 and 4 of S. 1763, the Immigration and Nationality Act of 1979, I would like to submit Senator Huddleston's questions and our answers as an appendix to our previous testimony.

[Questions of Senator Huddleston and responses of Roger Conner follow:]

Question. Numerical limitation on immigration was first applied to Mexico on January 1, 1977. Isn't Mexico's past high percentage of immigration an overstatement of its future percentage of immigration?

Answer. In 1977, with the universal 20,000 quota limit applied to Mexico, there were 44,446 legal immigrants from Mexico, more than for any other country (exclusive of refugees). This continuing high immigration is a result of the nonquota immigration of more than 20,000 Mexicans, most of whom were relatives of American citizens. The strong favoritism in the law for relatives of recent immigrants and recently naturalized citizens ensures that Mexico's proportion of immigration will continue to be large.

Question. Are the waiting lines for immigration longer in Mexico than in other countries?

Answer. No. The attached chart shows that there are seventeen different country preference categories in which the waiting line is longer in countries other than Mexico in the same preference category. Mexico has the longest wait for second preference admissions, but S. 1763 increases immigration quotas for Mexico across the board, not just for second preference.

Question. Does Mexico have long waiting lines for all categories?

Answer. No. The chart of preference categories shows no waiting line longer than 2 years other than for second preference. By contrast, lines in China extend to 6 years, in Antigua to 12 years, and in Hong Kong, for fourth preference, to 13 years.

Question. Does your statement that Mexico received three times the per capita immigration of the rest of Latin America exaggerate the size of per capita immigration from Mexico?

Answer. No. Mexico has 70 times the per capita immigration of Africa, 320 times that of Bangladesh, 384 times that of Indonesia. The only countries with a significantly high per capita immigration, other than Mexico, are Cuba and the Dominican Republic, and Mexico's per capita immigration is three times theirs.

Question. Would increasing Mexico's immigration quota improve our relationship with Mexico?

Answer. FAIR does not believe that immigration quotas should become a tool of foreign policy, or that the number of people who are allowed to come to the United States from any country should be dependent upon our country's current relationship with any foreign government or administration. Were we to attempt to use increased quotas to curry favor with the Mexico government, we are convinced that Mexico would regard an increase of any magnitude as both inadequate and paternalistic. We cannot expect that the Mexican government would express any gratitude by either word or deed, or would believe that it should be grateful.

Question. Would increasing the immigration quota for Mexico help stem the flow of illegal immigrants?

Answer. The size of illegal immigration makes it unlikely that any increase in Mexican quota size which would be seriously considered would affect illegal immigration.

Question. Was Mexico hurt by the imposition of the 20,000 per year quota?

Answer. Immigration was limited by the application of the universal standard to Mexico. However, the quota was imposed with several years' notice, and, rather than penalize Mexico, simply subjected it and other Western Hemisphere countries to the same quota imposed on all other countries.

Question. Does Mexico have a special relationship with the United States which would legitimize its receiving more favorable treatment than other nations?

Answer. If the argument is that Mexico's cultural ties to the United States, and the large number of its descendants now living in the United States, give it the right to special treatment in immigration, that is exactly the rationale for the national origins system which was repudiated in 1965. If the argument for a special relationship is a close history, then why should not the Philippines, allies in World War II and the Vietnam War, receive preference over Mexico, which kept neutral in those wars? If the argument for a special relationship is based simply on geographic proximity, then that proximity already allows Mexico a great advantage in immigration over noncontiguous countries. The question presented by this bill is not whether there should be a special relationship with Mexico, since we shall always have one, but whether we should enlarge Mexico's existing advantage even further.

Question. Will this bill enable thousands who are now living illegally in the United States to regularize their status?

Answer. If that is the aim of the bill, FAIR believes that that problem should be addressed straightforwardly through a proposal for pardon or amnesty for illegal aliens, rather than through increasing immigration quotas.

Question. To what number will total immigration have to be raised by section 3 of this bill in order to accommodate raises in Mexican and Canadian visa quotas in section 4?

Answer. If, to pick a representative number, Canada and Mexico are each allocated 15,000 extra visa numbers, the total immigration quota will have to be raised by a minimum of 42,000 (not 30,000). Because Canada has used no more than 8,000 quota visas per year, the mechanism in section 4 would give Mexico approximately 27,000 visa numbers from Canada in addition to 15,000 extra visa numbers for itself—a total of 42,000.

Question. How would section 4 increase worldwide second-preference waiting times?

Answer. Section 203(a) (2) of the Immigration and Nationality Act specifies that no more than 40 percent of all preference quota visas be allocated to first and second preference immigrants. With the present ceiling of 290,000, no more than 116,000 may be first and second preference, and no more than 20,000 of those 116,000 may be allocated to Mexico, leaving 96,000 for the rest of the world. If the ceiling were raised by 30,000 to 320,000, no more than 128,000 could be first and second preference. But if Mexico were allocated 62,000 visas a year, and all were used for first and second preference quotas, only 66,000 would be available for use by the rest of the world—a cut of 30,000. Even if the worldwide ceiling were increased to 332,000 as suggested by the answer to the preceding question, the cut in first and second preference visas available to nations other than Mexico would be 25,200.

WAITING LISTS : AS OF JULY 1979

Foreign state	Preference ¹						Nonpreference
	1st	2nd	3rd	4th	5th	6th	
All foreign states and dependent areas except those listed below.	C	C	C	C	Aug. 19, 1978	Nov. 1, 1978	U. ²
China	C	Dec. 1, 1978	C	Aug. 1, 1974	Feb. 1, 1973	May 1, 1978	U.
India	C	C	Jan. 1, 1977	C	July 8, 1978	Nov. 1, 1978	U.
Korea	C	Jan. 1, 1971	C	C	Oct. 22, 1977	do	U.
Mexico	C	July 15, 1977	C	Feb. 15, 1978	Nov. 1, 1977	do	U.
Philippines	C	C	Aug. 1, 1969	Feb. 1, 1973	July 22, 1969	Apr. 1, 1978	U.
Anguilla	C	C	C	C	Aug. 1, 1978	June 15, 1977	U.
Antigua	C	Mar. 15, 1978	C	C	Mar. 15, 1976	Nov. 15, 1967	U.
Belize	C	Oct. 1, 1977	C	C	Apr. 1, 1976	Nov. 1, 1978	U.
Hong Kong	C	Sept. 22, 1975	C	Nov. 1, 1974	July 15, 1967	Jan. 22, 1972	U.
Sr. Christopher-Nevis	C	Feb. 22, 1978	C	C	Nov. 15, 1974	July 1, 1967	U.
St. Vincent	C	Aug. 1, 1978	C	C	Aug. 1, 1978	Jan. 15, 1977	U.

¹7th preference numbers are allocated in bulk, quarterly, to Immigration and Naturalization Service.

²Visa Services has determined on basis of demand that 290,000 numerical limit will be reached in fiscal year 1979. Therefore, applicants born in independent countries of Western Hemisphere and Canal Zone (except Mexico, Dominica, St. Lucia), having a priority date prior to July 1, 1975 may be processed under 144,999 recaptured Cuban numbers. No recaptured Cuban numbers allocated to natives of Mexico. Natives of Dominica and St. Lucia may not receive recaptured Cuban numbers because they were not independent countries of Western Hemisphere during period 1968-76.

Source: Visa Services Bulletin, July 1979.

MEXICAN IMMIGRATION: COMPARED TO 21 OTHER COUNTRIES INCLUDING THOSE 20 WITH HIGHEST PERCENTAGE OF IMMIGRATION TO UNITED STATES (INCLUDING MEXICO)

Rank and country	1979 population (millions)	1971-77 percent total immigration
1—Mexico.....	66.0	15.1
2—Philippines.....	47.0	8.1
3—Cuba.....	9.8	7.2
4—South Korea.....	40.0	6.1
5—West Indies.....		5.9
6—Canada.....	24.0	3.9
7—Italy.....	57.0	3.9
8—India.....	670.0	3.5
9—Dominican Republic.....	5.5	3.2
10—Great Britain.....	56.0	3.1
11—Hong Kong.....	4.7	2.8
12—Greece.....	9.4	2.6
13—Portugal.....	9.9	2.6
14—China (including Taiwan).....	1,040.0	2.4
15—West Germany (FRG).....	61.2	1.8
16—Columbia.....	26.1	1.5
17—Haiti.....	5.7	1.3
18—Japan.....	116.0	1.3
19—Ecuador.....	7.8	1.2
20—Spain.....	37.6	1.0
21—Israel.....	3.7	.8

Note: These are the top 20 countries in terms of percentage of total immigrants for the period 1971-77. Their population totals are given for reference purposes.

Country	1979 population (millions)	Immigrants during—		
		1951-70	1971-77	1951-77
China ¹	1,040	44,500	67,100	111,600
India.....	669	29,200	99,600	128,800
Indonesia.....	148	21,686	2,494	24,180
Brazil.....	124	43,100	12,100	55,200
Bangladesh ^{2,3}	88		1,885	1,885
Nigeria ³	82	1,598	4,617	6,215
Pakistan ³	80	5,525	18,391	23,916
Vietnam.....	53	6,900	21,659	28,559
Philippines.....	47	117,700	225,700	343,400
Thailand.....	46	5,384	34,210	39,594
Turkey.....	44	13,600	8,576	22,176
Egypt.....	41	20,317	13,410	33,727
South Korea.....	40	40,700	171,000	217,700
Iran.....	38	13,700	19,600	33,300
Burma ³	34	2,618	5,641	8,259
Ethiopia ³	32	1,159	1,531	2,690
Zaire ³	28	513	265	778
Argentina.....	27	69,200	9,400	78,600
Colombia.....	26	90,000	43,200	133,200
Sudan ³	20	708	326	1,034
Total.....	4 2,707	528,108	766,708	1,294,816
Mexico.....	66	753,700	422,322	1,176,022
Canada.....	24	791,300	114,000	905,300
Total, Mexico/Canada.....	90	1,545,000	536,322	2,081,322

¹ Includes Taiwan.

² For 1951-70, immigrants from Bangladesh are included in the Pakistan figures.

³ Figures for these countries are based on country of birth, rather than country of last permanent residence.

⁴ Billions.

IMMIGRANT NUMBERS FOR OCTOBER 1979
[From The Department of State]

Foreign state	Preference ¹					Nonpref- erence
	1st	2d	3d	4th	5th	6th
All foreign states and dependent areas except those listed below.	C	May 15, 1979	C	C	Sept. 22, 1978	Jan. 1, 1979
China	C	Jan. 8, 1979	C	Oct. 1, 1974	Aug. 15, 1973	Sept. 1, 1977
India	C	May 15, 1979	C	C	Aug. 15, 1978	U
Korea	C	do	C	C	Nov. 22, 1977	U
Mexico	C	Jan. 1, 1971	U	U	U	U
Philippines	C	Aug. 15, 1977	U	U	U	U
Antigua	C	Jan. 1, 1979	U	U	U	U
Belize	C	Jan. 15, 1978	U	U	U	U
Hong Kong	C	Oct. 22, 1975	U	May 22, 1968	Aug. 8, 1967	May 15, 1974
St. Christopher-Nevis	C	Apr. 22, 1978	U	U	U	U
St. Vincent	C	Dec. 8, 1978	U	U	U	U

¹ 7th preference numbers are allocated in bulk, quarterly, to Immigration and Naturalization Service.

² No recaptured Cuban numbers will be allotted pending a final decision in the case of Silva vs Levi.

CA/VO—Sept. 19, 1979.

[The updated visa-figures requested by Senator DeConcini follow:]

U.S. DEPARTMENT OF STATE,
BUREAU OF CONSULAR AFFAIRS,
Washington, D.C.

Visa Services.
No. 15, Vol. IV.

IMMIGRANTS NUMBERS FOR JANUARY 1980

A. STATUTORY NUMBERS

(1) This bulletin summarizes the availability of immigrant numbers during January. Consular officers are required to report to the Department of State all qualified applicants for numerically limited visas; and the Immigration and Naturalization Service reports the demand of all qualified applicants for adjustment of status. Allocations of numbers were made, to the extent possible under the numerical limitations, for the demand received by December 10 in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the class or foreign state or dependent area, in which demand was excessive, was deemed to be oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the statutory or regulatory limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary, during the monthly allotment of numbers to recede a cut-off date, supplemental requests for visa numbers will be honored only if the priority dates fall within the new cut-off date.

(2) Insurances of visas are governed by provisions of section 203(a) of the Immigration and Nationality Act, as amended, which prescribes preference classes as follows:

First preference (unmarried sons and daughters of U.S. citizens): 20 percent of the overall limitation of 290,000 in any fiscal year;

Second preference (spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence): 20 percent of overall limitation; plus any numbers not required for first preference;

Third preference (members of the professions or persons of exceptional ability in the sciences and arts): 10 percent of overall limitation;

Fourth preference (married sons and daughters of U.S. citizens): 10 percent of overall limitation plus any numbers not required by the first three preference categories;

Fifth preference (brothers and sisters of U.S. citizens 21 years of age or over): 24 percent of overall limitations, plus any numbers not required by the first four preference categories;

Sixth preference (skilled and unskilled workers in short supply): 10 percent of overall limitation;

Seventh preference (refugees): 6 percent of overall limitation; non-preference (other immigrants): numbers not used by the seven preference categories.

(3) A labor certification under section 212(a)(14) or satisfactory evidence that the provisions of that section do not apply to the alien's case is a prerequisite for nonpreference classification. Since all beneficiaries of approved third and sixth preference petitions are required to have a labor certification in support of the preference petition, such applicants are thereby entitled also to the nonpreference classification. Therefore, if visas are not available for them within their preference classes, and if nonpreference visas are available for their foreign state or dependent areas, these aliens may apply for nonpreference visas.

(4) Section 203(b) of the Immigration and Nationality Act provides that visas be given to applicants in order of preference classes. However, section 202(e) of the act provides that, whenever the maximum number of visas have been made available to natives of a foreign state or dependent area in any fiscal year, in the next following fiscal year visas will be made available by applying the preference limitations to the foreign state (20,000) or dependent area (600) limitations. Foreign state, China, and dependent area, Hong Kong, listed below benefit under the provisions of section 202(e) of the act.

(5) On the chart below the listing of a date under any class indicates that the class is oversubscribed (see paragraph 1) : "C" means current, i.e., that numbers were available for all qualified applicants; and "U" means unavailable, i.e., that no numbers were available.

Foreign State	Preference ¹						Nonpreference
	1st	2d	3d	4th	5th	6th	
All foreign States and dependent areas except those listed below.....	C	8-22-79	C	C	11-22-78	4-8-79	U
China.....	C	5-22-79	C	12-1-76	3-8-74	5-1-78	U
India.....	C	8-22-79	C	C	11-15-78	U	U
Korea.....	C	8-22-79	C	C	2-8-78	U	U
Mexico.....	C	2-1-74	U	U	U	U	U
Philippines.....	C	12-8-77	U	U	U	U	U
Antigua.....	C	3-1-79	U	U	U	U	U
Belize.....	C	6-1-78	U	U	U	U	U
Hong Kong.....	C	11-15-75	1-1-69	1-1-75	4-1-68	6-1-76	U
St. Christopher-Nevis.....	C	11-1-78	U	U	U	U	U

¹ 7th preference numbers are allocated in bulk, quarterly, to Immigration and Naturalization Service. CA/VO—Dec. 18, 1979.

B. RECAPTURED CUBAN (SILVA) NUMBERS

1. Recaptured Cuban (Silva) numbers may be issued to those principal alien immigrant visa applicants born in independent countries of the Western Hemisphere, who registered with U.S. Consulates between July 1, 1968, and December 31, 1976, inclusive, and their spouses and children who are accompanying or following to join pursuant to 8 U.S.C. sec. 1153(a)(9).

2. The reporting of demand for Recaptured Cuban (Silva) numbers; the allocation of numbers; and the establishing of the cut-off dates listed below follow the procedures outlined on page 1 of this bulletin, paragraph A.1.

Country	Date	Country	Date
Argentina.....	12-1-76	Guatemala.....	6-1-76
Bahamas.....	5-1-75	Guyana.....	1-1-77
Barbados.....	1-1-77	Haiti.....	10-1-76
Bolivia.....	9-1-76	Honduras.....	4-1-76
Brazil.....	1-1-77	Jamaica.....	1-1-77
Canada.....	1-1-77	Mexico.....	7-1-68
Chile.....	11-1-76	Nicaragua.....	11-1-76
Colombia.....	6-1-76	Panama.....	1-1-77
Costa Rica.....	12-1-76	Paraguay.....	1-1-77
Cuba.....	1-1-77	Peru.....	3-1-76
Dominican Republic.....	7-1-76	Surinam.....	1-1-77
Ecuador.....	6-1-76	Trinidad.....	1-1-77
El Salvador.....	3-1-76	Uruguay.....	1-1-77
Grenada.....	3-1-76	Venezuela.....	1-1-77

CA/VO—Dec. 3, 1979.

Senator DeCONCINI. Our next witness is Mr. Michael G. Harpold, director, National Immigration and Naturalization Service Council of the AFL-CIO.

STATEMENT OF MICHAEL G. HARPOLD, DIRECTOR, NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL, AFL-CIO

Mr. HARPOLD. Mr. DeConcini. I am accompanied here today by Ms. Jane McMichaels, who is the director of the legislative department of the American Federation of Federal Employees.

Senator DeCONCINI. Welcome.

Mr. HARPOLD. Also, Mr. John Hanrick, who is the Washington representative of our employee organization.

First of all, I would like to say that Senator Cranston started out very well by referring to this as emergency legislation. We also consider it emergency legislation, mainly because of the family interests involved, but also because of the fact that we as immigration employees are deeply involved.

The situation that confronts us is one that tears not only at our conscience, but also impacts severely upon our ability to do our job, enforcing other provisions of the law and enforcing against more serious violations of the law.

I don't think that anyone would dispute the fact that the separation of family is something that no one can really want to do. We review the existing law as providing exactly that.

PROBLEMS OF CURRENT LAW

Consequently, we feel we have an obligation to come here and tell you if there is something wrong with the law, and urge upon you the necessity of bringing about a legislative redress instead of depending upon the employees of the Immigration and Naturalization Service through exercise of discretion and through administrative action to somehow take up the slack. We have been doing that for years. We are pleased to do it, but we do feel that it needs a legislative approach.

The situation has become particularly exacerbated in recent years, mainly since the enactment of the 1976 amendments. Prior to that we were dealing with a situation where Mexican families were waiting 30 months for the issuance of an immigrant visa to come to the United States. Since that date, and I think it was mostly through legislative oversight, that period of time has grown astronomically to where it is now, over 8 years. The result is that families come anyway. There simply is no wall high enough. There is no law enforceable enough, and there is no system that can interdict this desire of families to reside together. It is a reality that simply has to be faced, and we as enforcement people with the Immigration Service face this situation every day.

We would recommend, however, that—of course, we do view this bill as a relief to the most pressing of the problem. However, we are also looking at the fact that visa numbers are backing up for Hong Kong, for the Philippines, for China, and for other countries.

PROPOSE MAKING SECOND PREFERENCE NONQUOTA

We would simply recommend that across the board we classify the spouses and minor children of immigrants the same as we classify the spouses and minor children of citizens. Simply say that we as a country have a principle, and that principle is called family reunification and that principle is somehow higher than a numerical restriction.

We feel that an approach like this would solve the problem once and for all. However, since we have before us S. 1763, we are pleased to support it.

VISA WAIVERS

I would like to go on to two other elements of S. 1763; one is section 241(f). Section 241(f) deals with waivers of excludability for immigrants who have secured admission through fraud and misrepresentation and are the immediate relatives of citizens or lawful resident aliens.

My immigration job is as an adjudicator. I think I can testify very well to the great controversy and almost annual change in interpretation of that provision. We are concerned about the clarification for one more particular reason. International air travel is up astronomically. At some of our airports of entry this year, nonimmigrant admissions are up 45 percent from last year. The visa office of the Department of State announces that they are going to issue something like 10 million nonimmigrant visas this year.

The task of enforcing or verifying all of these people and all these missions is just too much. So we feel that having it clearly stated that having secured an entry through fraud or misrepresentation is non-waivable, we have been given an additional enforcement tool which will aid us to cope with the workload we have.

STUDENT VISAS

We are also in favor of the second class of nonimmigrant students which the bill would propose. We feel there are distinctions between academic and nonacademic students.

We also feel that it is justifiable to require schools to report non-attendance of students, because we would hate to go back to the system before where we had to do annual extensions of stay.

I have had the experience of adjudicating these applications for an extension of stay 6 months after the fact. By the time we finally get around to issuing a new I-94 for a student who has applied for an extension of stay, he has completed his semester. So, we are not anxious to go back to that system.

Finally, I would say that the provisions which would relieve an applicant for naturalization to bring two witnesses into the offices would be a good one. I don't want to be facetious, but not having to bring two additional people into our offices would certainly make our hallways more passable.

I thank you, Mr. Chairman. I am ready for any question you may ask.

Senator DeCONCINI. Mr. Harpold, we don't have any particular questions. You have answered them well already. We certainly want to indicate that this legislation is remedial in nature and is certainly no criticism of the fine work of the employees of the INS.

I, for one, representing a border State, realize the difficulty and almost untenable position of many of your employees who are on the border and the tremendous pressures, both from this side and from our neighbors to the south, who are constantly pursuing expeditious handling, and even from members of my staff and myself, to process that flood of people who are constantly besieging you. I acknowledge the efficiency of your department under the circumstances under which you operate, and will continue to advance from the Appropriations Committee all the assistance I can.

Mr. Harpold. Thank you.

Senator DeCONCINI. I think the Service is manned and womaned by fine, fine people that are well-intentioned, but just have an overabundance of problems and cases presented to them. That is the problem that your service has to witness and continuously accept criticism from many, many factors or sectors of our economy and even from our neighbors to the south.

We thank you very much for your testimony this morning.

Mr. Harpold. Thank you sir.

[The prepared statement of Mr. Harpold follows:]

PREPARED STATEMENT OF MICHAEL G. HARPOLD

Mr. Chairman, I am pleased as a representative of the employees of the Immigration and Naturalization Service Council to submit our views concerning S. 1763. As I. & N.S. employees, we are vitally interested in immigration reform. The state of the law we enforce and the adequacy of our agency to its task directly impact upon our pride, our morale, and our concerns as citizens of this nation. That the reality of the present situation has outstripped our capacity as an agency of Government to cope is an accepted fact. Consequently, in a year when all others seem content to await the findings of the Select Commission on Immigration and Refugee Policy, we are encouraged that the Judiciary Committee is acting upon legislation, which is so important to the families of Mexican immigrants, as well as the employees of the I. & N.S.

The agony of family separation is a hardship that we feel no thinking American would impose upon another. Yet the reality of existing law does precisely that. We, as enforcers of the laws that you give us, have a special obligation to inform you when it is apparent that elements of those laws have gone awry. I. & N.S. employees are applying that law with compassion and the limits of

their discretionary authority. And we urge the Congress to accept the responsibility which is rightfully yours and correct the law so that the principle of family reunification can become the reality of a united family. Further, we ask that the measures addressed in other portions of the bill, which would improve the efficiency of the I. & N.S. be granted.

Our concern for family reunification was expressed in 1975 as one of four points in an immigration policy resolution adopted by this Council and the National Border Patrol Council. That resolution called for: "A more equitable system of Western Hemisphere immigration eliminating the impetus for families of citizens and lawful resident aliens to assume an illegal status to maintain the family unit and including provisions for relief from deportation for immediate relatives of citizens and lawful resident aliens already in the United States."

That resolution was supported by testimony before the House Subcommittee on Immigration, Citizenship, and International Law on March 12, 1975. Those hearings resulted in the passage of the Immigration and Nationality Act Amendments of 1976, which sought to establish parity between Eastern and Western hemisphere immigration by extending the preference system to the Western hemisphere. It was the hope of many, including ourselves, that by so doing the thirty or more months backlog for the spouses and children of Mexican immigrants would be eliminated.

Unfortunately, the amendments of 1976 did not cure the problem. While extending the preference system to the Western Hemisphere, the act also extended the 20,000 annual limitation for each country. That number was far less than had been historically used by Mexico. Again the backlog of applications from spouses and children of Mexican immigrants grew until in 2 years time, that number now far exceeds the number ever thought possible prior to 1977. Instead of a 2½-year wait, Mexican families must now wait 8½ years.

The hopelessness of legal family reunification for the families of Mexican immigrants is having several unfortunate results. No wall, no law, no system is strong enough to keep families apart. Families are increasingly pursuing the dangerous route of illegal entry into the United States.

Smugglers of people and vendors of phony documents make high profits from this most human of human aspirations, the desire of a family to live together. Still others are driven to fraud and deception. All of these practices constitute a sorry way to begin life in the United States and lessen the respect for the laws of this nation among peoples whom we at the same time hope will be part of the future of this nation.

I. & N.S. employees again feel caught in the middle. We do not seriously believe that the Congress means to keep families apart. Yet the laws that you give us do exactly that. In addition, we see the problem now growing beyond the bounds of Mexican immigration to the countries of the rest of the world as well. There is now a 5-month wait for immigrant visas for the spouses and children of immigrants from most foreign states, 9 months from China, over 2 years from the Philippines and 5 years from Hong Kong.

We would welcome an approach to the problem, which would eliminate any numerical barrier to the reunification of the immediate families of immigrants from all nations. In our opinion, the lifting of numerical restrictions for first and second preference immigrants from all the world would be in order. We support S. 1763 however, in that it is a bill presently before the Congress and offers the most immediate relief to the most serious problem. The granting of more visa numbers to contiguous neighbors would permit families of Mexican immigrants to live together in this country in dignity and with respect for the law.

We are in essential agreement with the remaining portions of the bill. We support the concept of dividing academic students from nonacademic students and the expanded authority of the Attorney General to withdraw school appraisals. This approach permits the I. & N.S. to implement regulations appropriate to each of these respective classes of nonimmigrants. Further, we do not feel that the requirement placed upon the schools to report the nonattendance of a student to be unreasonable or onerous. Schools are making sufficient money from foreign students to be able to afford administrative costs of such a program. The alternative is to go back to a system of annual applications for extension of stay. The I. & N.S. simply does not have the resources to do this, and we feel it only fair that education institutions that are profiting from foreign students share the administrative burden of controlling their stay while here.

One other change which we will mention here is the clarification of section 241(f). While permitting waivers of excludability for immigrants having close family ties who secured entry to the United States by fraud or misrepresentation, this change would deny such relief to nonimmigrants.

We view with alarm the phenomenal growth in the number of nonimmigrant admissions to the United States. Some of our major airports report as much as a 45 percent increase this summer over last. In a recent news release, the visa office stated that 10 million new nonimmigrant visas would be issued this year. The enforcement resources necessary to cope with such an increase are simply not present. Enactment of this section will help our enforcement efforts by serving as a deterrent to those who would first seek admission with a visa obtained under fraudulent pretenses, and then seek to legitimize their status through the medium of a phony marriage.

Other items such as the extension of the validity of a reentry permit to two years and the elimination of the second interview for naturalization will relieve us of additional administrative burdens, which serve little benefit to the overall enforcement of the I. & N. Act. And without being facetious, the elimination of the requirement that a petition for naturalization be "duly verified" will certainly serve to reduce the congestion in the hallways of our already overcrowded offices.

Again, Mr. Chairman, we appreciate the opportunity of appearing here today and are prepared to respond to any questions you may have.

Senator DECONCINI. We will now hear from Mr. Michael Burger, distinguished attorney from Montreal, Quebec, Canada. Mr. Burger has extensive experience in Canadian immigration into the United States.

Mr. Burger, we thank you very much for being with us today and look forward to your testimony.

If you have a prepared statement, we will enter it in the record at the end of your oral testimony.

STATEMENT OF E. MICHAEL BURGER, QUEEN'S COUNCIL, MONTREAL

Mr. BURGER. Mr. Chairman, I was told only yesterday, late Wednesday afternoon, that is, the day before yesterday, I had a deportation hearing, one which I lost, by the way—

Senator DECONCINI. It does happen, I guess. [Laughter.]

Mr. BURGER [continuing]. That I would be allowed to testify.

Senator DECONCINI. We are very pleased to have you here. For that matter, the record will remain open for 7 days from today if you want to add any formal statement. We will be glad to include it in the record, if you would send it to us.

Mr. BURGER. Thank you, Mr. Chairman. I will then speak from notes.

Senator DECONCINI. That is fine. Please proceed.

Mr. BURGER. My name is E. Michael Burger, Queen's Council, attorney at law, Montreal, Quebec. I think, Mr. Chairman, it was Harry Golden who some years ago wrote a book called "Only in America." I would think that perhaps only in America, and perhaps only in Canada, would it be possible for a foreigner like myself to be invited to address an important legislative committee on such an important matter as immigration.

We know that one of the prerequisites of national sovereignty is the absolute right of a country to decide whom it may admit on a temporary or a permanent basis.

I can only say that your country is perhaps one of the few where a person like myself could, in a sense, come before you as a suppliant

and be allowed to take up the time you are giving me to give you some Canadian input.

Senator DeCONCINI. Mr. Burger, just let me interrupt you a minute. You are not the exception. Last year when I held hearings on the administration's immigration bill, we had a number of witnesses in Arizona from Mexico that came forward, and some from other countries. I don't know if we are the exception, but we welcome hearing from our neighbors. We realize our judgments here affect our neighboring countries, particularly those to the north and south, immensely.

We may not always abide by what your suggestions are, but at least we want to have the availability of giving them serious consideration. We welcome you here just as much as you are pleased to be here.

Mr. BURGER. Thank you, Mr. Chairman.

I would like the record to indicate that I, of course, speak for no one but myself. I am before you as a private individual and represent neither vested nor divested or unvested interests.

CANADIAN IMMIGRATION POLICIES

I have the opportunity, of course, to listen to previous witnesses and their points. With your permission, I will make a broader ranging comment than I ordinarily would have made.

Allusion was made by a previous witness to the question of visitors' visas. There are many countries, the presence of which do not require visitors' visas to enter Canada. There is a schedule II, which is attached to the Immigration Act, 1976, which went into effect on April 10, 1978.

With your consent, Mr. Chairman, I will attach the latest updated schedule, which was recently amended, as part of my presentation.

U.S. EXCLUSION LAWS

Allusion was also made to the Helsinki Conference and the adherence of the United States to that conference. You know, there is in your law, section 212(a) (28), and I think that a phrase from that law was the title of a Broadway play. That phrase is, "Are you now or have you ever been." It alludes specifically to Canadian citizens, specifically to persons who wish to enter the United States as visitors. I am referring now to visitors only, who at one time may have been members of the Communist Party or a left-wing party.

It matters not whether they were deliberate members or innocent members, voluntary members or involuntary members; they must apply for special permission annually, for temporary admission to the United States.

When I tell you, sir, that as recently as 3 weeks ago, three Canadian citizens, in the late fifties and upper sixties in age, who perhaps were members of a "progressive" organization or group when they were attending college in the thirties or forties, were stopped and came in to see me to file what is called a 212(d) (3) application for advance permission to enter your country as a nonimmigrant.

Many of these people are retirees as visitors to a country; many of them are visitors to your country as most successful businessmen. It is an embarrassment to have to submit affidavits, letters of reference,

and to have their fingerprints taken, and to do this on an annual basis.

Perhaps this committee might at some time address itself to amending this legislation and to feel that the efflux of time will have cured the offense of so many of these people from having thought wrongly, in the opinion of persons who perhaps might have a difference of opinion.

CANADIAN POLICY TOWARD REFUGEES

Allusion was also made, Mr. Chairman, to the question of refugees. In Canada, my country, I am proud to say, has a record that is quite peerless in the area of refugees, and currently we will admit into Canada Vietnamese refugees between now and the end of 1980.

Bearing in mind that your population is 10 times ours, you can realize the fortunate generosity of Canada's gesture. Bearing in mind on the other level, as we will admit 105,000 immigrants to Canada in fiscal year 1979, which will be equivalent again, on a proportionate gesture, of your country admitting 1 million immigrants.

EFFECT OF PENDING BILL ON CANADA

Canada will not benefit from the increased allocation of numbers by the proposed amendment to S. 1763, in my opinion.

In 1968, you admitted 38,000 Canadians for permanent residence into your country. As of June 30, 1976, you admitted 7,600. Now your fiscal year changed, with all respect to Mr. Conner, and it ends in September. The fiscal year starts at October 1, and as of September 30, 1977, you admitted a total of 13,000 immigrants from Canada into the United States, including 1,246 who adjusted their status while they were in your country.

We understand that the statistics for 1978 will only be available next year. So, we won't benefit obviously from even the 20,000 numbers that you generously allotted to us. But that shouldn't deter you from giving 15,000 additional numbers next year.

BACKLOG IN NONPREFERENCE NUMBERS

What you can do for Canadians, in my opinion, sir, is this. We have many Canadians who fall into the nonpreference category. They are retirees and they are investors. The nonpreference category is not available. We understand that if the principle of proration is introduced into your system of numbers allocation next year, then nonpreference numbers may never be available.

We would believe that if remedial legislation is being contemplated, that numbers be reallocated specifically to the nonpreference category. I think one of the previous witnesses, Mr. Chairman, referred to that concept as well.

Give more numbers to the nonpreference category and, therefore, curtail the waiting factor. The first preference, I was just checking this with Mr. Maury Roberts a few minutes ago, the first preference has been current for many, many years and there you allot 20 percent of the total number of 290,000 per annum.

If that allocation is never reached, is it not possible to suggest to take 10 percent from that number? You won't reach the feeling that at least you will make a positive use of unused numbers.

SPECIAL CATEGORY FOR INVESTORS AND RETIREES

Alternatively, is it not possible to create a special category, category 6-A, to take care of your investors and of your retirees and allocate to them let us say approximately 10 percent of the total, maybe even 5 percent will do.

You see, when a person invests an amount, a minimum amount a person must invest in your country to qualify in that category, he can't go in and supervise his investment. He is stopped at the border crossing point. What are you doing, Mr. Burger. Why are you going to Miami or Chicago or New York? What is your business?

Again, we have those cases in our office where so many of them are barred at ports of entry, and they cannot protect their investments and they can't continue to give the employment they are giving to American citizens and American residents.

This is a matter which the Association of Immigration and Nationality Lawyers has taken up at the central office, sir, for the past few years. I believe the time has come that there should be remedial legislation.

QUESTION OF QUEBEC

Let me address myself for a moment to a recent situation in history. I don't know whether 1976 has some particular magnetism to the forces of history.

You had a significant, traumatic experience in 1776. We, in the Province of Quebec had a very traumatic experience on November 15, 1976. On that date there was elected into our province the party dedicated to the proposition that Quebec should become an independent province in Canada.

At this moment, as we face a referendum on that issue in our Province for the next 6 months, there is a lot of concern in Quebec and in Canada as to the future of our country.

I don't want to suggest that there will be refugees from Canada streaming into Vermont, or Plattsburg, New York, crossing the International Peace Bridge or so on. But I do suggest that your friendly neighbor to the north who is your best customer and with whom you have such generous and continuing cultural and other affinities, should attract the special consideration of the Immigration Service in the areas to which I have alluded.

I also think it would not be unwarranted to suggest that more availability be created for sixth preference categories to Canadians, or that is made possible through the group A of that section which allows statutory certification.

But I think there should be an interplay between sixth and third, in order to allow more Canadians who qualify as persons with managerial experience or with executive qualifications to more easily enter your country as L-1 transferees and ultimately adjust the status if it is their desire to remain permanently in your country.

THREE AREAS NEED REFORM

There are three areas, Mr. Chairman, to which I would commend your interest.

First, investors; second, retirees; and third, those who are in the managerial and executive categories.

I sense, sir, that listening to the other witnesses gave me a chance to make a wider ranging comment than I would have made. I would like to close on this note because I have been thinking about it.

PRAISE FOR IMMIGRATION SERVICE

I want to say a good word for the staff of the U.S. Immigration and Naturalization Service. I have dealt with them at many, many ports of entry. I have visited some of the posts in various parts of your country. I would say that as a group, it is a good group. It is a hard-working group. It is a dedicated group, but sir, it is an over-worked group. They lack space. They lack professional staff, and they lack certain technology.

So, if as a one-time shot, sir, you can also think in terms of expanding the budget, therefore, I think you will not only continue to maintain a high efficient morale of your service, but you will at the same time perhaps enable more visas to be granted, more efficiently and more quickly to all who are entitled to them.

Again, thank you for listening to me.

Senator DECONCINI. Mr. Burger, thank you. I want to pay special recognition to Canada, for indeed, you point out well your willingness to share in the burden of international refugees. The immigration spirit of Canada and the United States I think is something we can each be proud of from the standpoint of our country.

Your points are well taken and will be given careful consideration by the committee. Also, your statement at the end regarding the U.S. Immigration Service is particularly welcome by this Senator who has continuously attempted to expand financial assistance in our budget process here for the INS.

We certainly extend to you our thanks. I know Senator Kennedy cannot be here today, but he would want me to pay particular appreciation to you for being here and giving us your views of this legislation and some others. They are very good suggestions.

Mr. BURGER. Thank you Senator.

Senator DECONCINI. Thank you.

Senator DECONCINI. Our final witness is Sister Adela Arroyo. Sister Arroyo works for the Catholic Service for Immigrants, San Antonio, Tex.

Sister, we are very pleased to have you with us today.

STATEMENT OF SISTER ADELA ARROYO, CATHOLIC SERVICE FOR IMMIGRANTS, SAN ANTONIO, TEX.

Sister ARROYO. Thank you, Mr. Chairman. I have with me today two members of the staff from the U.S. Catholic Conference, Washington, D.C. Mary Murphy, to my right and Jules Noland, to the left. In the audience is a member of the staff from the Conference for Office of Hispanic Affairs, Ms. Rose Salazar. I have a statement which I have prepared which I will submit for the record afterward.

Mr. Chairman, my name is Sister Adela Arroyo, a Daughter of Charity of St. Vincent de Paul. I am the directress of the Catholic Services for Immigrants Office, which is located in San Antonio, Tex.

The office was initiated in 1973 by the then Auxiliary Bishop Patrick F. Flores. It operates within the jurisdiction of the archdiocese of San Antonio and it is affiliated to the U.S. Catholic Conference-Migration and Refugee Services. The office is duly accredited by the Department of Justice, Board of Immigration Appeals. The agency serves all, regardless of color, race or creed.

The new archbishop of San Antonio, Most Reverend Patrick F. Flores, expressed regret in not being able to be here today. In his behalf and those we serve, I appreciate the opportunity to make the following comments on increasing the ceiling of visas for immigrants born in foreign contiguous territories.

CATHOLIC CHURCH'S CONCERN OVER IMMIGRATION REFORM

Presently Canada and Mexico each have the same 20,000 annual visa allotment as all other countries, this is less than the number they had previously.

The administration testified in favor of a greater allotment of visas. It seems to me that this is in keeping with a good neighbor policy.

Senate bill 1763, affords a remedy to the serious problem whereby every preference is greatly backlogged, thus causing families to be split. It is ironic to be making preparations to celebrate in 1980 the "Year of the Family" when in reality the inconsistency of immigration laws and practices are causing the separation of families.

On a number of occasions during the past several years the bishops of the United States have spoken out about the need for a humane and just approach in our Government's policies established to solve current national and international problems.

The church today is also, greatly concerned over the moral and social issues affecting the family. The immigrant, regardless of his or her legal status forms a part of the family.

What happens to one member affects the whole family. How can a family keep together if it lives in continuous fear that one of the loved ones might be forced to leave the country. This is the present situation of many who have filed petitions under a preference.

Due to the fact that the measly number of 20,000 visas allotted has long been exhausted, the beneficiaries are being obligated to depart. The separation brings about numerous problems. For the record, I will cite some concrete examples.

HUMAN STORIES ON THE NEED FOR IMMIGRATION REFORM

A permanent resident husband petitioned for his alien wife and child. They have another child born in the United States. As the availability of visas is so backlogged, the alien wife and child had to return to their home country. The U.S. citizen child is 2 months old, so the mother deemed it necessary to take the child with her. The father had to choose whether to remain in the United States or leave. By leaving he would impede the accumulation of 5 years residency requirement for naturalization.

If he chose to remain he would sacrifice the unity of the family. With the hopes that somehow his wife would soon get her visa, he chose to remain.

The split family unit is causing extreme hardships on all. He maintains a tiny apartment and does his own cooking. There is every indication that his life which is all he can—is quite lonely.

Once a month he goes to see his family which is all he can afford as he is carrying the burden of maintaining two homesteads.

One might ask what effect does the prolonged separation have? The wife carries the total responsibility of rearing the children. The absence of the father is causing the children to react negatively. They miss the warmth, love, and caring presence of the father.

Much is being said about child abuse and child neglect. Yet, present immigration laws and policies are contributing to frustrations which cause persons to project their feelings and to take it out on the children.

It is said that absence makes the heart grow fonder, but fonder of another. This is the core of a grave moral issue of which Congress cannot afford to be blind to. Having to wait 7 and more years to get a visa is most unjust to the integrity of the family.

Another case to be cited is that of a son of a widowed permanent resident mother. The petition has been on file for some time but due to the backlog, the son was obliged to leave the country. All his family is legally in the United States but he had to go. He is living with friends but he misses being with his family.

How long will he endure the separation remains to be seen. As blood is thicker than water, he will probably return illegally to the United States.

IMMIGRATION POLICIES AND FAMILY UNITY

At the National Conference of Catholic Charities, President Carter stated that the goals of the White House Conference on the Family for 1980 is the family unit, that it is the fabric that keeps a society healthy. Disintegration of the family is causing society to fall apart. Crime, drugs, delinquency are its results.

The Catholic Services for Immigrants is a small office but it serves a large area. In the 6 years it has been in operation we have served over 10,000 families. I have witnessed a great deal of suffering caused by the separation of families. It hurts to see energetic, honest, hard-working people being torn apart from their families and subsequently succumb under the unjust weight and demands of the immigration laws. I visit the jail and it is heartbreaking to see aliens incarcerated because they could not bear the separation from their family and returned illegally to be with them.

The unavailability of visas is causing an increase of illegal entries. It is, therefore, imperative that Congress becomes aware of the effects that the separation of the families is bringing about.

In conclusion, Mr. Chairman, I support the bill, S. 1763, for its human dimensions and concerns. As we prepare to celebrate the "Year of the Family," I urgently plead to you in behalf of the thousands of families who are being separated or in constant fear of being separated. Let us listen to the cry of the people and act accordingly by granting a greater number of visas so that alien families can join us in truly celebrating the "Year of the Family."

I thank you for your concern. I will gladly entertain any questions. Thank you.

HUMANITARIAN DIMENSIONS OF PENDING BILL

Senator DeCONCINI. Sister, thank you for your thoughtful and provocative statements. I think you underline so very well the heart of the purpose, and maybe the main thrust of this legislation is indeed humanitarian in nature, to relieve a very, very pressing and urgent problem, particularly to our neighbors to the south, one that we might wish would go away with the coming sunrise, but does not go away, only becomes more complicated and more complex and more devastating to those who are caught up in the problem.

Your statement is greatly appreciated. I have no questions for you and your panel. We want to thank you for taking the time to put together this statement, and your continued interest in this area.

Sister ARROYO. Thank you, Mr. Chairman.

[The prepared statement of Sister Arroyo follows:]

PREPARED STATEMENT OF SISTER ADELA ARROYO

Mr. Chairman, my name is Sister Adela Arroyo, a Daughter of Charity of St. Vincent de Paul. I am the directress of the Catholic Services for Immigrants office, it is located in San Antonio, Tex. The office was initiated in 1973 by the then Auxiliary Bishop Patrick F. Flores. It operates within the jurisdiction of the archdiocese of San Antonio and it is affiliated to the U.S. Catholic Conference-Migration and Refugee Services. The office is duly accredited by the Department of Justice Board of Immigration Appeals. The agency serves all regardless of color, race, or creed.

The new archbishop of San Antonio, Most Reverend Patrick F. Flores, expressed regret in not being able to be here today. In his behalf and those we serve I appreciate the opportunity to make the following comments on increasing the ceiling of visas for immigrants born in foreign contiguous territories. Presently Canada and Mexico each have the same 20,000 annual visa allotment as all other countries, this is less than the number they had previously. The administration testified in favor of a greater allotment of visas. It seems to me that this is in keeping with a good neighbor policy.

Senate bill 1763 affords a remedy to the serious problem whereby every preference is greatly backlogged, thus causing families to be split. It is ironic to be making preparations to celebrate in 1980 the "Year of the Family" when in reality the inconsistency of immigration laws and practices are causing the separation of families.

On a number of occasions during the past several years the bishops of the United States have spoken out about the need for a humane and just approach in our government's policies established to solve current national and international problems. The church today is also, greatly concerned over the moral and social issues affecting the family. The immigrant, regardless of his/her legal status forms a part of the family. What happens to one member affects the whole family. How can a family keep together if it lives in continuous fear that one of the loved ones might be forced to leave the country? This is the present situation of many who have filed petitions under a preference. Due to the fact that the measly number of 20,000 visas allotted has long been exhausted the beneficiaries are being obliged to depart. The separation brings about numerous problems. For the record I will cite some concrete examples.

A permanent resident husband petitioned for his alien wife and child. They have another child born in the United States. As the availability of visas is so backlogged, the alien wife and child had to return to their home country. The U.S. citizen child is 2 months old so the mother deemed it necessary to take the child with her. The father had to choose whether to remain in the United States or leave. By leaving he would impede the accumulation of 5 years' residency requirement for naturalization. If he chose to remain he would sacrifice the unity of the family. With the hopes that somehow his wife would soon get her visa, he chose to remain. The split family unit is causing extreme hardships on all.

He maintains a tiny apartment and does his own cooking. There's every indication that his life is quite lonely. Once a month he goes to see his family which is all he can afford as he is carrying the burden of maintaining two homesteads. One might ask what affect does the prolonged separation have? The wife carries the total responsibility of rearing the children. The absence of the father is causing the children to react negatively. They miss the warmth, love, and caring presence of the father.

Much is being said about child abuse and child neglect. Yet, present immigration laws and policies are contributing to frustrations which cause persons to project their feelings and to take it out on the children. It is said that absence makes the heart grow fonder, but fonder of another. This is the core of a grave moral issue of which Congress cannot afford to be blind. Having to wait 7 and more years to get a visa is most unjust to the integrity of the family.

Another case to be cited is that of a son of a widowed permanent resident mother. The petition has been on file for some time but due to the backlog the son was obliged to leave the country. All his family is legally in the United States but he had to go. He is living with friends but he misses being with his family. How long will he endure the separation remains to be seen. As blood is thicker than water he will probably return illegally to the United States.

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In conclusion, Mr. Chairman, I support the bill S. 1763 for its human dimensions and concerns. As we prepare to celebrate the "Year of the Family" I urgently plea to you in behalf of the thousands of families who are being separated or in constant fear of being separated. Let us listen to the cry of the people and act accordingly by granting a greater number of visas so that alien families can join us in truly celebrating the "Year of the Family."

I thank you for your concern.

Senator DeCONCINI. This will conclude the hearings on this legislation. The record will remain open for 7 days. Anybody who testified who wants to make any alterations or changes in their testimony can submit it to the Judiciary Committee staff.

The committee will stand in recess subject to the call of the Chair.
[Whereupon, at 11:58 a.m., the hearing adjourned.]

APPENDIX I

TEXT OF 1763, AND SECTION-BY-SECTION ANALYSIS

96TH CONGRESS
1ST SESSION

S. 1763

To amend the Immigration and Nationality Act to improve the efficiency of the Immigration and Naturalization Service, and to establish a different numerical limitation for immigrants born in foreign contiguous territories, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18 (legislative day, JUNE 21), 1979

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to improve the efficiency of the Immigration and Naturalization Service, and to establish a different numerical limitation for immigrants born in foreign contiguous territories, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Immigration and Nation-
4 ality Efficiency Act of 1979".
5 That section 101(a)(15) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1101(a)(15)) is amended—

1 (1) by amending subparagraph (F) to read as fol-
2 lows:

3 “(F)(i) an alien having a residence in a foreign
4 country which he has no intention of abandoning, who
5 is a bona fide student qualified to pursue a full course
6 of study and who seeks to enter the United States
7 temporarily and solely for the purpose of pursuing such
8 a course of study at an established college, university,
9 seminary, conservatory, academic high school, elemen-
10 tary school, or other academic institution in the United
11 States, particularly designated by him and approved by
12 the Attorney General after consultation with the Sec-
13 retary of Health, Education, and Welfare, which insti-
14 tution or place of study shall have agreed to report to
15 the Attorney General the termination of attendance of
16 each nonimmigrant student, and if any such institution
17 of learning or place of study fails to make reports
18 promptly, the Attorney General shall have the authori-
19 ty, for this or any other cause satisfactory to him to
20 withdraw the approval of any school previously ap-
21 proved by him, and (ii) the alien spouse and minor chil-
22 dren of any such alien if accompanying him or follow-
23 ing to join him.”; and

1 (2) by striking out the period at the end of sub-
2 paragraph (L) and inserting in lieu thereof a semicolon
3 and the following:

4 “(M)(i) an alien having a residence in a foreign
5 country which he has no intention of abandoning and
6 who seeks to enter the United States temporarily and
7 solely for the purpose of pursuing a full course of study
8 at an established vocational, language, or other recog-
9 nized nonacademic institution in the United States,
10 particularly designated by him and approved by the
11 Attorney General after consultation with the Secretary
12 of Health, Education, and Welfare, which institution
13 shall have agreed to report to the Attorney General
14 the termination of attendance of each nonimmigrant
15 nonacademic student, and if any such institution fails
16 to make reports promptly the Attorney General shall
17 have the authority, for this or any other cause satisfac-
18 tory to him, to withdraw the approval of any school
19 previously approved by him, and (ii) the alien spouse
20 and minor children of any such alien if accompanying
21 or following to join him.”.

22 SEC. 2. Section 101(a)(19) of that Act (8 U.S.C.
23 1101(a)(19)) is amended—

4

1 (1) by striking out “, notwithstanding the provi-
2 sions of any treaty relating to military service,” after
3 “means”; and

4 (2) by striking out “, or was at any time,” after
5 “an individual who is”.

6 SEC. 3. Section 201(a) of that Act (8 U.S.C. 1151) is
7 amended by striking out “two hundred and ninety thousand”
8 and inserting in lieu thereof (number to be inserted at a later
9 date).

10 SEC. 4. Section 202 of that Act (8 U.S.C. 1152) is
11 amended—

12 (1) by inserting “(other than a foreign state which
13 is a foreign contiguous territory)” immediately after
14 “foreign state” in the proviso to subsection (a);

15 (2) by adding at the end of subsection (a) the fol-
16 lowing: “*Provided further*, That the total number of
17 immigrant visas and the number of conditional entries
18 made available to the natives of all foreign contiguous
19 territories under paragraphs (1) through (8) of section
20 203(a) shall not exceed (number to be inserted at a
21 later date) in any fiscal year, except that any of the
22 (number to be inserted at a later date) visas unused by
23 one contiguous foreign state in a prior fiscal year shall
24 be made available to the other contiguous foreign state
25 in the subsequent fiscal year (in addition to its annual

5

1 allotment of (number to be inserted at a later date)
2 visas)"; and

3 (3) by striking out all through the colon in subsec-
4 tion (e) and inserting in lieu thereof the following:

5 "(e) Whenever the maximum number of visas or condi-
6 tional entries has been made available under section 202 to
7 natives of any single foreign state as defined in subsection (b)
8 of this section, any dependent area as defined in subsection
9 (c) of this section, or all foreign contiguous territories as de-
10 fined in subsection (a) of this section in any fiscal year, in the
11 next following fiscal year a number of visas and conditional
12 entries, not to exceed twenty thousand in the case of a for-
13 eign state (other than foreign state which is a foreign contig-
14 uous territory), six hundred in the case of a dependent area,
15 or (number to be inserted at a later date) in the case of all
16 foreign contiguous territories, shall be made available and al-
17 located as follows:".

18 SEC. 5. Section 212 of that Act (8 U.S.C. 1182) is
19 amended—

20 (1) by amending paragraph (17) of subsection (a)
21 to read as follows:

22 "(17) Aliens who have been arrested and deported, or
23 who have fallen into distress and have been removed pursu-
24 ant to this or any prior Act, or who have been removed as
25 alien enemies, or who have been removed at Government

6

1 expense in lieu of deportation pursuant to section 242(b), and
2 who seek admission within five years of such deportation or
3 removal, unless prior to their embarkation or reembarkation
4 at a place outside the United States or their attempt to be
5 admitted from foreign contiguous territory, the Attorney
6 General has consented to their applying for admission;"; and
7 (2) by adding at the end thereof the following:

8 " (k) The Attorney General may admit to the United
9 States any otherwise admissible alien in possession of an im-
10 migrant visa who is inadmissible under paragraphs (14), (20),
11 or (21) of section 212(a), if satisfied that such inadmissibility
12 was not known to and could not have been ascertained by the
13 exercise of reasonable diligence by such immigrant prior to
14 the departure of the vessel or aircraft from the last port out-
15 side the United States and outside foreign contiguous terri-
16 tory, or, in the case of an immigrant coming from foreign
17 contiguous territory, prior to the application of the immigrant
18 for admission."

19 SEC. 6. Section 223(b) of that Act (8 U.S.C. 1203(b)) is
20 amended to read as follows:

21 " (b) If the Attorney General finds (1) that the applicant
22 under subsection (a)(1) has been lawfully admitted to the
23 United States for permanent residence, or that the applicant
24 under subsection (a)(2) has since admission maintained the
25 status required of him at the time of his admission and such

1 applicant desires to visit abroad and to return to the United
2 States to resume the status existing at the time of his depar-
3 ture for such visit, (2) that the application is made in good
4 faith, and (3) that the alien's proposed departure from the
5 United States would not be contrary to the interests of the
6 United States, the Attorney General may, in his discretion,
7 issue the permit, which shall be valid for not more than two
8 years from the date of issuance and shall not be renewable.
9 The permit shall be in such form as prescribed by regulation
10 for the complete identification of the alien.”.

11 SEC. 7. Section 237 of that Act (8 U.S.C. 1227) is
12 amended—

13 (1) by amending subsection (a) to read as follows:

14 “(a)(1) Any alien (other than an alien crewman) arriving
15 in the United States who is excluded under this Act, shall be
16 immediately deported in accommodations of the same class in
17 which he arrived, unless the Attorney General, in an individ-
18 ual case in his discretion, concludes that immediate deporta-
19 tion is not practicable or proper.

20 “(2) Deportation shall be to the country in which the
21 alien boarded the vessel or aircraft on which he arrived in the
22 United States, unless the alien boarded such vessel or aircraft
23 in foreign territory contiguous to the United States or in any
24 island adjacent thereto or adjacent to the United States and
25 the alien is not a native, citizen, subject, or national of, or

1 does not have a residence in, such foreign contiguous terri-
2 tory or adjacent island, in which case the deportation shall
3 instead be to the country in which is located the port at
4 which the alien embarked for such foreign contiguous terri-
5 tory or adjacent island.

6 “(3) The cost of the maintenance, including detention
7 expenses and expenses incident to detention of any such alien
8 while he is being detained, shall be borne by the owner of the
9 vessel or aircraft on which he arrived, except that the cost of
10 maintenance (including detention expenses and expenses inci-
11 dent to detention while the alien is being detained prior to
12 the time he is offered for deportation to the transportation
13 line which brought him to the United States) shall not be
14 assessed against the owner of such vessel or aircraft if—

15 “(A) the alien was in possession of a valid, unex-
16 pired immigrant visa,

17 “(B) the alien (other than an alien crewman) was
18 in possession of a valid, unexpired nonimmigrant visa
19 or other document authorizing such alien to apply for
20 temporary admission to the United States or an unex-
21 pired reentry permit issued to him, and (i) such appli-
22 cation was made within one hundred and twenty days
23 of the date of issuance of the visa or other document,
24 or in the case of an alien in possession of a reentry
25 permit, within one hundred and twenty days of the

1 date on which the alien was last examined and ad-
2 mitted by the Service, or (ii) in the event the applica-
3 tion was made later than one hundred and twenty days
4 of the date of issuance of the visa or other document or
5 such examination and admission, if the owner of such
6 vessel or aircraft established to the satisfaction of the
7 Attorney General that the ground of exclusion could
8 not have been ascertained by the exercise of due dili-
9 gence prior to the alien's embarkation, or

10 "(C) the person claimed United States nationality
11 or citizenship and was in possession of an unexpired
12 United States passport issued to him by competent au-
13 thority.";

14 (2) by inserting immediately after subsection (a)
15 the following:

16 "(b) If the government of the country designated in sub-
17 section (a) will not accept the alien into its territory, the
18 alien's deportation shall be directed by the Attorney General,
19 in his discretion and without necessarily giving any priority
20 or preference because of the order as herein set forth to—

21 "(1) the country of which the alien is a subject,
22 citizen, or national;

23 "(2) the country in which he was born;

24 "(3) the country in which he has a residence; or

1 “(4) any country which is willing to accept the
2 alien into its territory, if deportation to any of the
3 countries under paragraphs (1), (2), and (3) is impracti-
4 cable, inadvisable, or impossible.”;

5 (3) by redesignating subsection (b) as subsection
6 (c) and amending it to read as follows:

7 “(c)(1) It shall be unlawful for any master, commanding
8 officer, purser, person in charge, agent, owner, or consignee
9 of any vessel or aircraft to—

10 “(A) refuse to receive any alien (other than an
11 alien crewman), ordered deported under this section
12 back on board such vessel or aircraft or another vessel
13 or aircraft owned or operated by the same interest;

14 “(B) fail to detain any alien (other than an alien
15 crewman) on board any such vessel or at the airport of
16 arrival of the aircraft when required by this Act or if
17 so ordered by an immigration officer, or to fail or
18 refuse to deliver him for medical or other inspection, or
19 for further medical or other inspection, as so ordered
20 by such officer;

21 “(C) refuse or fail to remove him from the United
22 States in the country to which his deportation has been
23 directed;

1 “(D) fail to pay the cost of his maintenance while
2 being detained as required by this section or section
3 233 of this Act;

4 “(E) take any fee, deposit, or consideration on a
5 contingent basis to be kept or returned in case the
6 alien is landed or excluded; or

7 “(F) knowingly bring to the United States any
8 alien (other than an alien crewman) excluded or arrest-
9 ed and deported under any provision of law until such
10 alien may be lawfully entitled to reapply for admission
11 to the United States.

12 “(2) If it appears to the satisfaction of the Attorney
13 General that any such master, commanding officer, purser,
14 person in charge, agent, owner, or consignee of any vessel or
15 aircraft has violated any of the provisions of this section or of
16 section 233 of this Act, such master, commanding officer,
17 purser, person in charge, agent, owner, or consignee shall
18 pay to the district director of customs of the district in which
19 the port of arrival is situated or in which any vessel or air-
20 craft of the line may be found, the sum of \$300 for each
21 violation. No such vessel or aircraft shall have clearance from
22 any port of the United States while any such fine is unpaid or
23 while the question of liability to pay such fine is being deter-
24 mined, nor shall any such fine be remitted or refunded,
25 except that clearance may be granted prior to the determina-

1 tion of such question upon the deposit with the district direc-
2 tor of customs of a bond or undertaking approved by the
3 Attorney General or a sum sufficient to cover such fine.”;

4 (4) by redesignating subsection (c) as subsection
5 (d) and amending it to read as follows:

6 “(d) An alien shall be deported on a vessel or aircraft
7 owned by the same person who owns the vessel or aircraft on
8 which such alien arrived in the United States, unless it is
9 impracticable to so deport the alien within a reasonable time.
10 The transportation expense of the alien’s deportation shall be
11 borne by the owner of the vessel or aircraft on which the
12 alien arrived. If the deportation is effected on a vessel or
13 aircraft not owned by such owner or owners, the transporta-
14 tion expense of the alien’s deportation may be paid from the
15 appropriation for the enforcement of this Act and recovered
16 by civil suit from any owner, agent, or consignee of the
17 vessel or aircraft.”; and

18 (5) by redesignating subsections (d) and (e) as sub-
19 sections (e) and (f), respectively.

20 SEC. 8. Section 241(f) of that Act (8 U.S.C. 1251(f)) is
21 amended to read as follows:

22 “(f)(1) The provisions of this section relating to the de-
23 portation of aliens within the United States on the ground
24 that they were excludable at the time of entry as aliens who
25 have sought to procure or have procured visas or other docu-

1 mentation, or entry into the United States, by fraud or mis-
2 representation, whether willful or innocent, may, in the dis-
3 cretion of the Attorney General, be waived for any alien
4 who—

5 “(A) is the spouse, parent, or child of a United
6 States citizen or of an alien lawfully admitted to the
7 United States for permanent residence, and

8 “(B) was in possession of an immigrant visa or
9 equivalent document and was otherwise admissible to
10 the United States at the time of such entry except for
11 those grounds of inadmissibility specified under para-
12 graphs (14), (20), and (21) of section 212(a) which
13 were a direct result of that fraud or misrepresentation.

14 “(2) A waiver of deportation for fraud or misrepresenta-
15 tion granted under paragraph (1) shall also operate to waive
16 deportation based on the grounds of inadmissibility at entry
17 described under subparagraph (B) directly resulting from such
18 fraud or misrepresentation.”.

19 SEC. 9. Section 244(c) of that Act (8 U.S.C. 1254(c)) is
20 amended to read as follows:

21 “(c) Upon application by any alien who is found by the
22 Attorney General to meet the requirements of subsection (a)
23 of this section the Attorney General may, in his discretion,
24 suspend deportation of such alien, cancel the deportation pro-

1 ceedings, and adjust the status to that of an alien lawfully
2 admitted for permanent residence.”.

3 SEC. 10. Section 244(d) of that Act (8 U.S.C. 1254(d))
4 is amended to read as follows:

5 “(d) Upon the cancellation of deportation in the case of
6 any alien under this section, the Attorney General shall
7 record the alien’s lawful admission for permanent residence
8 as of the date the cancellation of deportation of such alien is
9 made, and unless the alien is an immediate relative within
10 the meaning of section 201(b), the Secretary of State shall
11 reduce by one the number of preference immigrant visas au-
12 thorized to be issued under section 203(a) or 202(e) for the
13 fiscal year then current.”.

14 SEC. 11. Section 244(f) of that Act (8 U.S.C. 1245(f)) is
15 amended to read as follows:

16 “(f) The provisions of subsection (a) of this section shall
17 not apply to an alien who—

18 “(1) entered the United States as a crewman sub-
19 sequent to June 30, 1964,

20 “(2) was admitted to the United States as a non-
21 immigrant exchange alien as defined in section
22 101(a)(15)(J), or

23 “(3) has acquired the status of a nonimmigrant
24 exchange alien as defined in section 101(a)(15)(J) after
25 admission, is subject to the two-year foreign residence

1 requirement of section 212(e), and has not fulfilled that
2 requirement or received a waiver thereof.”.

3 SEC. 12. Section 248 of that Act (8 U.S.C. 1258) is
4 amended to read as follows:

5 “SEC. 248. The Attorney General may, under such con-
6 ditions as he may prescribe, authorize a change from any
7 nonimmigrant classification to any other nonimmigrant classi-
8 fication in the case of any alien lawfully admitted to the
9 United States as a nonimmigrant who is continuing to main-
10 tain that status, except an alien classified as a nonimmigrant
11 under paragraph (15) (C), (D), or (K) of section 101(a), or an
12 alien classified as a nonimmigrant under paragraph (15)(J) of
13 section 101(a) who is subject to the two-year foreign resi-
14 dence requirement of section 212(e) and has not received a
15 waiver thereof, unless the alien applies to have his classifica-
16 tion changed from a classification under paragraph (15) (C) or
17 (J) to a classification under paragraph (15) (A) or (G) of sec-
18 tion 101(a).”.

19 SEC. 13. Section 286 of that Act (8 U.S.C. 1356) is
20 amended—

21 (1) by inserting after subsection (a) the following:

22 “(b) Moneys expended from appropriations of the Immi-
23 gration and Naturalization Service for purchase of evidence
24 and subsequently recovered shall be reimbursed to the appro-

1 priations for the Immigration and Naturalization Service.”;
2 and

3 (2) by redesignating subsection (b) as subsection
4 (c) and by inserting “and subsection (b)” immediately
5 after “Except as otherwise provided in subsection (a)”.

6 SEC. 14. Section 315 of that Act (8 U.S.C. 1426) is
7 amended—

8 (1) by striking out the period at the end of subsec-
9 tion (a) and inserting in lieu thereof the following: “,
10 except as provided in subsection (c).”; and

11 (2) by adding at the end thereof the following new
12 subsection:

13 “(c) The provisions of subsection (a) shall not apply to
14 an alien who at the time of applying for exemption for dis-
15 charge, whether before or after the effective date of this sec-
16 tion, was a national of a foreign state with which the United
17 States then had a treaty or international agreement exempt-
18 ing such nationals from military service in the Armed Forces
19 of the United States. This subsection shall have retroactive
20 application to an alien who is or has been debarred from citi-
21 zenship in accordance with the provisions of subsection (a),
22 whether the petition for naturalization filed by such alien was
23 denied by administrative action of the Immigration and Natu-
24 ralization Service or by judicial decree.”.

1 SEC. 15. Section 316(b) of that Act (8 U.S.C. 1427(b))
2 is amended by adding the following paragraph at the end:

3 “The spouse and dependent unmarried sons and daugh-
4 ters who are members of the household of a person who
5 qualifies for the benefits of this subsection shall also be enti-
6 tled to such benefits during the period for which they were
7 residing abroad as dependent members of the household of
8 the principal.”.

9 SEC. 16. Section 329(b) of that Act (8 U.S.C. 1440(b))
10 is amended by striking out paragraph (5).

11 SEC. 17. Section 334(a) of that Act (8 U.S.C. 1445(a))
12 is amended by striking “and duly verified by two witnesses,”.

13 SEC. 18. Section 335 of that Act (8 U.S.C. 1446) is
14 amended—

15 (1) in subsection (b) by striking out “and the oaths
16 of petitioner’s witnesses to the petition for naturaliza-
17 tion”;

18 (2) by striking out subsections (f), (g), and (h); and

19 (3) by redesignating subsection (i) as subsection
20 (f).

21 SEC. 19. Section 336 of that Act (8 U.S.C. 1447) is
22 amended—

23 (1) by striking out “and the witnesses” each time
24 it appears in subsections (a) and (b);

25 (2) by striking out subsection (c);

1 (3) by redesignating subsection (d) as subsection
2 (c);

3 (4) by redesignating subsection (e) as subsection
4 (d) and by striking the last sentence of that subsection;
5 and

6 (5) by redesignating subsection (f) as subsection
7 (e).

8 SEC. 20. Section 344(c) of that Act (8 U.S.C. 1455(c))
9 is amended by striking out "\$6,000" each time it appears
10 and inserting in lieu thereof "\$40,000".

11 SEC. 21. Section 1 of this Act shall become effective
12 one hundred and eighty days after the date of enactment of
13 this Act, and sections 2 through 20 of this Act shall become
14 effective upon the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS

Section 1 amends section 101(a)(15) of the Immigration and Nationality Act. Section 1(a) amends subparagraph (F), relating to nonimmigrant students, to specifically limit it to academic students, and to expand the authority of the Attorney General to allow him to withdraw his approval of a participating school for any cause. Section 1(b) creates a new nonimmigrant category, subparagraph (M), for nonacademic or vocational students, and provides for their entry according to the same terms and conditions as those set forth for (F) academic students.

Section 2 [Section 14] amends section 201(a) of the Immigration and Nationality Act to increase the annual ceiling on numerically limited worldwide immigration from 290,000 to 300,000.

Section 3 [Section 15] amends section 202 of the Immigration and Nationality Act. It amends section 202(a) to increase from 20,000 to 35,000 the number of immigrant visas and conditional entries which may be made available annually under the preference system to the natives of the contiguous countries (i.e., Canada and Mexico). It further provides that, in addition to these annual allotments of 35,000, any of the 35,000 visas unused by a contiguous country in a given fiscal year will be made available to the other contiguous country in the subsequent fiscal year. Section 202(e) is amended to extend the preference percentage allocations to the 35,000 visas and conditional entries allotted to a contiguous country, in the event that the maximum number of visas or conditional entries (i.e., 35,000) was made available to that contiguous country in the previous fiscal year.

Section 4 [Section 2] amends section 212 of the Immigration and Nationality Act. Section 4(a) amends section 212(17), one of the categories of excludable aliens, by placing a five year time limit on the requirement that aliens who have been deported, or who have been removed from the United States as an alien enemy, because of indigence, or at government expense, must obtain the consent of the Attorney General to reapply for admission. Under current law, such aliens are perpetually barred without such permission, in contrast to aliens who have been deported following exclusion from admission, who are required under section 212(a)(16) to seek the Attorney General's permission for readmission for only a one year period.

Section 4(b) adds a new subsection (k) to section 212, restoring to the Attorney General discretionary authority to waive certain technical defects in immigrant visas, if he is satisfied that the aliens involved are innocent of wrongdoing. Similar authority was contained in the Immigration Act of 1924 and was carried forward in the 1952 Act as section 211(c), which was deleted, apparently inadvertently, by the 1965 amendments.

Section 5 [Section 3] amends section 223(b) of the Immigration and Nationality Act to provide that a reentry permit, issued to an alien lawfully admitted for permanent residence who wishes to temporarily leave the country, will be valid for two years and not renewable. Under present law, reentry permits are valid for one year, with provision for renewal up to an additional year. The reentry permit is generally needed only for anticipated absences of over a year.

Section 6 [Section 4] amends section 237 of the Immigration and Nationality Act primarily to clarify the appropriate destination of an alien who is being deported following exclusion from admission or entry in violation of the law. Section

237(a) is amended by the deletion of the provision that such an alien be immediately deported "to the country whence he came." A new paragraph 237(a)(2) provides that such an alien will be deported to the country in which he boarded the vessel or aircraft which brought him to the United States, unless he boarded it in a foreign contiguous territory or adjacent island of which he is not a native, citizen, subject, national, or resident. In that case, he will be deported to the country from which he departed to the foreign contiguous country or adjacent island. A new subsection 237(b) provides that in the event that the country to which the alien is to be deported will not accept him, the Attorney General will, at his discretion, direct that the alien be deported to the country of which the alien is a subject, citizen, or national; the country of his birth; the country in which he has a residence; or if deportation to the above is "impracticable, inadvisable, or impossible," to any country willing to accept him. The above provisions are closely related to those in section 243(a) of current law, designating the destination of an alien who is being deported following an expulsion hearing.

Section 7 [Section 5] amends section 241(f) of the Immigration and Nationality Act. Under current law, section 241(f) provides a mandatory waiver of deportation based upon visa fraud at the time of entry for aliens who are "otherwise admissible" and are the spouses, parents, or children of U.S. citizens or permanent resident aliens. This provision has been a major source of litigation and controversy for years. According to the Justice Department, differing administrative and judicial interpretations of the most recent Supreme Court decision relating to the provision, Reid v. INS, 420 U.S. 619 (1975), "have left the law in a state of confusion which makes it virtually impossible for the Service to uniformly administer section 241(f)."

Section 7 amends section 241(f) to make the waiver discretionary rather than mandatory; to indicate the specific grounds of inadmissibility to which the waiver relating to visa fraud or misrepresentation may apply; to specifically include innocent, as well as willful, misrepresentation within the purview of the law; and to specifically limit eligibility to aliens who entered as immigrants.

Section 8 [Section 16] amends section 244(c) of the Immigration and Nationality Act. Current law requires the Attorney General to report to the Congress on suspension of deportation cases, and requires Congressional approval in certain case and allows for Congressional disapproval in all cases. Section 8 eliminates the role of the Congress in this discretionary function of the Attorney General, by deleting the reporting requirement contained in section 244(c)(1), and deleting paragraphs 244(c)(2) and (3), relating to Congressional action on suspension of deportation cases.

Section 9 [Section 12] amends 244(f) of the Immigration and Nationality Act, relating to ineligibility for suspension of deportation and voluntary departure. It amends the existing language to limit ineligibility of (J) nonimmigrant exchange visitors to those who are subject to the two-year for residence requirement of section 212(e), and have not fulfilled it or obtained a waiver. It also deletes section 244(f)(3), which bars from eligibility natives of contiguous countries or adjacent islands who are eligible for "special immigrant" visas, a classification which was eliminated by P.L. 94-571. Both of these changes codify Board of Immigration Appeals interpretations of the law.

Section 10 [Section 11] amends section 248 of the Immigration and Nationality Act, relating to change of nonimmigrant classification. Under the amended section 248, (J) nonimmigrant exchange visitors who are not subject to the two year foreign residence requirement of section 212(e), or who have obtained a waiver, are eligible to change to any other nonimmigrant classification. Nonimmigrants with (K) nonimmigrant finance status are ineligible to change to any other nonimmigrant status.

Section 11 [Section 13] amends section 286 of the Immigration and Nationality Act. It allows INS to retain funds spent out of INS appropriations for the purchase of evidence when such funds are subsequently recovered. Presently such recovered funds must be deposited into the Treasury as miscellaneous receipts, in accordance with a ruling by the Comptroller General.

Section 12 [Section 6] amends section 316(b) of the Immigration and Nationality Act. Current law provides that an absence of a year or more from the United States will break continuity of residence for purposes of the five year residency requirement for naturalization, but exempts certain aliens whose employment requires them to be abroad for extended periods of time. The amendment extends this benefit to the spouses and dependent unmarried sons and daughters who are members of the aliens' households.

Section 13 [Section 8] amends section 329(b) of the Immigration and Nationality Act by eliminating paragraph (5). This is a conforming amendment in keeping with the elimination of the witness requirements from the naturalization provisions.

Section 14 [Section 7] amends section 334(a) by deleting the requirement that a petition for naturalization be "duly verified by two witnesses" when a petitioner for naturalization files his petition in court prior to a final court hearing. This amendment is requested by the Department of Justice, on the grounds that "examination of witnesses is time-consuming, unnecessary, and unproductive," and that INS can and does obtain relevant information about a petitioner's fitness for citizenship in other ways.

Section 15 [Section 9] amends section 335 of the Immigration and Nationality Act by deleting all references to the two witnesses required under present law to participate in naturalization proceedings.

Section 16 [Section 10] amends section 336 of the Immigration and Nationality Act. Section 16(2) strikes section 336(c), thereby deleting the requirement for a 30 day waiting period between the filing of a petition for naturalization and the final court hearing. According to the Department of Justice, the current mandatory 30 day waiting period and the return trip by the petitioner and examiner to the court which it necessitates are usually unnecessary, and additional time can be requested when it is needed. The remaining subsections of section 16 make conforming amendments necessitated by either the elimination of the 30 day waiting period or of the witness requirements.

Section 17 amends section 344(c) of the Immigration and Nationality Act to authorize certain courts which have naturalization jurisdiction to retain up to \$20,000 of the fees collected in naturalization proceedings each fiscal year. Current law authorizes the retention of a maximum of \$3,000 of the fees collected annually. This provision is strongly endorsed by INS, which is concerned

that State courts may withdraw from the naturalization process unless the amount which they may retain is adequate to cover their costs.

Section 18 [Section 17] provides that all provisions will become effective on the date of enactment with the exception of section 1, relating to nonimmigrant foreign academic and vocational students, which will become effective 180 days after enactment.

APPENDIX II

ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

ANTONIO B. WON PAT, M.C.
 MEMBER OF CONGRESS

ARMED & DANGEROUS

House of Representatives

Washington, D.C. 20515

October 29, 1979

U.S. DEPARTMENT OF JUSTICE
 FEDERAL BUREAU OF INVESTIGATION
 400 ...
 P.O. BOX 1149
 WASHINGTON, D.C. 20515

INTERIOR AND INSURANCE
 AFFAIRS
 NATIONAL BUREAU OF
 INSURANCE AFFAIRS
 CHAIRMAN, PACIFIC AFFAIRS

Honorable Edward M. Kennedy
 Chairman
 Senate Committee on the Judiciary
 2226 Dirksen Senate Office Building
 Washington, D. C. 20510

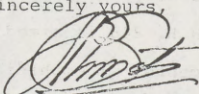
Dear Mr. Chairman:

Enclosed please find my testimony in support of the Guam visa waiver amendment I proposed to S. 1763, the Immigration and Nationality Act Efficiency Amendments. The hearing record for that measure is being held open for seven (7) days.

Please let me know if you have any questions for me about my proposal, or if I can provide any other information to you.

With best wishes,

Sincerely yours,


 ANTONIO B. WON PAT
 Member of Congress

Enclosure

HONORABLE ANTONIO B. WON PAT
From the Territory of Guam

STATEMENT IN SUPPORT OF AMENDMENT TO S. 1763

Mr. Chairman, thank you for the opportunity to submit testimony regarding my proposed amendment to S. 1763, the Immigration and Nationality Act Efficiency Amendments.

H.R. 848, which I introduced in the House of Representatives on January 15, 1979, would waive visa requirements for foreign visitors to Guam whose stay in the territory would not exceed 15 days. My October 12, 1979 letter to you (copy attached), requesting inclusion of my bill's language in S. 1763, explains H.R. 848's main purpose and narrow construction. I respectfully ask to have that letter made a part of your Committee's official hearing record.

At your October 17th and 26th hearings on S. 1763, you heard favorable testimony on another proposed amendment: waiving visa requirements for visits to the U.S. for up to 90 days for persons from countries with reciprocal visa waivers. Even with inclusion of the 90-day reciprocal waiver language, though, my legislation would still be necessary for Guam. Japan and some of the other nations at which H.R. 848 is aimed do not currently meet the reciprocity requirements. I emphasize again, however, the limited scope of my bill, which I believe would not allow abuse of its provisions.

I would also like to point out the status of H.R. 848 in the House. I have introduced similar legislation in each Congress since the 93rd. The 94th Congress version, H.R. 2771, actually passed the House on February 2, 1976, but was not acted on by the Senate before the close of that Congress. Again in the 95th

I could not persuade your predecessor, Judiciary Committee Chairman Eastland, to assure Senate action on my measure if approved by the House. The Immigration, Refugees & International Law Subcommittee of the House Judiciary Committee therefore declined to consider the measure without that prior Senate concurrence.

While the current head of the House Immigration Subcommittee, Representative Holtzman, is justifiably concerned about the possible "overstay" problems and therefore cautious on all visa waiver proposals, I think favorable Senate action on my bill's provisions would give the needed boost for positive consideration when brought before the House as part of S. 1763.

Again, Mr. Chairman, I appreciate your attention to my request. I would be glad to provide whatever additional information you might require.

October 12, 1979

Honorable Edward M. Kennedy
Chairman
Senate Committee on the Judiciary
2226 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

I am writing in reference to S. 1763, your bill to amend the Immigration and Nationality Act, and to H.R. 848, my bill to waive visa requirements for aliens visiting Guam for up to 15 days.

I understand a hearing on S. 1763 is tentatively scheduled for Wednesday, October 17, 1979. I would like to request your consideration of H.R. 848 for inclusion of its provisions in S. 1763 at that time. My legislation is narrowly constructed for applicability only to Guam. It is primarily aimed at the Japanese tourist trade, which consists largely of package deals arranged by Japanese travel agencies for relatively short (7-15 days) trips to Guam. A sizeable percentage of the tourists are honeymooners or groups of young singles (such as schoolteachers) who arrive on Guam in Japanese airplanes, stay at Japanese-owned hotels and tour the island with Japanese guides. Their contact with the Guam community is primarily for shopping and recreation (movies, etc.). The chances of their "overstaying," with or without visas, is virtually nil. Guam is too distant from any other desirable U.S. areas, all of which would still require entry visas, and is small enough to allow easy discovery and removal of overstays by Immigration authorities.

The advantage to Guam would come from the ease with which greater numbers of this type of tourist could enter the territory. We would not be posing any threat to other areas' tourist business, such as Hawaii's, because Guam is

c
 catering to a different clientele: packaged trips of shorter distance and duration. At present, Guam's economy is largely based on U.S. military and governmental employment and expenditures. Tourism is the only industry which could be further developed, because of the already existing infrastructure, to help the territory move towards a more autonomous economic position.

Enclosed is a copy of H.R. 848. My office has already provided extensive background material to your Committee staff, including H.R. 2771, the 94th Congress version of this legislation which had Administration support and was passed by the House in 1976. Please let me know if you would like additional information in this regard.

With personal regards,

Sincerely yours,

ANTONIO B. WON PAT
 Member of Congress

Enclosure

ABWP/chs:na



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Statement

S. 1763, THE "IMMIGRATION AND NATIONALITY EFFICIENCY ACT OF 1979"

Phyllis Eisen
Immigration Program Director

Committee on the Judiciary
U.S. Senate

October 25, 1979

I am Phyllis Eisen, Immigration Program Director for Zero Population Growth, Inc. On behalf of ZPG, I would like to thank the Committee for its invitation to state our views on S. 1763.

ZPG is a private, non-profit organization. It is supported by citizens around the country who believe the United States would benefit from a planned, voluntary end to its continued population growth.¹ At present and in the decades ahead, our country will experience major changes in its population -- not only continued growth but also new shifts in the distribution of the population and an increasingly larger proportion of older people.

According to the House Select Committee on Population last year, these changes both influence and are influenced by federal programs to the detriment of public well-being. Yet, the federal government has neither a policy nor the capacity to plan ahead for those changes.²

In the stresses we place on our natural resources, whether

energy, water, or land, we already are experiencing the strains caused by continued population growth and over-consumption. In the school shortages of the 1950's as well as the job and housing shortages today, we are paying for the consequences of the changes in our population which we continue to ignore.

ZPG believes the federal government should commit itself to planning for population changes as it shapes public policy. And, at the same time, it should encourage those changes which will lead to a voluntary stabilization of the nation's population.³

Because immigration significantly influences the growth, the distribution, and the age structure of the U.S. population,⁴ ZPG believes it must be addressed in public planning for ongoing changes and long-term population goals. Immigration, both legal and illegal, represents a complex human phenomenon affected by demographic as well as social, economic, and political factors in the United States and around the world. For that reason, in previous testimony to this and other Congressional committees,⁵ ZPG has advocated a comprehensive reform of immigration law which would speak to long-term population goals for the country in addition to other important concerns.

It is our commitment to comprehensive policy reform which compels us to comment on S. 1763. This legislation proposes two kinds of changes in our immigration law. First, it sets forth several procedural changes intended to improve the efficiency and effectiveness of the Immigration and Naturalization Service's implementation of the objectives of existing immigration policy.⁶ ZPG supports these changes.

Second, in Sections 3 and 4, S. 1763 raises a major policy issue, which Congress spoke to and acted on in 1976: Should countries of the Western Hemisphere be permitted to send a larger number of immigrants to the United States than Eastern Hemisphere nations? In the "Immigration and Nationality Act Amendments of 1976," Congress established a uniform 20,000 limit for every nation.

Limits on immigration, whether for one country or all, constitute the heart of immigration policy. There is no more fundamental issue than this, affecting

the political, economic, and social objectives of the law. ZPG opposes action by this Congress to change the uniform 20,000 limit in isolation of other, unresolved immigration policy issues.

The intent of Sections 3 and 4 is to reduce the pressures for the immigration of Mexicans illegally into the United States, the most serious problem challenging our immigration policies today. However, the lesson of repeated amendments of the law and examinations of the problem of illegal immigration has been that only a comprehensive reform of the law and complementary public policies will effectively reduce illegal immigration. That is especially true for the United States, Mexico, and Canada, whose demographic, economic, and political destinies are so intertwined. While addressing a serious problem, Sections 3 and 4 represent the kind of piecemeal change in policy which ZPG opposes.

In addition, action by this Congress on this provision of S. 1763 would come at a time that, despite strong concerns and good intentions, would detract from the political credibility of the work of the Select Commission on Immigration and Refugee Policy, the first thorough re-examination of the goals and instruments of immigration policy to which Congress has committed itself.

Last year, ZPG lobbied for the creation of this commission.⁷ We were aware of the problems inherent in any commission effort but convinced that it represents the only opportunity for the kind of comprehensive policy review -- undertaken jointly by representatives of the Congress, the Administration, and the public -- that is needed so much. The Select Commission owes much to the Senate Judiciary Committee and its chairman for its existence today.

It is the fate of too many commissions for their work to be ignored before it has been completed and for their recommendations to be avoided after they have been published. The political visibility and credibility of the Select Commission already have been tested by the long delays in the appointment of its members, the recent change in its leadership just as its work has finally gotten underway, and the

tremendous complexity and sensitivity of the issues with which it must deal.

In the face of such tests, it is the continued commitment of the Congress -- the final arbiter of immigration policy -- which determines the Commission's political support and influence. For this Congress to move ahead to rewrite policy so central to the Commission's work will surely weaken the respect and the confidence which public officials and concerned private citizens invest in it.

Since the Commission's establishment, ZPG has worked continually to promote widespread awareness of the Commission and support for its work. We believe the Judiciary Committee has demonstrated this support, too. We believe that it and other committees, through action on the practical problems that impede the implementation of current policy and the exploration of major policy issues, can complement the Commission's work and further public interest in it. But, we believe that action now on Sections 3 and 4 of S. 1763 will do neither.

Thank you again for the opportunity to express our concerns.

FOOTNOTES

- 1 In 1978, according to the U.S. Census Bureau, the U.S. population grew by 1.7 million people, resulting from 3.3 million births, 1.9 million deaths, and net immigration, as estimated by the Bureau, of about 347,000. (The Census Bureau does not include estimates of illegal immigration in its net immigration estimate.) The attached "U.S. Population Fact Sheet" illustrates in greater detail the changes in the nation's population growth as well as distribution and age structure. U.S. NEWS AND WORLD REPORT, in its October 15, 1979, issue, reported that during the next decade, "Growth in the number of Americans will speed up. Population will expand by about 21 million in the coming decade, or 3 million more than in the 1970's. By 1990, the country will have... 242 million..."
- 2 In its report, "Domestic Consequences of United States Population Change," the House Select Committee on Population stated:

The Federal Government has no capacity to plan systematically for population change; yet changes in the size, age composition, and geographical distribution of the population can, and often do, have profound effects on Federal policies, and Federal policies and programs often influence the direction of population change unintentionally.

The United States has no explicit policy outlining goals relating to the overall size, growth, and distribution of the population; and the benefits and disadvantages of those policies and programs that do affect the U.S. population are not assessed in terms of their impact on population.
- 3 In August, Representative Richard Ottinger introduced H.R. 5062, which would declare a federal policy of planning for population change and eventual stabilization as well as create a White House Office of Population Policy which would oversee the policy's implementation. The bill, which now has 16 co-sponsors, is pending before the Subcommittee on Legislation and National Security of the Committee on Government Operations.
- 4 In its March 1979 staff report, the Interagency Task Force on Immigration Policy stated:

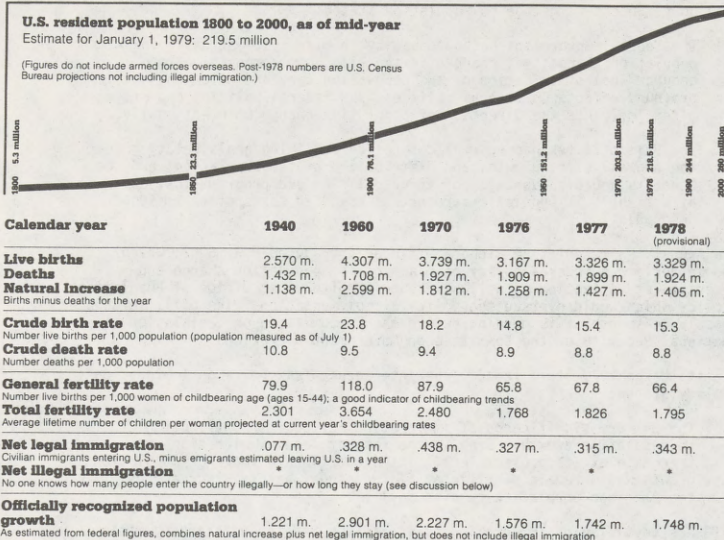
The primary significance of immigration may be its contribution to population growth. Even if the rate of legal immigration were to remain at its present level, its proportionate share of population growth would remain significant if the annual natural increase of the American population remains small.
- 5 ZPG has testified on immigration policy to the Senate Judiciary Committee on March 31, 1976, May 4, 1978, and August 14, 1978. We also have presented testimony to the House Judiciary Committee on March 12, 1975, October 1, 1975, and April 22, 1977. In addition, we have testified on immigration policy to the House Select Committee on Population on April 5, 1978, and on numerous occasions to the House and Senate Appropriations Committees.
- 6 The last major revision of immigration policy occurred with enactment of the 1965 Immigration and Nationality Act Amendments. In 1976, Congress passed amendments which imposed a uniform 20,000 limit on Western Hemisphere countries as already existed for Eastern Hemisphere nations, and in 1978, Congress replaced the separate Hemispheric ceilings with a single, global annual ceiling of 290,000.
- 7 In our testimony of May 4, 1978, ZPG stated its support for a Congressionally established Select Commission in place of an inter-agency task force, arguing that, "Historically, Congress has been the shaper of immigration policy. We believe it should be involved directly and from the start of any serious rethinking of policy today."

U.S. Population Fact Sheet

1979 edition



The United States is growing by about 2 million people this year. We still have not achieved zero population growth. Although birth rates have decreased since the Baby Boom (1945-1959), the numbers of births and immigrants (both legal and illegal) are still large.



Sources: U.S. Bureau of the Census and U.S. National Center for Health Statistics. Estimates for 1978 are provisional, and likely to be revised.

*Illegal immigration: uncounted residents

The official figures above, however, don't give the whole picture of population change in the United States. Thousands of foreign citizens enter the U.S. illegally—overstaying visa periods, crossing borders undetected or using false papers.

Illegal immigration accounts for a net increase of several hundred thousand undocumented residents a year, according to recent academic and government studies. No one "knows" the precise size of the illegal flow into the U.S. There simply aren't enough reli-

able data. Estimates of the *net increase* due to illegal immigration range all the way from 166,000 to one million or more a year.

Seasonal border crossings and recrossings make it still more complicated to estimate net immigration.

U.S. Immigration and Naturalization Service officials estimate that three to five million immigrants live illegally in the U.S. at any given time.

A complete estimate of U.S. population growth can't be made without adding in an estimate of illegal immigration.

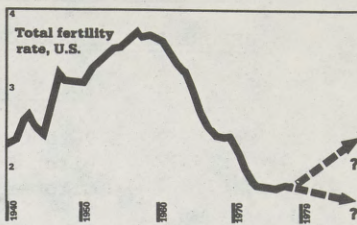
Which way will the curves go?

There's no doubt the U.S. population curve on the reverse of this page will continue to rise for decades. Even if immigration and childbearing decreased substantially, it would take 30 years to reach zero population growth.

It's hard to imagine the pressures for immigration to do anything but rise. Many immigrant source countries grow three times as fast as the U.S., have high unemployment and more than 40 percent of their people are younger than 15—approaching the age to find work or migrate.

As for childbearing, there are conflicting forces. The population will mount even if the rate of childbearing, at right, continues to decrease. The number of women of childbearing age (15-44) will increase 17 percent between 1976 and 1990—Baby Boom babies growing up. And surveys indicate young women expect to have an average of 2.1 children each, compared to the current total fertility rate of 1.8. Some observers say young couples will feel more secure in having families after the Baby Boomers stop crowding the job market. These factors, they say, could raise the total fertility rate as high as 2.9 in the 1990s.

However, other experts expect the total fertility rate to decrease as low as 1.5 children per woman as a result of later marriages, more divorce, more women working and the popularity of smaller families and childfree lifestyles. In 1978, 48 percent of women ages



20-24 were still single, compared to only 28 percent back in 1960. With such varied possibilities in the air, and an unknown volume of illegal immigration, long-term population projections should not be used as predictions. They can only illustrate long-term implications of trends. For example, they can give comparable but inexact dates when the nation might reach z.p.g.

Compare the projections below to see how childbearing and immigration levels combine to produce different levels of population growth. Childbearing trends are expressed in terms of the total fertility rate (TFR) which has hovered around 1.8 in recent years.

Assumptions	Population, year 2000	Year U.S. reaches z.p.g. (and peak pop.)
Compare these first two projections for effects of childbearing levels:		
■ Census Bureau Series II (their standard projection), with increase in TFR to 2.1, net immigration of 400,000	260 m.	Never
■ Census Bureau Series III, with decrease in TFR to 1.7, same net immigration	246 m.	2020 (253 m.)
Compare these two projections for effects of different immigration levels:		
■ TFR continues at 1.8; net legal and illegal immigration total 900,000	269 m.	Never
■ Same TFR; net immigration totals 400,000	253 m.	2025 (269 m.)
A fifth projection shows effects of decrease in both components of growth:		
■ TFR declines to 1.6 by 1985 and total net immigration from 400,000 to 150,000	240 m.	2007 (241 m.)

Dimensions of population change

Migration is rearranging the population. In 1975-78, 11 percent of Americans moved each year.

Two-thirds of Americans live in metropolitan areas—67 percent in 1978. Suburban parts of those metro areas are growing in the greatest numbers—9.1 million between 1970 and 1978. In the same period, central cities as a class lost 3.1 million people, and nonmetropolitan areas gained 7.6 million people.

For nonmetro areas, which had generally lost population for decades, the 7.6 million-person gain since 1970 has been big news. However, much of that growth is essentially suburban. Five-eighths of the gain, 1970-74, was in counties adjacent to metro areas.

New migration trends also explain why population growth is heaviest in the South and the West. Since 1970, 40 percent of U.S. growth occurred in three states—California, Texas and Florida. The Northeast and North Central states had a net decrease of 1.3 million people, 1975-78, and the South and the West gained that number.

Americans are living longer, bolstering population growth. Those born in 1900 could have expected to live an average of 47.3 years. By 1976, life expectancy at birth was up to 72.8 years—69 years for males and 76.7 years for females.

The U.S. age structure is shifting. With lower birth rates and longer lifespans, the proportion of children in the population is decreasing and the proportion of older people, increasing gradually.

In 1978, 29 percent of the U.S. population was younger than 18; by the year 2020, 20 to 25 percent will be (depending on growth rates in the interim). In 1978, 11 percent was 65 or older; by 2020, the age group is projected to be 16 to 18 percent of the population.

However, the population of working age, 18 to 64, probably will hold steady around 60 percent, actually rising slightly if growth is slower.

Another way of looking at the shift: In 1978, half the population was older than 29.7 years, and half younger. By 2020, the median age is likely to be 39 to 43.

These changes are intensified by the passage of the big Baby Boom generation into maturity. The age group 25-34 was 34 percent larger in 1978 than in 1970. Now the numbers of teenagers and college students have passed their peaks. When the Boom generation retires, they will be twice the number of today's population over 65.

More than half of Americans are female: In 1978, 51.3 percent. For the first time in 1978, 50 percent of U.S. women were in the labor force (including 62 percent of women ages 25-34). Two in five workers were women, compared to one in three in 1960.

Prepared by Steve Behrens, May 1979. Population estimates and rates are from official U.S. government sources. Projections above (except the first two) by ZPG. References on request.

Additional copies available from Zero Population Growth, Inc., 1346 Connecticut Ave., N.W., Washington, D.C. 20036. Single copies free with self-addressed, stamped envelope; prices for bulk copies on request.

ZPG is a national, non-profit membership organization which advocates planning for an end to population growth in the U.S. and worldwide. Membership information and publications list available on request.

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STATEMENT OF WERNER J. FLEISCHMANN
BEFORE THE SENATE JUDICIARY COMMITTEE

ON S. 1763

96th Congress
First Session
October, 1979

I am pleased to submit this Statement endorsing Sections 2 and 14 of S. 1763. These provisions would restore eligibility for U. S. citizenship to permanent resident aliens who have been debarred from citizenship because of the exercise of their treaty right to be exempted from compulsory military service.

Speaking for myself and other permanent resident aliens in my situation, we strongly urge the enactment of this legislation. It would, at long last, remove the punitive bar to citizenship imposed on those of us who have done nothing more than exercise our lawful treaty rights. We are extremely grateful to Senator Williams, who first introduced a bill to eliminate this injustice (S. 1217), and to Senator Kennedy, who took up the cause and included this remedial reform in his legislation. We are also pleased that the Immigration and Naturalization Service supports this measure.

My story is probably typical: I came to this country 38 years ago, and have lived here continuously ever since. This is my home. My business is here, my family is here. My wife and my children are all native U. S. citizens. I consider myself a loyal American in every respect -- but, under existing law, I can never become a U. S. citizen.

The reason is that, 37 years ago, I was exempted from compulsory military service in the United States.^{*/} I applied for and received my exemption on the basis of the 1850 Treaty of Friendship, Commerce and Extradition between the United States and Switzerland, Article II of which provides that "the citizens of one of the two countries, residing or established in the other, shall be free from personal military service" Unfortunately, Section 315 of the McCarran Act of 1952 debars from citizenship all

^{*/} I was drafted just one year after my arrival in the U. S. At the time, I was on leave from the Swiss Army. I had already served in the Swiss military for two years, and was to remain on active status for four more years. Aware that, as a Swiss citizen, I was subject to imprisonment if I served in any foreign military service, I requested the advice of the Consulate General of Switzerland. I was informed about the Treaty described above and told to request a Form 301 from my draft board and execute it. The execution of that form rendered me permanently ineligible for citizenship, notwithstanding the provisions of Article II of the Treaty.

aliens exempted from military service, regardless of whether the alien was entitled to such an exemption by treaty.

As a permanent resident alien who is "ineligible for citizenship," I bear the stigma of an "excludable alien." This puts me in the company of drug addicts, persons convicted of illicit traffic in narcotics, chronic alcoholics, professional beggars, vagrants, prostitutes, anarchists, and others of the kind.

Much worse, however, are the travel restrictions imposed on excludable aliens. Should I leave the United States for business or personal reasons, for even a day, I can be barred from reentry. Thus, unless I secure advance permission from the Immigration and Naturalization Service to reenter the U. S., I can be turned away at the border -- from my home, my family, my business. That is why permanent resident aliens who are ineligible for citizenship are indeed "permanent" residents -- we cannot leave the United States.

It is not difficult to imagine the hardship that such a restriction imposes. I know of treaty nationals

who have had to turn down job opportunities because they would need to travel abroad in their new positions, scientists who have been unable to attend international conferences. For treaty nationals ineligible for citizenship, a family visit outside the United States is nearly impossible. How often we have sought to visit an ailing relative abroad, only to experience the frustrating delays of the ponderous bureaucratic machinery at INS in processing an application for a reentry permit.^{*/} Delays of a year and more are routine. As one individual wrote in a letter to me:

"Especially hard are the travel restrictions to live with. It does take a lot of effort to get a reentry permission. The first time I applied for one because my father was very ill I had to secure a report from the Swiss Red Cross to that effect. It then took considerable time and that was after I was here for 18 years. It makes you feel like a prisoner in your chosen country"

I do not know what it costs the United States Government each year to process these applications for advance

*/ I have been more fortunate than most -- because my business requires numerous trips abroad each year, I have been able to obtain "advance permission to return to unrelinquished domicile" in the U. S. Still, each year or two I am required to resubmit a lengthy application (totalling some 30 pages) along with my fingerprints and a certified check, and go through the process of having my application approved all over again.

permission to reenter the United States. The cost is probably not insignificant. To us, certainly, the cost is very substantial -- not only financially, but also emotionally. It is painful to live in, and be loyal to, a country that persistently reminds you that you are an outsider.

Quite apart from the personal toll that the law has taken on me and others in similar circumstances, it would appear that the U. S. law barring treaty nationals from citizenship is inconsistent with the international obligations of the United States. After all, the U. S. has entered into treaties, with such diverse nations as Switzerland, Ireland, Norway, Liberia, Thailand, Yugoslavia, Italy, Spain and Austria, among others, whereby each State grants a reciprocal right to an exemption from military service. Can the U. S. be free subsequently to qualify the military exemption mutually agreed to in the treaty without the concurrence of the other contracting State?

The Government of Switzerland, I know, believes that the bar to citizenship imposed on treaty nationals exempted from military service constitutes a violation of the U. S.-Swiss Treaty. The Embassy has informed the Department of

State that, in the view of the Government of Switzerland, the sanctions imposed by the U. S. amount to a "one-sided alteration of the treaty, which is incompatible with the principles of international law." Senator Williams has supported this legislation in large measure because its passage "would eliminate a small but constant irritant in our relations with our treaty partners" and "demonstrate that the United States is mindful of its treaty obligations."

Moreover, these punitive sanctions have been applied inconsistently and haphazardly over the years. The laws, implementing regulations, administrative interpretations, and judicial decisions are rife with conflict. To illustrate the confusing pattern of statutory and administrative immigration and conscription law, I call to the attention of the Committee a document prepared by the Immigration and Naturalization Service entitled "Interpretations," Section 315.5 of which is an annotated summary of the naturalization law concerning treaty nationals who claim exemption from military service. That document amply demonstrates that the "even hand of the law" has not been

applied to treaty nationals who have requested military exemption.^{*/}

The law is unfair and ought to be changed. I know of one individual who was granted a discharge from the military on the basis of his status as a treaty national after serving in the U. S. Army for 19 months. He has been a member of the American Legion for over 30 years. But under existing law, he can never become a citizen.

We should not be "punished" for having invoked a right granted to us by treaty. Indeed, as the law stands, I am to be punished in perpetuity for a military exemption granted to me 37 years ago. Even a convicted criminal is eventually forgiven. Yet under the McCarran Act, we would never be forgiven, but would always be forced to suffer the degrading status of an "excludable alien."

The legislative history of the McCarran Act identifies "three classes of persons" that are to be permanently ineligible for citizenship -- deserters, draft dodgers,

^{*/} For example, a treaty national's eligibility for citizenship may hinge on how he notified his local draft board of his status as a treaty national. If he did so orally, he can today be a citizen; if he filled out a Selective Service Form, he is debarred. Likewise, if his local draft board happened to classify him I-A and postponed his induction indefinitely, he can become a citizen; if the board instead classified him IV-C, he is debarred.

and aliens exempted from military service. Since that legislation became law in 1952, amnesty has been granted to those who, during the Viet Nam War years, refused induction into or deserted from the Armed Forces illegally. The Administration has proposed amnesty for aliens who entered this country illegally. The time has come, I submit, for amnesty to be granted to individuals who merely elected to exercise the rights conferred on them by international treaty in full accordance with the law.

S. 1763 would accomplish this objective and eliminate a long-standing inequity in the law. It would do so without sacrifice to the public interest. It is consistent with the international commitments of the United States. And it is of overwhelming significance to those of us who have been barred from citizenship in our chosen country.

I strongly urge its enactment.

300 Jacksonville Road
Pompton Plains, New Jersey 07444

Amending the Immigration and Nationality
Efficiency Act to Relax Current Standards
for Issuance of Non-Immigrant Visas

Statment on behalf of American Express Company

(October 26, 1979)

Before the Senate Judiciary Committee

by

Louis V. Gerstner, Jr.
President, Travel Related Services
American Express Company
New York, New York

The American Express Company appreciates the opportunity to submit this testimony concerning a proposed amendment to S.1763, the Immigration and Nationality Efficiency Act, which would relax current standards for issuance of non-immigrant visas. American Express believes that the time is right for selective relaxation of visa issuance standards. This amendment is good foreign policy and good domestic economic policy.

We support this amendment because we believe that relaxation of our visa requirements on a selective basis would substantially facilitate travel to this country and reduce our persistent negative balance of payments. In the tourism area, we have incurred a \$3 billion deficit in our balance of payments for each of the past 5 years. Increased inbound tourism would also create new jobs. Because jobs in the tourism sector are service-oriented and non-technical, they are particularly accessible to those segments of our society with the highest rate of unemployment.

Aside from the economic benefits likely to flow from relaxation of our visa requirements, this reform would eliminate an unnecessary irritant for visitors. In 1976, the United States Travel Service of the Department of Commerce commissioned a study of the international travel market. Data was gathered on a country-by-country basis to better understand foreigners' travel habits and patterns. One conclusion, highly relevant to this visa waiver legislation, was that obtaining a U.S. visa was cited as a major difficulty by 11 percent of the West Germans, by 10 percent of British, by 25 percent of the French, and by 15 percent of the Japanese visiting this country.

These figures give some indication of the hurdles our visa requirements present to foreign tourism. Although it is hard to quantify the number of tourists that would be encouraged to visit the United States if a visa waiver provision does become law, we believe that the resultant good will and the economic benefits to our country are reasons enough to press for its passage.

It is appropriate to consider what the results will be if no action is taken on this issue. It appears increasingly likely that nations now not requiring visas of United States citizens will begin to retaliate. Recently, I understand that Brazil and Argentina took such action for precisely this reason. Certainly this result is contrary to our national goal of facilitating world travel to our country.

There are also fiscal considerations to this issue. Our current efforts to process visa applications in countries with a low incidence of visa fraud are not only time consuming but also expensive. By eliminating this unnecessary paperwork, expenses could be cut by as much as \$1.5 million annually, allowing our overseas missions to provide improved services to U. S. nationals.

We understand that the opposition to this measure lies in the fear that efforts to deter terrorists and illegal aliens coming to the United States would be hampered by dropping the visa requirement from such countries as the UK, France and Germany. We cannot testify to this point for we do not have the expertise to make that kind of value judgment. We would only observe that in the same countries where acts of terror have occurred, such as in Germany and the UK, those governments apparently have adopted other means to combat those problems. What we can testify to is that, as a very large worldwide travel agent, the reciprocal dropping of visa requirements should result in more travel to this country and the major benefits that such inbound traffic would bring.

We very much appreciate this opportunity to present our views on this issue and hope our comments have been of some assistance.

STATEMENT SUBMITTED BY NATIONAL FOREIGN TRADE COUNCIL, INC.
OF NEW YORK

*[Oral Testimony Before Select Commission on Immigration and
Refugee Policy—Boston, Mass., November 19, 1979]*

I am William F. Cagney, Director of Industrial Relations and Management Resources of the National Foreign Trade Council, Inc., a non-profit association of over 600 U.S. companies engaged in foreign trade and investment.

We are concerned about the need for our U.S. immigration procedures to take into account the legitimate and reasonable requirements of business. This is all described more fully, with specific recommendations, in the letter from the President of the Council, Richard W. Roberts and the Memorandum attached to that letter, copies of which have been provided to the Commission.

In our view, a two-way flow of professional and managerial personnel must be maintained between U.S. companies and their foreign branches or affiliates. American employees are routinely sent abroad and the required visas and work permit applications normally receive prompt approval by foreign governments. By contrast, U.S. companies encounter excessive delays and undue restrictions from the U.S. government when applying for temporary visas or permanent resident status for foreign nationals being brought here. This greatly handicaps the effective conduct of international business, placing U.S. companies at a competitive disadvantage vis-a-vis foreign firms--not to mention the personal hardship imposed upon the individuals and families being transferred. In today's world, quick action is imperative to take advantage of opportunities which otherwise are lost or diminished.

We are essentially speaking of skilled professional, technical and managerial personnel brought to the U.S. to receive further training and to occupy positions of responsibility in preparation for assuming critical positions directly related to the development of our international markets and the expansion of our export operations and foreign direct investments which are so vital to the needs of the U.S. economy today and in the future.

The two primary areas of difficulty with the U.S. immigration procedures revolve around:

- 1/ Excessive delays on the part of the INS, State and Labor Departments - with no means available to ascertain the status of petitions, much less the probable date the authorization may be granted.
- 2/ Restrictions on mobility of foreign nationals awaiting renewal of visas (required annually) or adjustment of status, effectively "grounding" them and preventing them from carrying out their international responsibilities with the U.S. company.

The Council's Memorandum comments in greater detail on our various concerns and makes a number of recommendations which we believe will be helpful not only to U.S. companies but to the various governments agencies involved as well. We respectfully submit these for your consideration. While this presentation is necessarily critical, in fairness, we must also commend the many able, dedicated employees of the various agencies who do strive earnestly to facilitate the desired transfers.

NATIONAL FOREIGN TRADE COUNCIL, INC.

10 ROCKEFELLER PLAZA, NEW YORK, N. Y. 10020

RICHARD W. ROBERTS
PRESIDENT

November 15, 1979

Select Commission on Immigration
and Refugee Policy
New Executive Office Building
- Room 2020
726 Jackson Place, N.W.
Washington, D.C. 20506

Dear Sirs:

The National Foreign Trade Council, a non-profit association of over 600 U.S. companies engaged in foreign trade and investment, is pleased to present to the Select Commission on Immigration and Refugee Policy its views on the effect of present governmental immigration procedures on the international mobility of personnel -- i.e., intra-company transfers.

The overseas operations of U.S. multinational companies take a variety of forms, including foreign affiliates, branches, joint ventures, and marketing arrangements with foreign distributors. Irrespective of the form of arrangement by which the U.S. company conducts overseas operations, a two-way flow of professional and managerial personnel must be maintained between the U.S. company and its foreign representatives. While the necessity for U.S. companies to send highly qualified personnel abroad to disseminate information and provide management expertise is well documented, there is an equally strong need for foreign professional and managerial personnel to come to the United States for training, research, planning and other corporate functions.

When U.S. multinational companies send personnel abroad, visa and work permit applications normally receive prompt approval by foreign governments. By contrast, U.S. multinational companies encounter excessive delays and undue restrictions from the United States Government when applying for visas or permanent residence status for foreign nationals. The enclosed Memorandum identifies a number of impediments and administrative delays which in the view of the Council's mem-

bership should be eliminated. The mobility of highly skilled international personnel is an essential element in the conduct of trade and investment. Unnecessary delays and restrictions in the movement of personnel reduce efficiency, slow the dissemination of technology and management techniques, and place U.S. multinational companies at a competitive disadvantage abroad.

The foreign nationals about whom we are concerned are skilled technical and managerial personnel brought to the United States to receive further training and occupy positions of responsibility in preparation for assuming critical responsibilities directly related to the development of our international markets. It is through their expertise that our U.S. multinational companies expand their export operations and foreign direct investments which stimulate exports. This is vital to the needs of the United States economy today and in the future.

It is a cause of deep concern when our members report recent instances of delay and administrative difficulty such as the following, involving foreign nationals brought to or seeking to enter the United States:

1. A Foreign Exchange Trader of a U.S. international bank, anxious to expand its currency trading operations in Europe, is delayed one year waiting for INS approval of a Training Visa (H-3) to enter the United States for an urgent 6-month Program. Meantime, no personal or business plans can be concluded.

2. A German National, Vice President-International of a pharmaceutical company temporarily in the U.S. on an I-1 visa and seeking renewal thereof for a second year, is not permitted to travel (because of the requirement to surrender the I-94 form) to his Far East area of responsibilities for a period of four months awaiting INS approval of the renewal. The result is that a marketing program is stalled.

3. A French Research chemist (highly technical radio-astronomy field) of leading manufacturer of photographic equipment seeking to enter the U.S. on Permanent Resident status is forestalled by an initial

six month period for processing of the Labor Certification through the Federal/State Departments of Labor. (The certification was ultimately granted after much frustration and loss of valuable time). Following this, there is a further 8 month delay in the INS and State Department for adjudicating the 6th Preference Petition allowing him to enter.

The foregoing cases are both typical and illustrative of those reported by Council members. The delays resulting from present administrative practices not only constitute a personal hardship to the foreign nationals involved, but also, more importantly, have an adverse effect on the international operations of United States business. The Council does not necessarily advocate a formalized system of preferential treatment for such individuals, but it does strongly urge that improved administrative procedures be developed to handle petitions and applications for those individuals whose mobility contributes to the efficiency of U.S. international business.

It is respectfully requested that this letter and the attached memorandum be included in the record of the hearings to be held in Boston on November 19, 1979 and that favorable consideration be given to the recommendations made herein.

Very truly yours,

Richard Roberts

RWR:mjb
Encl.

November 16, 1979

MEMORANDUM

The National Foreign Trade Council is a private, non-profit association of over 600 American companies, engaged in foreign trade and investment. Its membership comprises varied industries, including manufacturers, mining and petroleum companies, exporters, importers, carriers, banks and others.

U.S. companies having international operations are confronted with a variety of problems in obtaining from Federal agencies the necessary visa and other approvals needed to admit foreign nationals to the United States on either a temporary or permanent resident basis. These foreign nationals are professional and managerial personnel whose presence in the U.S. is required for the efficient conduct of international business operations by U.S. multinational companies. Delays and difficulties in obtaining admission of these individuals to the United States have adverse effects on corporate operations.

This Memorandum describes the nature and seriousness of the problems and difficulties faced, as reported by members of the Council and discussed at meetings of our Committee on Immigration, and offers a number of recommendations to improve existing procedures.

Delays

The heart of the difficulty encountered by U.S. companies seeking to obtain entry visas for foreign nationals is the inordinate delay by the Immigration and Naturalization Service

(INS) and the State and Labor Departments in processing the various Petition or Application forms. This applies both to the initial petitions and applications for renewals. Delays of several months to over one year are common even in cases where the action required to be taken by the agencies involved is essentially routine and ministerial, and the actual adjudication process may be accomplished quite quickly.

Inability to Locate Documents

The filing system and administrative procedures for handling petitions/applications by INS are woefully inadequate. Documents are lost or simply cannot be traced. Months after the filing of an application or petition, many INS offices are unable to give an indication of the status thereof, or even an approximate date when a decision might be rendered. As a result, the foreign national is unable to conclude arrangements for his transfer to the United States; the U.S. company is impeded from filling a key position; and manpower planning is disrupted.

The INS should introduce a computerized system to monitor the progress of these forms. Also, improved administrative procedures are essential to reduce or eliminate the problem of lost or untraceable documents.

Inability to Communicate by Telephone

At a number of INS offices it is extremely difficult to make telephone contact with the agent responsible for processing a particular form; thus, there is no reasonable way for the

individual concerned, or a company acting on behalf of the individual, to discuss a problem or obtain an indication of the status of a petition or application. It therefore becomes necessary for individual petitioners/applicants to visit the INS offices, which are already overcrowded, and wait for hours for advice or a decision on what are usually very routine requests. We recommend that as many officers as are necessary be assigned to respond to inquiries concerning the status of these forms at each district office.

Inadequacy of Instructions

The individual or company seeking to initiate the entry or renewal procedure must determine which of a variety of petitions, or application forms as the case may be, are appropriate to file with the INS. The particular form selected has significant procedural and substantive consequences. To assist the individuals and companies concerned to choose the proper form and complete it properly, the agencies issuing the forms, particularly the INS, should promulgate comprehensive instruction manuals. Individuals, companies and the INS itself would all benefit from this action.

Some agency representatives maintain that instructions are contained on the forms and, therefore, no separate instruction manual is needed, but this view does not take into account the fact that in order to initiate a petition or application, it is necessary - at the threshold - to select the proper form(s) to be used. Moreover, the instructions on some forms are ambiguous and frequently not fully reflective of what is actually required.

Processing delays for extension of stay

When applications for extension of stay are filed in respect of foreign nationals, the applicant is required to surrender to the INS his I-94 form which records dates of arrival and departure, as well as the visa status of the individual. Since possession of the I-94 form is mandatory to enable the foreign national to enter or leave the United States for visits to Canada or Mexico, the surrender of this document effectively prevents the individual from leaving the United States for these two destinations.* While the surrender of the Form I-94 and the need to review visas abroad would not be particular burdens if extension applications were handled promptly, the long delay in processing of applications imposes particular hardship upon the individuals as well as the company involved, particularly when the foreign national has direct operational responsibilities overseas. Inability to make required visits to the overseas area greatly handicaps the individual in the performance of his or her job.

Advance Paroles

When an application for adjustment of status is pending, an individual can seek an advance "parole", or temporary permission, to leave the United States for specific business purposes. Several INS district offices are reluctant to grant advance

* Moreover, for travel abroad to other locations, the extension application must be approved and the individual must have the appropriate notice of approval (Form I-171C) in his possession in order to renew his visa at a consular post.

parole under any circumstances; others resist very strongly granting a second or third advance parole even when there has been an extreme delay in the processing of the petition.

Handling of the Non-Immigrant "Intra-Company Transferees" (L-1) Visas

The L-1 visa allows U.S. companies to bring "intra-company transferees" to the United States to work for several years or more. The foreign nationals involved have unique managerial or executive experience, or specialized knowledge in the international operations of the company. They are generally brought to the United States for an extended period (usually more than one year) to lend their international expertise to the U.S. companies and also, by becoming better acquainted with the staff and method of operations in the United States, to become more effective upon their return to their overseas location.

Several problems have arisen in the handling of the L-1 visas, first upon the initial application (which currently is only granted for the period of one year) and secondly, upon applications for the annual renewal required:

1. Term. There is confusion and inconsistency among district INS offices as to the overall time limit for L-1 visas. In the Detroit area the district INS office has ruled that no foreign national may stay in the United States for more than three years under an L-1 visa, but the office was unable to produce any administrative guideline from Washington to that effect.

Our understanding is that the Commissioner's office of the Immigration and Naturalization Service has not placed a limit

on the number of permissible extensions of the L-1 visas.

Clarification of this point is essential.

2. Processing Time. There is an unusual length of time taken for the routine processing of the initial petition for an L-1 visa, which as stated elsewhere, handicaps corporate operations greatly. Moreover, there is a further frustrating delay generally experienced by companies on the required annual renewals of the L-1 visa. There seems no justifiable reason for such delays which again severely handicap operations, particularly when they prevent the individual from traveling out of the country on important business missions.

3. Adjustment of Status Petitions. There are, understandably a number of cases where individuals in the United States on an L-1 visa basis have subsequently filed for an adjustment of status to that of permanent resident. Our members assert that applications for adjustment of status are occasionally greeted with suspicion by the INS resulting in prolonged and generally unproductive investigations concerning the intent of the individual applicant and the company. While isolated instances of abuse may have occurred, the vast majority of applications are based on justifiable grounds. Applications for adjustment of status should be reviewed on their merits, and there should be no presumption of an intent to mislead the INS.

Various substantial delays occur in the entire procedure of adjustment of individual L-1 visa status to permanent residence status. Additional delays of six to twelve months are not uncommon when an initial Labor Certification is required. It is

respectfully recommended that the entire procedure be reviewed with a view of expediting INS, Labor and State Department determinations.

An additional problem has arisen in instances where foreign nationals have been in the United States on a valid L-1 visa, but wish to apply for permanent resident status and will need to renew L status after initiating the permanent residency process. Such individuals have extension of stay or renewal of the L visa but the Consulate has refused permission to return to the U. S. The justification for such action is that the individual, by manifesting an intention to immigrate, is no longer a bona fide non-immigrant. With the current backlog of visa numbers, exacerbated by the lengthy processing delays, this rigid interpretation creates unusual and unnecessary hardships. It is difficult to understand the rationale for so needlessly encumbering the process.

Labor Certifications

In certain instances, particularly where a petition is for permanent residence status, immigration regulations provide that a Labor Certification first be obtained from Federal and State labor departments certifying to the unavailability of persons for such employment in the local labor market area.

Two procedures in particular which are utilized by the Labor Department are time-consuming and wasteful. The first, a search of the Labor Department's "job bank" for at least 30 days, rarely produces a result for the reason that the positions listed in the "job bank" seldom match the managerial and technical

positions for which foreign nationals are sought by U.S. multinational companies. Second, the Labor Department's requirement that companies advertise in newspapers of general circulation for the technical and executive positions which such companies desire to fill by utilizing foreign nationals is unrealistic, since most companies in the normal course of business would not recruit in this manner for personnel to fill such highly specialized technical or executive positions, and actually have far more effective recruitment programs.

Permanent Resident Status

When foreign nationals seek to reside in the United States on a more permanent basis, the procedures involve the INS, State Department and, where employment is involved, the Labor Department. Applicants are admitted under a Preference system, which provides only two categories, the 3rd and 6th Preferences, for business purposes.

Under most circumstances the adjudication of the Preference Petition currently takes six to twelve months. This period follows the delay of perhaps another six to twelve months in obtaining any required Labor Certification as mentioned above. While the Preference Petition is being processed, the INS seems unable to give any advice as to its status or when adjudication might reasonably be expected. Therefore, the petitioner and family are unable to make firm plans for leaving their home country, and the company itself cannot set any schedule to allow for a transition. As a result, corporate plans for expansion of international operations or training of individuals for new,

increased international responsibilities are put in suspense. The costs of such delay to U.S. companies having international operations are substantial.

If the foreign national is in the United States on a temporary non-immigrant visa, and adjustment of status to permanent resident is sought, similar delays are encountered. These delays also impede foreign nationals from carrying out their corporate responsibilities because they may not be able to travel during this period.

The wording of the petition for the 3rd Preference category states that in order to qualify, the applicant must be "an alien who is a member of the professions, or who because of his exceptional ability in science or arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States." It is suggested that the wording of the 3rd Preference Petition should be reviewed to strive for greater uniformity of treatment and clarification of desired criteria - we suggest an accredited college/university degree with evidence of professional competence.

Training Visas H-3

H-3 visas are used by companies engaged in international operations to bring selected foreign nationals to the U.S. for training lasting from several weeks to several years. Usually the training programs are designed to fit in with the operating requirements of the U.S. headquarters as well as the needs of the overseas affiliate. It is obvious the INS has been giving a low priority to the processing of these visas; in the New York area, for example, delays of upwards of six months in the processing of H-3 visas have been experienced. We are not aware of a reason.

Moreover, H-3 visa petitions are frequently arbitrarily denied or returned for superfluous additional information.

* * * * *

Aside from the foregoing general comments, we offer the following specific suggestions:

1. The temporary visas for the several "H" categories, as well as the important "L-1" category, should be granted for the full period anticipated (duration of stay) in order to avoid time-consuming annual renewals currently required. The processing might be more efficiently handled by U.S. Consuls, rather than the INS.

Moreover, permission for multiple entry should automatically be given. This would eliminate needless frustrations as well as paperwork when an individual, who has come to the United States on a single-entry basis, must proceed overseas for urgent family or business considerations.

2. The various petition/application forms currently state that they should not be submitted to the INS prior to 30 days before the anticipated date of entry or the expiry date on renewals. This is impractical because of the much greater time required in processing any of these applications. We suggest that the INS should allow the various forms, with the proposed effective date clearly identified, to be submitted at least 60-90 days in advance thereof. With improved handling procedures, the forms might then be processed before the effective date.

3. When a petition is approved by INS, many companies ask to have cable advice of such approval transmitted through the State Department to the U.S. Embassy or Consulate abroad to the foreign national and his employer. Although companies presently pay for such services, there has been resistance in some district offices to such requests. We recommend that regional offices routinely fulfill cable communication requests by the petitioning companies.

4. There should be a greater flexibility in making immigrant visa numbers of other Preferences available to those now required to file under the 3rd or 6th Preference categories. The other Preferences (except Non-Preference) are available only for those entering on a family-related basis, and such categories have larger quotas than the 3rd or 6th Preference. Unfilled quotas should be made available for the 3rd or 6th Preferences in the same manner as the "fall down" process which is allowed for other Preferences. We also suggest increasing the quota limits currently available to these two Preference categories.

* * * * *

While the foregoing comments have focused on certain deficiencies in administration of the immigration laws, it should be noted that Council members have encountered many dedicated and competent individuals engaged in the handling of immigration matters. Inadequate funding, cumbersome administrative procedures and different legal considerations affecting different categories of immigrants have all contributed to the problems causes of delays can be eliminated and therefore respectfully urge that the recommendations stated above be given serious consideration.

STATEMENT OF
PAMELA A. WILLIAMSON,
ARNOLD & PORTER,
WASHINGTON, D.C.

ON BEHALF OF
DR. DIRK ALAN MAXFN-McINTIRE

Before the
Senate Judiciary Committee
96th Congress
1st Session

OCTOBER, 1979

RE: Inclusion in S. 1763 of Amendment to
Section 349(a)(1) of Immigration and
Nationality Act

STATEMENT OF
 PAMELA A. WILLIAMSON, ARNOLD & PORTER,
 ON BEHALF OF
 DR. DIRK ALAN MAXEN-McINTIRE

This statement is submitted by Pamela A. Williamson of Arnold & Porter, a Washington, D.C., law firm, on behalf of Dr. Dirk Alan Maxen-McIntire. Dr. Maxen-McIntire is a native citizen of the United States and a naturalized citizen of Germany. Dr. Maxen-McIntire was born in 1948 in Maryland, to an American father and a German mother. Upon her divorce in 1954, Dr. Maxen-McIntire's mother, Mrs. Eva Maxen, returned to Germany with her children to live with her parents, due to her inability to support the children alone and her husband's irregular alimony payments. In order to obtain free education and other benefits of German citizenship, Mrs. Eva Maxen had Dr. Maxen-McIntire and his brother naturalized in Germany. Dr. Maxen-McIntire was 15 years old at the time. By the operation of section 349(a)(1) of the Immigration and Nationality Act of 1952, as amended, Dr. Maxen-McIntire was expatriated by the Department of State for failing to become a resident of the United States before his twenty-fifth birthday.*/ At this time, he was working and pursuing educational studies and could not afford to uproot himself, financially or academically.

Section 349(a)(1) of the Immigration and Nationality Act of 1952, as amended, subjects native-born American citizens who, during minority, are the passive beneficiaries of foreign naturalization proceedings invoked by their parents to a requirement that they establish permanent residence in the United States before their twenty-fifth birthday in order to retain their American citizenship. By virtue of the Supreme Court holdings

*/ Although this decision was subsequently reversed, Dr. Maxen-McIntire is still obligated to comply with section 349(a)(1).

in Afroyim v. Rusk, 387 U.S. 253 (1967), and Schneider v. Rusk, 377 U.S. 167 (1964), section 349(a)(1) is unconstitutional to the extent that it does not predicate loss of citizenship on voluntary relinquishment but on the actions of a parent over which the expatriatee has no control; and (2) it discriminates against a class of American citizens who become dual nationals during minority by the actions of their parents by subjecting them to a residency requirement to which no other class of American citizens are subjected. ^{*}/

Section 349(a)(1) of the Immigration and Nationality Act provides as follows:

"(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

"(1) obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: Provided, That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday"

Without expressing any opinion on the constitutionality of making naturalization in a foreign state by an adult upon his own application, grounds for expatriation, it at least has the fairness to impose the

^{*}/ For discussion of the Afroyim and Schneider cases as they apply to the constitutionality of section 349(a)(1), see Appendix C.

consequences of action on the person taking the action. However, to expatriate a native-born American citizen who becomes a dual national during childhood through no affirmative action or choice of his own is patently unfair and unconstitutional under the Supreme Court holding in Afroyim v. Rusk, 387 U.S. 253 (1967), that by virtue of the Fourteenth Amendment a citizen born or naturalized in the United States can only lose his United States citizenship by voluntarily relinquishing it. In so holding, the Supreme Court made no distinction between the right of citizenship conferred by the Fourteenth Amendment upon adult citizens and citizens in their minority. Furthermore, the Supreme Court held in Schneider v. Rusk that Congress could not constitutionally discriminate between classes of American citizens.

Moreover, according American citizens who have been taken to and naturalized in a foreign state during childhood upon the initiative of their parents the opportunity to save their citizenship by establishing residency in the United States before their twenty-fifth birthday, does not alter the constitutional infirmity. Mr. Justice Black said in Afroyim v. Rusk that the Fourteenth Amendment prevents Congress from abridging, affecting, restricting the effect of, as well as taking away, citizenship. 387 U.S. at 267.

In any event, it is apparent that Congress has recognized the type of constitutional infirmity now existing in section 349(a) (1). Just last year it repealed four expatriation provisions of the Immigration and Nationality Act -- sections 301(b), 350, 352 and 355 -- that were very

similar in their terms and rationale to section 349(a)(1) in that they predicated retention of American citizenship on either residing in the United States by a certain age or refraining from residing in a foreign state for a certain period of time.^{*/} See Pub. L. No. 95-432, 92 Stat. 1046 (Oct. 10, 1978).^{**/}

With the repeal of section 301(b), which imposed a residency requirement on American citizens born abroad to one citizen parent, Congress expressed the belief that it had eliminated the only existing expatriation provision which imposed a United States residency requirement on citizens of the United States.

"The bill [H.R. 13349] also corrects an inconsistency which has developed in our citizenship law by repealing Section 301(b) of that act. There is only one narrow class of U.S. citizens which currently must comply with any U.S. residency requirement in order to retain their U.S. citizenship." H.R. Rep. No. 95-1493, 95th Cong., 2d Sess. I (1978) (House Judiciary Committee) (emphasis supplied).

However, section 349(a)(1) remains as law to force a class of United States citizens to comply with a residency requirement in order to retain their United States citizenship. As the law stands, naturalized American citizens and certain American citizens born abroad have the right to reside in a foreign state indefinitely, without risking their citizenship and without having to comply with a United States residency requirement. Nevertheless, there is a class of native-born Americans who are denied this right. Moreover, native-born citizens who are dual nationals at birth by operation of a foreign law may reside abroad indefi-

^{*/} See Appendix A for text.

^{**/} See Appendix B.

nitely without risking their citizenship. Are native-born American citizens who were naturalized in a foreign state during minority by their parents any more responsible for their dual nationality than those citizens who were born dual nationals? The answer is obviously no.

In any event, Senator Kennedy has presented Congress with a perfect opportunity to "finish the job" in S. 1763 by amending section 349 (a) (1) of the Immigration and Nationality Act, to end the injustice of expatriating American citizens who are the passive beneficiaries of a foreign nationality during their minority, and to relieve the only remaining class of American citizens saddled with the unconstitutional burden of having to comply with an arbitrary United States residency requirement in order to retain their American citizenship.

I have attached as Appendix D a draft provision amending section 349(a) (1) in a manner consistent with the position advocated in this statement.

APPENDIX A

Pertinent Provisions of the Immigration and Nationality Act of 1952 Prior to the Passage of Pub. L. No. 95-432, 92 Stat. 1046 (Oct. 10, 1978).

"Sec. 301. (a) The following shall be nationals and citizens of the United States at birth:

* * *

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

(b) Any person who is a national and citizen of the United States under paragraph (7) of subsection (a) shall lose his nationality and citizenship unless -- (1) he shall come to the United States and be continuously physically present therein for a period of not less than two years between the ages of fourteen years and twenty-eight years; or (2) the alien parent is naturalized while the child is under the age of eighteen years and the child begins to reside permanently in the United States while under the age of eighteen years. In the administration of this subsection absences from the United States of less than sixty days in the aggregate during the period for which continuous physical presence in the United States is required shall not break the continuity of such physical presence."

"Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

(1) obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: Provided, That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: And provided further, That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of

this Act, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of section 101(a)(27)(E)"

"Sec. 350. A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state shall lose his United States nationality by hereafter having a continuous residence for three years in the foreign state of which he is a national by birth at any time after attaining the age of twenty-two years unless he shall --

(1) prior to the expiration of such three-year period, take an oath of allegiance to the United States before a United States diplomatic or consular officer in a manner prescribed by the Secretary of State; and

(2) have his residence outside of the United States solely for one of the reasons set forth in paragraph (1), (2), (4), (5), (6), (7), or (8) of section 353, or paragraph (1) or (2) of section 354 of this title: Provided, however, That nothing contained in this section shall deprive any person of his United States nationality if his foreign residence shall begin after he shall have attained the age of sixty years and shall have had his residence in the United States for twenty-five years after having attained the age of eighteen years."

"Sec. 352. (a) A person who has become a national by naturalization shall lose his nationality by --

(1) having a continuous residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in section 353 of this title, whether such residence

commenced before or after the effective date of this Act;

(2) having a continuous residence for five years in any other foreign state or states, except as provided in sections 353 and 354 of this title, whether such residence commenced before or after the effective date of this Act.

(b) (1) For the purpose of paragraph (1) of subsection (a) of this section, the time during which the person had his residence abroad solely or principally for a reason or purpose within the scope of any provision of section 353 shall not be counted in computing quantum of residence.

(2) For the purpose of paragraph (2) of this subsection (a) of this section, the time during which the person had his residence abroad solely or principally for a reason or purpose within the scope of any provision of sections 353 and 354 shall not be counted in computing quantum of residence."

"Sec. 355. A person having United States nationality, who is under the age of twenty-one and whose residence is in a foreign state with or under the legal custody of a parent who hereafter loses United States nationality under section 350 or 352 of this title, shall also lose his United States nationality if such person has or acquires the nationality of such foreign state: Provided, That, in such case, United States nationality shall not be lost as the result of loss of United States nationality by the parent unless and until the person attains the age of twenty-five years without having established his residence in the United States."

92 STAT. 1046

PUBLIC LAW 95-432—OCT. 10, 1978

Public Law 95-432
95th Congress

An Act

Oct. 10, 1978
[H.R. 13549]

To repeal certain sections of title III of the Immigration and Nationality Act, and for other purposes.

Immigration and
Nationality Act,
amendment—
Repeals.
8 USC 1401,
1482.
8 USC 1481,
1484-7.
8 USC 1401.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsections (b), (c), and (d) of section 301 and section 350 of the Immigration and Nationality Act are hereby repealed, effective as of the date of enactment of this Act.

Sec. 2. Paragraphs (5) and (8) of section 349 and sections 352, 353, 354, and 355 of the Immigration and Nationality Act are hereby repealed.

Sec. 3. Section 301 of the Immigration and Nationality Act is amended by striking out "(a)" after "Sec. 301.", and by redesignating paragraphs (1) through (7) as subsections (a) through (g), respectively.

8 USC 1481.

Sec. 4. Section 349 of the Immigration and Nationality Act is amended by inserting "(a)" after "Sec. 349.", and by renumbering paragraphs (6), (7), and (9) as paragraphs (5), (6), and (7), respectively.

Approved Oct. 10, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1493 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Sept. 19, considered and passed House.

Sept. 28, considered and passed Senate.

ARNOLD & PORTER

MEMORANDUM OF LAW

TO: SENATE JUDICIARY COMMITTEE

FROM: Pamela A. Williamson, Arnold & Porter, Washington, D.C.

RE: Appropriateness of Amending Section 349(a) (1)
in S. 1763.

I. INTRODUCTION

The following discussion of the 1978 legislation that repealed a number of expatriation provisions*/ similar to section 349(a) (1) and the Supreme Court decisions which prompted that legislation will show that section 349(a) (1) is "ripe" for amendment at this time in that (1) it does not predicate loss of citizenship on voluntary relinquishment but on the actions of a parent over which the expatriatee has no control; and, (2) it discriminates against American citizens who become dual nationals during childhood by the action of their parents, by subjecting them to a residency requirement to which no other class of American citizens are subjected.

II. DISCUSSION

The Supreme Court decisions pertinent to this discussion are Schneider v. Rusk, 377 U.S. 167 (1964) and Afroyim v. Rusk, 387 U.S. 253 (1967). In the Schneider case, the Court held unconstitutional, section 352 of the Immigration and Nationality Act**/ which provided that an

*/ Pub L. No. 95-432, 92 Stat. 1046 (Oct. 10, 1978).

**/ See Appendix A to STATEMENT OF PAMELA A. WILLIAMSON, ARNOLD & PORTER, ON BEHALF OF DR. DIRK ALAN MAXEN-MCINTIRE to SENATE JUDICIARY COMMITTEE, RE: AMENDMENT OF SECTION 349(a) (1) in S. 1763 (October, 1979) [hereinafter referred to as "STATEMENT"].

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American citizen by naturalization would lose his citizenship by either residing for three years in the foreign state of his birth or former nationality, or by residing for five years in any other foreign state or states. The Court reasoned that since native born citizens were free to reside abroad indefinitely without suffering loss of citizenship, section 352 constituted discrimination against naturalized citizens "so unjustifiable as to be violative of due process." 377 U.S. at 168. In reaching this conclusion, the Court expressly held that American citizens could not be expatriated simply for residing abroad -- precisely what section 349(a) (1) does.

"The discrimination aimed at naturalized citizens drastically limits their rights to live and work abroad in a way that other citizens may. It creates indeed a second-class citizenship. Living abroad, whether the citizen be naturalized or native born, is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance. It may indeed be compelled by family, business, or other legitimate reasons." 377 U.S. at 168-169.

In repealing section 352 in Pub. L. No. 95-432, Congress merely implemented the Court's decision.

The other Supreme Court decision of particular pertinence here is *Afroyim v. Rusk*, 387 U.S. 253 (1967). In that case, the Court held unconstitutional section 349(a) (5) of the Immigration and Nationality Act which provided for loss of citizenship for voting in a foreign election. Although that expatriation provision involved no residency requirement, the Court made its holding applicable to any expatriation law, including section 349(a) (1).

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The Court in Afroyim simply held that the Fourteenth Amendment, which declares that "[a]ll persons born or naturalized in the United States are citizens of the United States," confers on one born or naturalized in the United States a constitutional right to remain a citizen unless he voluntarily relinquishes that citizenship.

In addition to section 352, Congress also repealed section 350 of the Immigration and Nationality Act^{*/} in Pub. L. No. 95-432. This section provided that a native-born American citizen who became a dual national at birth by operation of foreign law and who had "voluntarily sought or claimed benefits of the nationality of any foreign state" would lose his American citizenship by residing for three years in the foreign state of which he was a national after the age of 22, unless he took an oath of allegiance to the United States prior to the expiration of the three-year period.

Both the Departments of State and Justice endorsed the repeal of section 350 upon the probability that it could not survive constitutional scrutiny in light of the Supreme Court decisions in Afroyim v. Rusk and Schneider v. Rusk.

"Although no court has yet considered this provision, it may experience difficulty in light of the decision of the Supreme Court in Afroyim v. Rusk, *supra*, to the extent that the statute does not contemplate voluntary relinquishment of citizenship. Its validity might also be attacked under the principle set forth in Schneider v. Rusk, 377 U.S. 163 (1964), since it imputes diminished allegiance to one class of citizens solely on the basis of foreign residence." H.R. Rep. No. 95-1493, 95th Cong., 2d Sess. 7 (Letter from Patricia M. Wald,

^{*/} See Appendix A to STATEMENT.

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Assistant Attorney General to Peter W. Rodino, Jr., Chairman, House Judiciary Committee (Dec. 12, 1977)).

Another of the expatriation provisions involving a residency requirement that was repealed in Pub. L. No. 95-432 was section 355 of the Immigration and Nationality Act.*/ This section provided that an American citizen under the age of 21 and living in a foreign state with or under the legal custody of a parent who loses United States citizenship under sections 350 or 352 of the Immigration and Nationality Act, shall thereby lose his American citizenship if he has or later acquires the nationality of the foreign state of his residence, unless he establishes his residence in the United States before he attains the age of 25.

As with section 350, the Departments of State and Justice endorsed the repeal of section 355. The Department of State noted that it has long considered section 355 void by reason of the Supreme Court's decision in Schneider v. Rusk. In other words, like section 352, condemned in Schneider v. Rusk, section 350 unjustifiably discriminated against a class of American citizens -- in this case dual nationals residing abroad in the custody of a parent who loses his United States citizenship -- by imposing upon them a United States residency requirement that they must fulfill in order to retain their American citizenship.

This provision is strikingly similar to the portion of section 349(a)(1) in issue. Not only does section 349 (a)(1) discriminate against American citizens who are dual nationals residing abroad, it also requires, like section 355, that those individuals whose citizenship is jeopardized during minority, establish residency in the United States before attaining the age of 25.

*/ See Appendix A to STATEMENT.

Finally, Congress repealed in Pub. L. No. 95-432 an expatriation provision that imposed a residency requirement on individuals whose American citizenship was based on a statute rather than the Fourteenth Amendment. Section 301(a)(7) of the Immigration and Nationality Act provided that a person born outside of the United States to one alien parent and one United States citizen parent shall be a United States citizen at birth if the citizen parent has resided in the United States for 10 years, 5 of which occurred after attaining the age of 14. Section 301(b)*/, before its repeal in Pub. L. No. 95-432, provided that United States citizens who derived their citizenship through the operation of section 301(a)(7) would lose this citizenship if they did not reside in the United States for two years between the ages of 14 and 28.

Unlike the other expatriation provisions repealed by Pub. L. No. 95-432, the constitutionality of section 301(b) had been expressly upheld by the Supreme Court, the Afroyim and Schneider decisions, notwithstanding.**/ The Court rationalized that since the class of persons born abroad and made United States citizens by statute are not "born or naturalized in the United States," they are not entitled to the same citizenship rights as those who acquired citizenship under the Fourteenth Amendment.

Nevertheless, Congress decided that Section 301(b) "create[d] an inequity that should be removed." H.R. Rep. No. 95-1493, 95th Cong., 2d Sess. 4 (1978) (House Judiciary Committee). Despite the Supreme Court's earlier judgment that it was constitutional to discriminate against "statutory citizens" residing abroad as opposed to "Fourteenth Amendment citizens" residing abroad, the House Judiciary Committee likened loss of citizenship to banishment and exile and expressed its opinion that "once [citi-

*/ See Appendix A to STATEMENT.

**/ Rogers v. Bellei, 401 U.S. 815 (1971).

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zenship] is conferred, it should not be lightly, nor discriminatorily revoked." Id.

III. CONCLUSION

Accordingly, to eliminate from section 349(a)(1) of the Immigration and Nationality Act, the provision for loss of citizenship based on the naturalization of a citizen upon an application filed in his behalf by a parent, guardian, or agent, or through the naturalization of a parent having legal custody of such person, and thereby render superfluous the residency requirement, would bring section 349(a)(1) in line with the constitutional law expressed in the Afroyim and Schneider decisions and implement the intent of Congress manifested in Pub. L. No. 95-432.

DRAFT AMENDMENT OF SECTION 349(a) (1) OF THE
IMMIGRATION AND NATIONALITY ACT

(1) by striking out the comma and all language after "obtaining naturalization in a foreign state upon his own application" up to the following: "; or" and inserting in lieu thereof the following: ": Provided, That a person who shall have lost nationality prior to the effective date of enactment of this Act, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person, is entitled, within two years from the effective date of this Act, to a reversal of the administrative or judicial determination of loss of citizenship."

APPENDIX III

ESTIMATED SAVINGS TO BE ACHIEVED BY S. 1763

The estimated cost savings for INS efficiency legislation is \$1,488,802. These savings will be realized by eliminating unnecessary reporting requirements and streamlining procedures which duplicate efforts.

Presently §336(a) requires a 30 day waiting period between the filing of a petition for naturalization and the final court period. The 30 day waiting period is not necessary and eliminating it would save INS over 132,000 annually.

Another outdated naturalization requirement which will be eliminated is §334(a). This section requires that every petitioner for naturalization be accompanied by two witnesses (when he files his petition for naturalization in court prior to a final court hearing on the petition). Examination of the accompanying witnesses is time consuming, unnecessary and unproductive. The elimination of this requirement will save over \$889,792 annually.

By amending §286 of the Act and allowing INS to retain funds spent for the purchase of evidence (mostly counterfeit documents) when such funds are later recovered will save over \$100,000 annually.

Under Section 223(b) a reentry permit for Legal residents is valid for only one year and is renewable. By making the reentry permit valid for two(2) years and non-renewable INS would save \$317,207 annually.

Other proposed changes would save INS another \$100,000 annually.

APPENDIX IV

DEPARTMENT OF STATE'S VIEWS ON VISA WAIVER PROPOSAL

UNDER SECRETARY OF STATE,

FOR MANAGEMENT

WASHINGTON

December 12, 1979

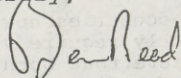
Dear Mr. Chairman:

In response to the recent request by the staff of your Committee, I am pleased to enclose an updated paper on a selective waiver of the nonimmigrant visa requirement, a subject I understand your Committee is presently considering. The Administration favors enactment of a selective waiver provision, and we would welcome your support of this idea.

If you should desire any further information, please do not hesitate to contact me or a member of my staff.

With best wishes,

Sincerely,



Ben H. Read

Enclosure: As stated.

The Honorable
Edward M. Kennedy,
Chairman,
Committee on the Judiciary,
United States Senate.

Selective Nonimmigrant Visa Waiver Proposal

This amendment to Section 212(d) of the Immigration and Nationality Act of 1952 would authorize the Secretary of State and the Attorney General jointly to waive the nonimmigrant visa (NIV) requirement for nationals of certain countries visiting the United States for 90 days or less for business or pleasure. (Such an amendment would extend the coverage of a blanket waiver authority which is granted already to nationals of Canada and the Bahamas, to British nationals resident in Bermuda, the Cayman Islands and the Turks and Caicos Islands.) The countries to which this additional waiver provision would apply would be selected on the basis of reciprocity and of data showing that applicants from those nationals pose the lowest risk of becoming public charges or of violating their status as temporary visitors.

Countries initially eligible for the benefits of this waiver proposal would be those which (1) did not require a visa of United States citizen tourists and business visitors, or were prepared to abolish such a requirement; and (2) had a nonimmigrant visa refusal rate of not more than 2 percent in the last fiscal year before the proposal became effective. After the initial period, continuing eligibility for this benefit would be based upon rates of formal or informal denial of entry and of violation of nonimmigrant status after entry. Thus, if experience with the waiver provision showed that it resulted in a meaningful increase in attempted or successful entry by unqualified aliens from one or more beneficiary countries, the entitlement of those countries would be cut off automatically and potential threats to the integrity of our system for controlling aliens would be prevented. Provision is made in the proposal for according this benefit at a later date to countries which did not qualify initially, but subsequently were determined to have become eligible.

Twenty-nine countries now meet all requirements. Japan and Brazil presently require visas of U. S. visitors, but there is reason to believe that both will lift the requirement if the USG indicates readiness to do the same for their citizens. Visitors admitted under the proposed amendment would be required to accept certain requirements, such as purchase of a round-trip, nonrefundable ticket, completion of a new Immigration and Naturalization Service (INS) form, and routine namechecks at the port of entry.

Procedures

Implementation of the proposal for short term business and pleasure visits by nationals of the countries jointly designated by the Attorney General and the Secretary of State will entail the institution of procedures to ensure that (1) eligible alien visitors without visas are aware of the conditions and limitations governing their visit, and (2) adequate entry and departure controls are maintained for aliens entering without visas. These procedures will be primarily a matter of extending the existing contractual relations between the Immigration and Naturalization Service and the international carriers. It is anticipated that the following arrangements would prove satisfactory to both INS and the carriers:

-- Entry without visa would be available (as at present) only to aliens transported to the U.S. on carriers which have entered into a contractual agreement with INS requiring the carrier to:

(1) Refuse to accept for passage to the United States any nonimmigrant visitor without a visa or a completed INS card.

(2) Remove without expense to the U.S. Government, to the foreign port from which the alien embarked, any alien brought to the U.S. under the visa waiver and found ineligible for admission by an immigration officer at the port of entry.

(3) Make no refunds or partial refunds on the return portion of a round-trip, nonrefundable ticket to be held by each alien entering the U.S. under the visa waiver, or accept for transportation a person other than the one in whose name the ticket was issued as presently required.

(4) Honor unconditionally the return portion of the round-trip ticket when presented for return passage.

-- The carrier would be responsible for ensuring that the alien was aware of the limitations governing his entry under the visa waiver.

-- The carrier would provide an INS form to the alien, at time of purchase or embarkation containing:

(1) A statement that the alien understands that he is not permitted to engage in employment in the U.S., and cannot have his temporary visitor status changed or his stay extended beyond 90 days.

(2) A Statement that the alien is not ineligible for admission under one or more of the categories described in section 212(a) of the Act. The alien would sign this form and present it to the immigration inspector at the port of entry, together with his passport and nonrefundable return ticket.

-- Notwithstanding the fact that the alien had signed this form (which would contain a caveat that entry was not guaranteed), the determination as to his admissibility would rest solely with INS at the port of entry. If found ineligible, the carrier would be obliged to return the alien to his port of embarkation, his country of origin, or a third country to which he is eligible for admission, using the round-trip or ongoing trip portion of the alien's ticket.

-- The INS form issued to the alien by the carrier prior to his arrival would serve as an entry and departure document when properly endorsed by the inspecting officer. The form would be in duplicate, the alien retaining the original and INS retaining the copy as a control document. The alien would surrender his form when he departed the U.S. for collation with INS's control copy. If INS received no record of departure, the alien would be regarded as an overstay and referred for investigation. To avoid expensive and time-consuming INS efforts to verify departure, the carrier would be responsible for lifting the alien's form and returning it to INS, as is done now with Form I-94.

-- An alien who remained beyond the 90-day limit or otherwise failed to maintain status would be subject to deportation proceedings, with the alternative of voluntary departure if the alien established that he was ready, willing, and able to depart the U.S. promptly or that his inability to depart promptly was due entirely to circumstances beyond his control.

-- Although these procedures ostensibly place on the carrier the responsibility and the financial burden for

removing aliens found ineligible at the port of entry, it should be noted that the requirement for the alien to have a round-trip ticket in his possession saves the carrier from financial loss in the event the alien is found ineligible. It is this provision that has induced the carriers to support, indeed to promote, earlier visa waiver proposals. It should be further noted that the requirement for a contractual agreement between INS and the carrier, and the carrier responsibility for distribution and collection of the INS eligibility/control form, are not departures from, but merely extensions of, procedures already used to comply with Sections 238, 240, 293 and related provisions of the Immigration and Nationality Act. Based on previous carrier concurrence in this procedure, it is anticipated that the carriers would find it in their own interest to undertake these obligations under the visa waiver proposal.

Discussion

In 1978, Foreign Service posts issued approximately 4.5 million nonimmigrant visas -- three times the annual total of ten years ago. Of these, about half will be issued in the 31 countries for which the proposal would apply initially -- and three-fourths of these to short term business and pleasure visitors. In the next two years, total issuances will increase by at least an additional million annually, with reduced air fares providing the possibility of even higher increases.

During a period when the Department's personnel resources are being cut back, it will simply not be possible to continue to provide prompt visa services in countries which supply the bulk of legitimate travelers as well as to screen fraudulent applications adequately in countries where there are the greatest risks. The proposed amendment would enable the Department to concentrate its limited resources on the areas which pose the greatest problems.

At the same time, enactment of the proposed amendment would give a positive sign to the world of the Administration's commitment to greater freedom of travel, as expressed in the Helsinki Final Act of the CSCE.

The Department estimates that implementation of the proposal would initially save 121 positions and \$3.13 million by FY-82.

Summary

Implementation of the proposal would provide substantial present and future personnel and money savings for the Department of State with virtually no added resource impact on domestic agencies. Short-term tourists and business persons from low-fraud countries would find it simpler to travel to the United States and might well be encouraged to do so in greater numbers by the elimination of the NIV requirements, which would help our balance of payments situation. It would provide a concrete signal of the Administration's commitment to the freedom of international travel and will accord to many of our friends the same treatment they have been providing U.S. nationals, some for many years. By enabling the Department of State to strengthen visa screening operations in countries which are the source of most illegal applicants for U.S. entry, the proposal would make possible the improved use of Departmental funds and personnel during a period of diminishing resources.

Attachments:

1. Suggested Language
2. Preliminary List of Countries

12/7/79

SEC. (a) Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end thereof the following new paragraph:

"(9)(A) The requirement of paragraph 26(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly in the case of an alien who is --

(i) applying for admission as a nonimmigrant visitor for business or pleasure for a period not exceeding ninety days; and

(ii) is a national of a country which extends, or is prepared to extend, reciprocal privileges to United States citizens and nationals and which is described in subparagraph (B) of this paragraph.

(B)(i) For the period beginning on the effective date of this paragraph and ending on the last day of the first fiscal year which begins after the effective date of this paragraph, a country shall be considered to be within the purview of subparagraph (A)(i) of this

paragraph if, in the last fiscal year preceding the effective date of this paragraph, such country had a nonimmigrant visa refusal rate, as determined by the Secretary of State in such manner as he shall by regulations prescribe, of less than two percent.

(ii) For each fiscal year following the period specified in subparagraph (B) (i), a country considered to be within the purview of subparagraph (A)(ii) during such period shall not be considered to remain within the purview of subparagraph (A)(ii) unless, in the fiscal year immediately preceding such fiscal year, it had a rate of exclusion and withdrawal of application for admission and a rate of violation of nonimmigrant status, as determined in both cases by the Attorney General in such manner as he shall by regulations prescribe, which did not exceed one percent.

(iii) If, in any fiscal year following the period specified in subparagraph (B)(i), a country not previously considered within the purview of subparagraph (A)(ii) shall have a nonimmigrant visa refusal rate, as determined in the manner provided for in subparagraph (B)(i),

of less than 2 percent such country shall be considered to be within the purview of subparagraph (A)(ii) for the next following fiscal year and shall thereafter be treated in the manner specified in subparagraph (B)(ii).

(b) Section 214(a) of the Immigration and Nationality Act (8 U.S.C. 1184(a)) is amended by changing the period at the end thereof to a colon and by adding thereto the following:

"Provided, That no alien admitted to the United States without a visa pursuant to section 212(d)(9) shall be authorized to remain in the United States as a temporary visitor for business or pleasure for a period exceeding ninety days from the date of his admission."

(c) Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)) is amended to read as follows:

"(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; (3) an alien admitted in transit without visa

under section 212(d)(4)(C); or (4) an alien admitted as a temporary visitor for business or pleasure without a visa under section 212(d)(9)."

(d) Section 248 of the Immigration and Nationality Act (8 U.S.C. 1258) is amended by inserting after the word "except" the following:

"an alien admitted as a temporary visitor for business or pleasure under section 212(d)(9),".

COUNTRIES

Andorra
Austria
Belgium
Botswana
Brazil
Denmark
Finland
France
Germany (FRG)
Iceland
Ireland
Italy
Japan
Liechtenstein
Luxembourg
Malawi
Malaysia
Malta
Monaco
Morocco
Netherlands
New Zealand
Norway
San Marino
Spain
Swaziland
Sweden
Switzerland
Tunisia
United Kingdom
Venezuela

APPENDIX V

U.S. LABOR MARKET PROJECTIONS AND THEIR RELEVANCE TO CURRENT
MIGRATION CONTROVERIES

An Essay by Clark W. Reynolds

OFFICE OF
SENATOR
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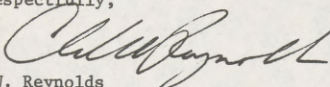
Cable: FOODRES STANFORD

Senator Edward Kennedy
U.S. Senate Judiciary Committee
Dirksen Senate Office Building
Room 2304
Washington, D.C. 20510

Dear Senator Kennedy:

I have been advised by your staff assistant, Ms. Antonia Hernandez, of the forthcoming hearings of the Committee regarding proposed legislation to increase the annual quota of Mexicans allowed to immigrate to the United States. For reasons which will become clear from a reading of the enclosed research paper, "Labor Market Projections for the United States and Mexico and their Relevance to Current Migration Controversies," I strongly support such legislation. I wish to submit the paper, shortly to appear in Food Research Institute Studies, Stanford University, for inclusion in the record of the Committee.

Most respectfully,



Clark W. Reynolds
Professor of Economics

CWR:CS
enc.

LABOR MARKET PROJECTIONS FOR THE UNITED STATES AND MEXICO
AND THEIR RELEVANCE TO CURRENT MIGRATION CONTROVERSIES

Clark W. Reynolds
Food Research Institute
Stanford University

With the assistance of Robert K. McCleery,
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July 6, 1979
(revised)

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Prospects for Employment Creation in Mexico During the Next Decade:
Implications for the Relationship between Mexican Labor Supply
and Future Employment Opportunities in the United States

Introduction

The purpose of this article is to contribute to the current reassessment of mutual relations between the United States and Mexico by demonstrating current and future economic interdependence, particularly in the exchange of labor. We project the supply of labor in the United States based on current demographic data, then calculate the demand for labor necessary to meet planned or projected levels of output in selected years. The results of comparing the supply and demand for labor in the two countries are of course sensitive to the particular parameters used, especially considering the wide range of current predictions concerning sustainable rates of growth of output and productivity in both countries. In general, we conclude that employment generation in post-petroleum Mexico may just be able to keep pace with its rapidly rising labor force. But only a sustained rate of growth of output in excess of 7 percent per annum will permit it to soak up its large pool of unemployed and under-employed workers.

In contrast, the United States is faced with the opposite problem. Regardless of the short run effect of the 1979-80 recession, we predict an eventual shortfall of labor of some five million workers by the year 2000, even given current levels of immigration and the maintenance of a substantial pool of undocumented aliens in this country. A curtailment of immigration combined with the Bureau of Labor Statistics low projection could result in aggregate shortfalls of 18 to 33 million workers within the time frame of our study. In short, even ignoring Mexico's oil reserves and the United States hunger for energy, it seems that the two countries share more than a border and are destined to move toward closer ties which may be mutually advantageous.

I. Background

The major North American states, Mexico, Canada, and the United States, are drawing closer together through the exchange of labor, commodity trade, capital flows, and technology transfers even as their governments are attempting to strengthen national autonomy and security in an increasingly multipolar world. The relative growth of Mexico and Canada in output and production has outstripped that of the United States in recent years. In 1960 Mexico and Canada had a combined gross national product one-tenth that of the United States. In 1976 their joint output was 14 percent of United State production, and by 2000 it is expected to total one-fourth. The combined population of Canada and Mexico amounted to 29 percent of the United States population in 1960 and 40 percent in 1976; by the year 2000 it will be 50 percent. These figures suggest that the North American region is likely to show an increasingly balanced distribution of output and population among its three major partners in the years to come.

However, it is by no means clear that the internal distribution of income will be more equal in labor-abundant Mexico, in the face of her burgeoning population and work force, without a major effort at job creation and the "export" of a significant fraction of the labor force. In the United States, the demographic imbalance caused by the "baby boom" is inspiring dire predictions of social upheavels, failure of the social security system, and other major structural changes early in the next century. Without substantial immigration, there will simply not be enough productive labor, given the declining rates of investment and productivity growth, to sustain the living levels of those outside the work force, not to mention those with redundant skills who remain "structurally unemployed." Hence both growth and distribution in the two countries will depend on their mutual interaction in all major economic dimensions. Notwithstanding the

desire of each of the North American economies for maximum self-determination, they are destined to be bound together still further by strong complementarities in resource endowments, production mix, and demographic structure.

Trade in goods and services between the two countries is still highly asymmetrical, with about 67 percent of Mexico's exports directed to the United States markets, while only 4 percent of United States exports go to Mexico. However the discovery of substantial new petroleum reserves will permit continued rapid growth of oil exports. Energy exports are already affecting both the level and balance of trade with the United States. The traditional current account surplus in favor of the United States is falling sharply and will almost certainly shift to a deficit during the next two decades, unless Mexican import restrictions are substantially liberalized. The current account balance will also be affected by trends in exogenous international capital flows. Mexico is already the second largest borrower of financial capital in the third world (after Brazil). By the mid 1980s Mexico will have the option of using its expanded petroleum rents either to reduce debt exposure or to spur imports for domestic growth. Foreign direct investment could also increase significantly in the years ahead. Whatever the trend in net capital flows and implication for the trade balance, Mexico's share of United States imports is certain to rise, while the share of United States exports should increase as well in response to the rapid expansion of Mexican purchasing power.

The Mexican contribution to the United States work force comprises two major flows made up of those who permanently migrate to the United States (legal and undocumented) and those who temporarily migrate. Mexican immigrants form a rotating pool of labor only part of which adds to the annual stock of workers as measured in decennial population censuses. In Table 1 estimates of these components are presented in terms of their evolution from 1940 to 1975. While the undocumented component is highly conjectural, the figures reflect

the best available estimates of the permanent and rotating components of the labor pool, reconciled with the census data from each country.

It is in the area of employment that the two countries have become the most interdependent. Since 1940 an estimated two and one half million Mexicans have joined the United States work force as permanent residents, while one may conservatively estimate that at least a million more are in the labor pool each year as temporary migrants (Table 1). By 1975 at least three and one-half million workers from Mexico had joined the United States job market, not counting those born of Mexican parents. The pool is growing by about 170,000 per year, while the annual growth of the total United States work force is 1.7 million. Hence at least 10 percent of the growth in supply of American labor is represented by Mexican migrants. This number equalled 30 percent of net growth in the Mexican labor force by the mid-1970s, while the pool of Mexicans in the United States (accumulated since 1940) amounted to one-fifth of the economically active population of Mexico in 1975 (Table 1). Temporary migrant workers alone represented 5.8 percent of the Mexican labor force in that year. It is evident that Mexican workers play a relatively far greater role in the United States economy than does United States-Mexican trade, direct investment, or financial transactions.

Table 1

Mexican Contributions to the U.S. Labor
Pool for Selected Years

	(thousand workers)				
	1940	1950	1960	1970	1975
(1) Mexican labor force	5858	8345	10213	12955	15400 est.
(2) Legal and undocumented temporary migrant workers (per year)	300	500	500	600	900
(3) Cumulative stock of permanent undocumented workers (beginning in 1940)		500	1000	1550	1925
(4) Cumulative stock of legal immigrant workers (beginning in 1940)		30	210	470	650
(5) Total Mexican workers in U.S. labor pool *	300	1030	1710	2620	3475
(6) Mexicans working in U.S. as share of Mexican work force (5) ÷ (1) = (6)	5.1	12.3	16.7	20.2	22.6

Notes: Mexican labor force totals for 1940, 1950, and 1970 are from the census data on economically active population age 12 and over (including unemployed). The 1960 census figure was adjusted to correct for overcounting of rural workers (for details see Reynolds (1979)). A detailed discussion of Mexican labor force and employment data is in Keesing (1977); his adjusted labor force total for 1950 is 8,272 and for 1960 is 9,691. For 1940 and 1970 they are the same as the census figures. The estimates in row (2) are based on the number of legal temporary workers (including Braceros from 1942 to 1964) plus an estimate of undocumented workers during the previous five year period (double the number of illegals deported reduced by one-fourth for non-participants in the work force. The figure is reduced by 20 percent more in 1975 to provide the most conservative possible estimate, in view of the speculative nature of the methodology used. Row (3) is based on the assumption that 10 percent of the seasonal migrants in Row (2) elect to remain in the United States each year. Row (4) represents the net cumulative legal migration of workers assuming that legal migrants from Mexico have a .65 labor force participation rate and a 5 percent attrition rate.

Figures on legal and undocumented migration and labor participation rates are from Marshall (1978); Domestic Council Committee on Illegal Aliens (1976) and Cornelius (1978). The figures in the table represent estimated numbers of workers who will participate in the U.S. labor market at some time during the year cited, whether as temporary or permanent additions to the stock of manpower and do not represent man-years of labor. Hence Row (2) includes workers who might have been employed in Mexico as well as in the U.S. during that year, since the average period of employment of temporary Mexican workers in the U.S. is from three to six months (Bustamante (1978; 1979) and Cornelius (1978)).

* When we speak of "Mexicans" in the United States, we refer to all legal and illegal immigrants from Mexico who entered this country between 1940 and the present and their progeny, regardless of place of birth. This is clearly not the same as "People of Mexican Origin" as detailed in a recent Current Population Survey. The magnitude of the difference (about one and a half million people) can be explained as being all legal and illegal immigrants and their descendants who came before 1940. We are making the assumption, unrealistic perhaps, that most of the illegals are counted in this survey. Otherwise the gap would be greater.

II. Trends in Output and Population Growth in Mexico and the United States

Since 1950, the Mexican GNP growth rate has been almost double that of the United States. From 1950 to 1970 this was enough to more than compensate for Mexico's accelerating rate of population growth, so that even though per capita United States income grew, the gap between the two countries fell from 8.5 to 1 in 1950 to 6.8 to 1 in 1970 (Table 2). In the 1970s the picture began to change. Mexico's demographic explosion had begun to eat up most of the output growth, and by 1977 the income gap widened to 7.4 to 1. One might expect that slower growth and widening per capita income gaps between the United States and Mexico would elicit a migratory response northward. Table 1 shows that Mexican migration substantially increased in the 1970s to make the present pool of Mexican labor in the United States by far the largest in history. However Mexico's recent petroleum discoveries could generate the savings needed to accelerate the growth of production, while family planning measures introduced by the government in the early 1970s should slow population growth.

Government sources suggest a lowering of annual rates of population growth from 35 per thousand in the 1960s to 29 in the mid 1970s, with the downtrend expected to continue.*

* Although it is clear that population growth rates have fallen, there is debate concerning the magnitude of the fall. In the United Nations declared "Year of the Family" (1973) a concerted effort was made to register all births in Mexico. Mexican vital statistics, which are kept by year of registration rather than by year of occurrence, were consequently biased upward in 1973 by inclusion of many births which would otherwise have gone unrecorded for a year or two. This led to a downward bias in the subsequent years which may have contributed to recent apparent declines in the birth rate.

Table 2

Trends and Projections of United States and Mexican
Output and Population 1950 - 2000

Year	Gross National Product (Million 1977 dollars)		Population (million)		GNP per Capita (1977 dollars)		Ratio of GNP Per Capita
	U.S.	Mexico	U.S.	Mexico	U.S.	Mexico	
1950 (observed)	756	15	152	26	4984	586	8.5
1960 "	1043	27	181	35	5776	780	7.4
1970 "	1522	54	205	49	7430	1095	6.8
<u>1977</u> "	<u>1887</u>	<u>74</u>	<u>217</u>	<u>63</u>	<u>8701</u>	<u>1180</u>	<u>7.4</u>
1985 (projected)	2399	120	235	79	10209	1519	6.7
1990 "	2787	161	247	89	11283	1809	6.2
2000 "	3762	294	273	109	13780	2697	5.1

Assumptions: U. S. compound output growth rate for 1977 to 2000 at 3% per annum, Mexican output growth rate of 6% p.a.; U. S. population growth projected at 1% p.a. including migration 1977/2000 (see below); Mexican population growth assumed to decelerate, reflecting the second phase of the demographic transition from 2.8% p.a. 1977/85; to 2.5% p.a. 1985-90; and 2.0% p.a. 1990-2000.

Note that the U. S. population projections above assume that there will be sufficient net immigration to permit a sustained 1 percent compound annual rate of growth. With no net immigration, the U. S. Bureau of the Census projects the following levels of U. S. population: (in thousands) 1985, 228,912; 1990, 237,028; 2000, 248,372 (this series reaches zero growth around the middle of the twenty-first century), ref: U.S. Bureau of Census, Current Population Reports, series P-25, cited in U.S. Department of Commerce, Statistical Abstract of the U. S. 1978, Washington, DC, 1978 pp 8f. The U. S. population projections in the table imply a cumulative net immigration from 1978-85 of 6 million; from 1975 to 1990 of 10 million; and from 1978 to 2000 of 25 million, or 1.5 million persons per year in the last decade of the century (more than twice the current flow).

Table 2 assumes that these factors of output growth and fertility decline must combine to reverse the disequilibrating trends of the early 1970s and permit Mexico again to outstrip the United States in rates of growth of per capita output. Mexico is hoping that GNP will grow at 7 to 7.5 percent annually between now and the end of the century. Assuming a 6 percent compound rate of growth of GNP and 2.8 percent population growth rate, one may project that the Mexico-United States per capita income gap would recover its 1970 ratio by 1985. That is partly because United States output is projected to grow at only 3 percent annually, though its population growth will remain at no more than 1 percent. Later in the paper it will be shown that there is no way short of a totally implausible productivity miracle that the United States will be able to sustain even a modest 3 percent rate of output growth assumed in Table 2 without substantial in-migration of labor. Even the most optimistic growth of Mexico's GNP at rates well beyond the 6 percent annually shown in Table 2, will be unable to absorb the tidal wave of demographic growth of earlier years between now and 2000. If there is no outlet for Mexico's impoverished workers, attempts to support them by make work projects or income transfers will eat up scarce savings needed for investment. Associated social and political pressures will tend to discourage private investment. If contrasts between rich and poor across the border and over the fences of the barrios of Mexico are allowed to magnify, they could lead to domestic and international security problems that no rate of growth would resolve.

III. Projections of the Supply of Labor in Mexico

The labor supply in Mexico during the next 20 years depends upon three main factors: past demographic trends, desired participation rates of working age men and women, and the expectations of gainful employment. Other factors which bring about changes in desired labor force participation of women are future fertility rate declines and the changing role of women in Mexico. It is not possible here to more than summarize some of the most salient findings of research on determinants of Mexican labor and piece them together into a framework consistent with the projections of output, population, and exchange between the United States and Mexico.

Estimates of Mexican labor force growth between 1970 and 2000, based on two alternative sets of estimates for those of working age (A and C) and alternative assumptions about labor force participation, are given in Table 3. These projections are relatively insensitive to assumptions about future demographic trends, since most of those who will be in the age group 15 to 64 between now and the end of the century have already been born. The economically active population is expected to double between 1980 and 2000. The number of job seekers will increase by 20 million, with a relatively rapid growth of women and with an overall 3.5 percent compound annual rate of growth of labor supply. Depending upon the overall demographic projection used, the gross labor participation rate will rise from 26 percent in 1970 to 30 percent (high population estimate) or 38 percent (low population estimate).

Even if education improves markedly in Mexico during the coming decades, the majority of workers will have little more than a basic primary school education, and any improvement in educational skills or training will have to be through adult classes, on the job training, and home study (Urquidí, 1974). The labor supply will be heavily weighted by those qualified only for

Table 3

Projections of Mexican Labor Supply 1970-2000

Year	Total Population Estimate			Population Ages 15-64			Economically Active Population		Labor Participation Rate			
									Active Pop. # Pop ages 15-64		Active Pop. # Total Population	
	A	B	C	A	B	C	A	C	A	C	A	C
	(million persons)								(Percentages)			
1970	---	50	-	---	25.5	---	---	13.0	---	51.0	---	25.8
1980 est.	70	70	72	36.3	36.3		20.4	20.4	56.2	56.2	29.1	27.8
1985	79	81		42	42.6		24		57			
1990	89		100	50	52.2		29	28-30	58	54-58	28-30	
2000	109	123	135	68	70.3	74.0	41	40	60	54	38	30

Sources and methods:

Estimate A is based on the assumption of a rapidly declining population growth rate reaching 2.0 by the period 1990-2000 (see notes to Table 2). For the economically active population Estimate A assumes a rising participation rate for the age group 15 to 64, based primarily on growing female participation, anticipating that Mexico will become more comparable to other developing countries (its female labor force participation ratio is relatively low by international standards (P. Gregory, "Employment and Unemployment in Developing Countries," report to the World Bank, 1976)) as birth rates decline.

Estimate B is the low fertility projection III of Alba (La población de México: evolución y dilemas, El Colegio de México, 1977) which reduces fertility more gradually achieving a population growth rate of 2.03 for 1995-2000. Estimate C is based on the projection of Urquidí ("Empleo y Explosión Demográfica," Demografía y Economía, Vol. VIII, No. 20, 1974) which is slightly higher than Alba's moderate fertility decline based on a population growth rate of 2.4 percent in 1995-2000 leading to a population of 135 million by the year 2000.

"unskilled" occupations at least into the 1990s. This will exacerbate whatever excess supply conditions are suggested by the aggregate projections, as structural employment problems will almost certainly worsen.

Lower demographic growth rates mean a possible increased in labor force participation by women, so that the slowdown population growth will have the paradoxical effect of increasing labor supply between 1980 and 2000. As a consequence the need to find means of absorbing that labor will increase rather than decrease as the demographic transition moves into its decelerating phase.

IV. Projections of the Demand for Labor in Mexico

Will a doubling of the supply of labor in the next 20 years be matched by new jobs? In the past Mexico has had one of the lowest sustained rates of open unemployment in the developing world (Gregory, 1976; Keesing, 1974), despite very wide fluctuations in the level of economic activity and in demand for labor in the more productive high-wage occupations. Rather than becoming involuntarily unemployed in slack periods, Mexican workers have tended to voluntarily withdraw from the labor market or have found low-income self employment in the informal sector or to remain idle for large portions of the year. For example, between 1940 and 1950 female labor participation rates doubled as jobs became more plentiful, but then fell again between 1960 and 1970 as the labor market weakened (Keesing, op. cit.) In the 1960s the growth of self-employed in urban services was substantial, as modern sectors failed to provide enough jobs for migrants from agriculture (McFarland, 1973 as cited by Gregory, op. cit.) By the mid-1970s outmigration of labor appears to have accelerated in the face of a severe domestic recession.

Since the supply of labor in Mexico tends to shift with demand at the subsistence level, the labor slack shows itself less in terms of open unemployment than in a number of other indicators:

1. lagging or declining earnings of unskilled labor
2. falling female participation rates
3. increased seasonal unemployment and underemployment
4. increased self-employment (especially in the urban informal sector)
5. slowed emigration from the rural to urban areas within Mexico
6. increased pressures for migration to the U.S.

By the late 1960s the Mexican economy had begun to face serious obstacles to continued rapid growth in output, productivity, and employment. The "Mexican miracle" that had been heralded as an example during the postwar period was running out of time. Its much vaunted agricultural productivity growth was plummeting in the face of land and water constraints, even though demand for agricultural products continued to grow. The postwar "import substituting" industries, which had achieved important gains during previous decades, had begun to show the effects of serving a limited domestic market behind quantitative and tariff barriers that permitted high prices and low quality relative to more vigorous export-oriented manufacturing industries abroad. By the early 1970s output growth had decelerated sharply, together with employment, even though capital formation continued to expand. Productivity growth had fallen to a fraction of its earlier levels. Hence by mid decade the Mexican economy appeared to be in serious trouble and was no longer able to absorb more than a fraction of its rapidly increasing work force (Reynolds, 1979).

Some of the causes of the malaise were policy-induced, including an overvalued exchange rate that hurt exports and favored unproductive imports, increasing conflict between government and the private sector during the period from 1970 to 1976, the expectation of agrarian reform, new laws restricting foreign direct investment, and foreign borrowing by the Mexican government. A final jolting peso devaluation in 1976 created a major squeeze on corporate working capital and triggered a flight of short-term funds that drained foreign exchange reserves and stopped the economy cold (Reynolds, 1978; Tello, 1979; Villar, 1979). But harmful as these policy measures were, there were more important underlying problems associated

with an increasingly inward-looking character of the economy that neglected the foreign market, serious inequalities in the distribution of income and wealth, increasing urbanization, and the spread of slums. The latter conditions created social unrest and political uncertainty that dampened expectations of potential domestic and foreign investors. The failure of potential leaders in the private sector to respond with courage and imagination to the immense problems of poverty and underemployment on every hand worsened the condition.

Given this background, Mexico's announcement of the discovery of major petroleum and natural gas reserves during the early days of the Lopez Portillo administration was greeted with understandable skepticism. However, as these announcements were gradually confirmed, expectations shifted from doubt to euphoria and the predictions of Mexico's petroleum-led growth potential have skyrocketed. A team from the World Bank provided a set of output forecasts assuming a sustained GNP rate of growth of 7 percent for Mexico through the year 2000 (World Bank, 1978, Table 40, p. 106). The Wharton moderate projection model suggests a more modest 6.6 percent rate of output growth for the period 1977 to 1983 (Table 4), and most of the projections in this paper assume a 6 percent rate of growth of gross domestic product through 2000 (Table 2). Sustained growth at 6 percent per annum implies a doubling of output every 12 years, and it will require an enormous expansion in the capital stock, infrastructure, skilled labor and managerial pool. This will in turn require a major expansion in imports of goods and skilled labor services making pressures for an opening of the Mexican economy to increased foreign trade and investment immense. While it will be difficult to turn outward the inward-looking orientation of Mexican planners, policy makers, and private entrepreneurs, the growth projections carry with them a relentless logic to do so.

Assuming that a 6 percent sustained growth rate may be achievable through the year 2000, what will be the consequences for Mexico's absorption of its work force and for wages of the lowest income groups? There are far more serious problems, and failure to find adequate answers will generate social pressures and political conflict that could prevent realization of Mexico's new development dream.

A major difficulty in assessing the employment impact of alternative growth and investment strategies is the lack of hard information about the current structure of the demand and supply for labor and its likely change under alternative development strategies. The most recent Input-Output study of Mexico for the year 1970 (Mexico, SPP, 1979), an excellent tool of sectoral planning, will require a complementary matrix of labor inputs by skill and occupational category if it is used to project labor demand. Nor is there any manpower planning framework which would permit linking Mexico's ambitious new industrial production plan (Mexico, SPFI, 1979) with projections of labor supply in order to determine the outlook for workers at all skill levels. This is needed in order to project additional education and training requirements to determine the immigration of skilled workers and managers that will be needed in the coming years. Not only are the employment implications of the industrial development plan unclear; the present administration has no agricultural development plan capable of providing rural employment projections nor does one appear to be forthcoming.

Given the shortage of reliable information relating output to employment and productivity in even the basic sectors of the Mexican economy and in view of the shaky nature of production forecasts, one cannot expect to generate very robust labor demand projections. As a second best approach we have resorted to a relatively crude employment

forecast based on past trends in labor-output ratios and expected rates of productivity growth.*

* The United States is no better equipped with overall manpower projections, estimates of capital requirements for growth, or medium and long run development strategies. Indeed Mexico has a more comprehensive approach to planning today than the United States ever did in its long history. Only in recent decades have the iron laws of resource scarcity become so apparent, given the world's compelling demands for rapid growth, the interdependence of national economies, and the social intolerance of major business cycles. In such circumstances the United States has pressed on developing countries better approaches to planning and capital budgeting. In view of its own severe structural problems, observers may now say, with some justice, "physician heal thyself."

Table 4
Output and Employment Growth in Mexico, 1978-83, and Net Investment Requirements

	1977	1978	1979	1980	1981	1982	1983	Compounded Annual Rate of Growth 1977/83
Gross domestic product (billion 1977 dollars)	74	79	84	91	98	105	110	6.61%
Net investment (billion 1977 dollars)		8.7	10.4	11.9	13.4	15.1	15.5	
Employment (thousand employees)	17,057	17,687	18,316	19,012	19,730	20,522	21,241	3.66%
Increase in employment (thousand employees)		630	629	696	718	792	719	
Incremental capital/ labor ratio (net investment per additional job in 1977 dollars)	13,800	16,500	17,000	18,700	19,100	21,500		
capital/labor ratio (capital per job in 1977 dollars)	6,900	7,090	7,370	7,670	8,030	8,770		
Incremental capital/ output ratio (net investment ÷ change in GDP)	1.84 %	1.80 %	1.99 %	1.84 %	2.05 %	3.16 %		

Source: DIENEX/WHARTON Mexican econometric model (Wharton, 1979) with values in billion 1960 pesos converted to 1977 U.S. dollars at a rate of one 1960 peso = \$.181 U.S. dollar of 1977 purchasing power.

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Table 4a

Long Term Projections of Demand for Labor in Mexico 1980 to 2000 (Million Workers Employed)							
	Year	1980	1985	1990	2000 (1)	Projected Labor Force (Table 4) 2000 (2)	Projected Employment Gap 2000 (3) = (2) - (1)
GNP growth rate of 4 percent compounded annually		19.0	21.2	23.7	29.5	40 - 41	10.5 - 11.5
GNP growth rate of 6 percent		19.0	22.4	26.4	36.7	40 - 41	3.3 - 4.3
GNP growth rate of 6.6 percent		19.0	22.9	27.5	39.8	40 - 41	0.2 - 1.2
GNP growth rate of 7 percent		19.0	23.1	28.1	41.5	40 - 41	-1.5 - -0.5

Notes on methods:

Million workers employed is calculated based on an estimated output elasticity of labor demand of .554 (Table 4) from the DIEMEX/Wharton model applied to projected rates of output growth. Such an elasticity is consistent with historical trends and with a projected pattern of petroleum-led growth, in which heavy industry and producer goods manufacturing figure prominently in development strategies. The projected labor force (supply of labor) for the year 2000 does not take into consideration present underutilization of employed labor (19.0 million active population in 1980) which amounts to 20 to 30 percent of the work force working only part of the year (approximately 2 to 3 million man years of labor slack not including 1.3 million working in family enterprises without pay and 6 million self-employed, the majority of which are at the subsistence level) (Keesing, 1977). An additional 3 to 4 million workers are employed at least part of the year in the U.S. Moreover there is a downward bias in the reported labor participation rate owing to slack in the labor market (see Gregory, 1976; Keesing, 1977; and section V.

In Table 4 the DIEMEX/WHARTON projections of output and employment through 1983 are used as reasonable indicators of growth. They rest on the following moderate assumptions about border openings for productive imports starting in 1980; achievement of readily realizable crude oil export targets rising from 375,000 barrels per day in 1977 to 1,105,000 barrels per day in 1983, and expected gas exports of 1 billion cubic feet per day beginning in 1980 rising up to 2 billion cu. ft. per day in 1983. The model's projections of petroleum export revenues need to be revised upward, however, given the recently announced price of \$22.60 per barrel for Mexican crude, as the model projects the price to reach only \$18.45 by 1983. The projected natural gas price in the model, \$2.81 per tcf. in 1980, rises to \$3.41 in 1983, and that figure is also subject to upward revision assuming that an export agreement will be reached with the U.S. The model's exchange rate is semi-fixed, rather optimistically projecting the rate of inflation to decline from 32 percent in 1977 to 11 percent in 1983. This is unlikely given the liquidity-increasing effect of increased petroleum export revenues, government deficits, sustained foreign borrowing, and imported inflation.

The model projects output to grow at 6.6 percent annually through 1983, somewhat above the more conservative estimate of 6 percent for the period 1977-85 used in this paper (Table 2) below World Bank projections of 8 percent per annum for the period 1980-82 (World Bank, 1978). The United States State Department shows even more optimism projecting a real rate of growth in Mexican GNP of 8 percent or more throughout the 1980s (U.S. Foreign Service, 1979). Hence there may be some reason to expect Mexican employment growth to exceed the rate of 3.66 percent per annum projected in Table 4. The investment requirements for growth would rise accordingly,

in terms of Mexico's present strategy which is to favor the creation of the third stage of import substituting industry for the production of capital goods, even as it intends to reduce the effective protection of consumer and intermediate goods imports.

Table 4 indicates that additional jobs could be created with net investment of \$7,000 per job, based on past trends in factor utilization and a gradual rise in the capital/output ratio. The substantial difference between this figure and the marginal capital output ratio of \$16,500 stems from the nature of Mexico's development plans. Most new investment takes place in high capital labor ratio industries, such as petroleum and heavy manufacturing. Of course the ratio of output to worker is higher in these industries, causing per capita output of the employed labor force to rise relative to other development strategy results, although alternate effects on per capita income are ambiguous.

It is conceivable that a major shift in the pattern of production and technology toward more labor-using and capital-saving activities would substantially raise the demand for labor per unit of output. This is by no means clear in fact. The government's present development plans focus on capital formation for growth of heavy industry, producer goods manufacturing, and the creation of infrastructure for the regional decentralization of industry, all of which are likely to increase rather than decrease capital/labor ratios.

There is evidence that a moderate growth in the petroleum and gas-based expansion of the economy will permit the demand for labor to just about keep up with growth in its supply. On the basis of estimates in Table 4, if output were to grow by 6.6 percent annually until 2000, employment would rise by the same amount as labor supply, or 20 million jobs (Table 3). However all segments of the market would not be expected

to grow proportionately, and it is almost certain that just maintaining balance in overall supply and demand would not correct structural imbalances, as low skilled workers would remain in surplus. Pay differentials would still widen between workers with different educational levels and access to high productivity employment. To raise real wages of the poorest workers given the current 20 to 30 percent rate of underutilization of Mexican manpower in 1975, another 4 to 6 million jobs would have to be created by the year 2000. With an employment elasticity of output of .55, this would require a sustained real rate of growth of GNP of 7 percent, between now and the year 2000, and the present pool of one to three million Mexicans working abroad would have to be maintained.

V. The Relationship between Tightness in the Labor Market, Relative Wages and Prices and Income Shares

General tightness or slackness in labor markets has the most dramatic effect on the earnings of low skilled workers like those in agriculture and personal services. When markets are tight, workers in those sectors are attracted into higher wage industrial employment, and into modern commerce and service activities. The employers of lower wage labor (e.g., barbers, restaurant owners, and farmers) are forced to offer higher wages as well. This may induce them to invest in productivity-increasing machinery, mechanized food operations and mechanical harvesters. The price of the goods or services produced in these sectors will also rise giving the illusion of productivity growth. Thus in economies with tight labor markets like that of the United States in 1979, the benefits from productivity growth in leading economic sectors spread to the mass of workers. But in economies with slack labor markets, workers in low-wage occupations are unable to participate significantly in rapid productivity growth, because of the large number of potential competitors for their jobs. Where there are barriers to entry, such as through unionization, the jobs themselves may become "capital goods," with access to them bought and sold. In Mexico this is a common occurrence for jobs that pay more than a pittance, and even union officials are involved in their sale. When industries raise wages beyond the going rate, long queues of workers form outside the gates waiting for a chance at the lottery.

It is necessary to distinguish between the fact of low wages in Mexico and the alleged "low productivity" of its labor. In fact, Mexican workers may perform precisely the same task as their North American counterparts, with equal or greater skill, yet receive one-eighth to one-tenth of the U.S. wage for the same job. (See Reynolds, 1979 and

Keesing, 1977). Barbers in Mexico earn 50 cents for a haircut that would cost \$5.00 north of the border. Cooks, waiters, and maids may receive \$60 a month for their services in Mexico, where they would earn \$600 in the United States. The price of their final product tends to be lower as well, so that such labor intensive goods and services in Mexico cost a fraction of their United States price, relative to the cost of manufactured goods whose prices are set by international market conditions (plus import protection). It is not surprising that the labor share of national income in Mexico is a fraction of that of the United States share (50-60 percent rather than 80 percent), while the return to land, capital, and other assets is more than double the United States figure (40-50 percent rather than 20 percent). Moreover, skilled workers, managers, and university educated people in Mexico earn wages that are a multiple of 10-20 times the wages of unskilled labor, while in the United States the multiple is much lower.

Where major gaps in real wages for the same skills and occupations exist across a relatively open frontier, and where the products are not easily tradable (most services and construction must be consumed on the spot), market forces induce migration. Migrant labor flows tend to raise the relative wages of unskilled workers in the slack labor market (Mexico) and lower them in the tight labor market (United States) if they cause changes in the total labor supply. The relative price of goods and services affected by changing wage costs would also tend to rise in Mexico and fall in the United States. Figures on recent patterns of migration (Table 1) indicate that Mexican migration to the United States has had a far more than marginal impact on the market for unskilled labor in both countries.

Hence, relative wage and price effects must have almost certainly resulted from these migratory flows, though in the United States they may have merely slowed the growth of real wages in low-skilled occupations. The word relative is underscored here because if both output and productivity are growing rapidly in the receiving country, it is possible for the wages of unskilled labor to rise, though they would rise more rapidly in a protected job market. In fact, real wages in the United States have stagnated or declined in recent years for most workers, except in industries whose unions are particularly strong, like auto manufacturing, teamsters, construction workers, doctors, and employees with more direct access to the profit pool like corporate executives. After-tax earnings of working class households have declined in real terms during the past decade. This has been associated with a decline in the rate of growth of output and productivity of labor, low rates of investment, and lagging research and development. Labor tightness (insufficient migration in low-skill areas) may have adversely affected wages and productivity growth by constraining the ability of American industry to hold its own in increasingly competitive international markets. However in the absence of growth, migration has probably held down relative wages of unskilled labor.

The findings of earlier section indicate that if Mexico's output growth can be maintained at 6.6 percent annually until theyear 2000, the demand for labor will just keep pace with supply. A 7 percent sustained growth rate for the same twenty-year period would begin to absorb Mexico's severe underemployed and would almost certainly raise real incomes of the majority of Mexico's poor. The relative price of agricultural products, domestic services, and labor-intensive commodities would rise accordingly, forcing a change in the life style of Mexico's elite. However, growth rates of 6 to 7 percent imply a tripling or quadrupling of output between now and

the year 2000 and an even more rapid growth in imports of capital and intermediate goods, managerial know-how and skilled labor. Rapid growth is essential to relieve dependence on migration, but rapid growth will require increased dependence on foreign markets for trade, investment, and skilled labor. Since more effective labor absorption with rising real wages is a sine qua non for social and political stability, and stability is needed to elicit investments for further growth, improved links with the United States commodity, labor, and capital markets are essential to whatever priority is chosen - growth, employment, or distribution.

Projections of the Supply and Demand for Labor in the U.S. Economy 1985-2000

Several rough projections of aggregate labor supply and demand through the year 2000 are presented below. Estimates of the rate of growth of the labor supply are adapted from Bureau of Labor Statistics projections published in the Monthly Labor Review, December 1978. Since almost the entire labor force of the year 2000 has already been born, the primary variables in predicting the labor force are the participation ratio, the unemployment rate, and the amount of net immigration over this period.

Participation ratios have been rising at increasing rates over the past few years, primarily due to rapidly increasing labor market participation among women. The decrease of the "push effect" of falling birth rates and a lessening of the "pull effect" of a tight labor market will most likely combine to cause participation rates to increase at decreasing rates until the year 2000. The participation rates implicit in the labor supply projections are also given below.

Immigration is assumed constant at 400,000 per year, which is slightly above current figures. Unemployment is assumed to fall to 4.3 percent in 1990 and remain there. The tables below give estimates of the labor supply net of this "structural and frictional unemployment."

Table 5

Effective Labor Supply Based on Labor Force Participation in 1990 from
Monthly Labor Review, December 1978 - Extended Using these Assumptions*

	(millions of workers)								
				Participation Ratios**		Participation Ratios (16-64 age group)			
	1985	1990	2000	1985	1990	2000	1985	1990	2000
Labor Supply I (high)	113.8	122.0	134.8	67.7	69.7	72.1	75.7	78.6	81.1
Labor Supply II (medium)	110.0	116.1	126.8	65.3	66.2	67.2	73.2	74.8	75.7
Labor Supply III (low)	106.1	110.5	119.5	63.0	63.0	63.3	70.6	71.2	71.3

* Assumes immigration of 400,000 per year, military of 2.1 million (constant).

** Follows Bureau of Labor Statistics convention of ratio of civilian non-institutional labor force over civilian non-institutional population 16 and over.

Note: It is customary to speak of excess demand for labor apart from a normal level of employment. Even the most ardent Humphrey-Hawkins Act supporters recognize that frictional unemployment exists due to search time involved in changing jobs. It is not optimal on the individual or economy wide level for people to remain at one job for their entire economically active life. Invariably a certain percentage of the work force is between jobs. Structural unemployment is another unhappy fact of life. The skills required for a particular job may not match those of the individual looking for work. It may be prohibitively costly to relocate oneself to where the job is available, and transmission of information concerning job openings is neither perfect nor costless.

Although we assume a constant 4.5% rate of frictional unemployment, there is evidence that this rate is growing over time, and may already be too low. Current estimates run from 4% (Humphrey-Hawkins Act) and Democratic Secretary of Labor Ray Marshall's 4.75% estimate as expressed in the Employment and Training Report of the President, to Milton Friedman's 6 to 7% estimate. Clearly an underestimate of this "normal rate" would lead to a underestimate of the total labor force necessary to provide any given level of employment, and thus understate the potential labor shortages.

On the labor demand side two theoretical constructs were employed to arrive at total employment demand projections: For the first run, output-labor ratios were used in combination with a 3 percent annual rate of growth of aggregate output and a modest rate of growth of labor productivity based on an annual increase in the output-labor ratio of one percent. This productivity estimate is slightly below the historical trend figure of 1.3 percent growth from all sources. Using the formula $L^d(t) = Y^d(t) / OL(t)$, where $Y^d(t)$ is desired output (3 percent growth) in year t , OL is output-labor ratio in year t , and $L^d(t)$ is labor necessary to produce the desired level of output.

Table 6

Year	OL (Output/ Worker) 1977 dollars	Y (GNP) (billions of 1977 dollars)	Labor Demand (A) (millions of workers)	Labor supply I (from Table 5)
1970	18606 (actual)	1522 (actual)	81.8 (actual)	81.8 (actual)
1977	20380 " "	1887 " "	92.6 " "	92.6 " "
	(projected)	(projected)	(projected)	(projected)
1985	22070 " "	2399 " "	108.7 " "	113.8 " "
1990	23190 " "	2787 " "	120.16 " "	122.0 " "
2000	25621 " "	3762 " "	146.83 " "	134.8 " "

Although the exact magnitude of the impending labor shortages implied by Table 6 should not be relied upon, it is clear that shortfalls will occur if the U.S. pursues a goal of 3 percent annum growth of GNP or greater without major increases in migration.

For the second run, we used a Cobb-Douglas production function:

$y_t^d = A_t \cdot L_t^{0.7} \cdot K_t^{0.3}$, where y_t^d is desired output, $A(t)$ is a constant in any given year, but is a function of technological change (labor augmenting, capital augmenting, and jointly augmently) over time, L_t is the labor force at time t , and K_t is the contemporaneous capital stock. A simple algebraic transformation gives us labor supply as a residual:

$$L_t = \left[y_t^d / (A_t \cdot K_t^{0.3}) \right]^{1.428} \quad \text{and the results are compared to labor}$$

supply projections in Table 5.

Table 7

Year	Labor Demand(B) L_t	Labor Supply I	Labor Supply II	Labor Supply III	Desired GNP (y_t^d)	Capital Stock (K_t)
	(millions of workers)				(billions of 1977 dollars)	
1970	81.8	81.8	81.8	81.8	1522	5069.35
1977	92.6	92.6	92.6	92.6	1887	6091.78
1985	103.97	113.8	110.0	106.1	2399	7268.84
1990	112.14	122.0	116.1	110.5	2787	7992.47
2000	131.81	134.8	126.8	119.5	3862	9441.14

A_t , the measure of productivity gains from all sources, is assumed to continue the 1.38% growth rate it displayed in the period 1960 to 1977. If we had used the period 1970-77 as the base period to compute productivity growth, the 1.04% estimate would substantially increase labor demand (L_t) in all periods.

The labor demand figures generated in this fashion run slightly below the Bureau of Labor Statistics (BLS) high projected labor force, but are well above either of the other predictions. As a sidelight, it is interesting to note that even the BLS predict a shortage of labor, as they offset their unrealistically high predictions of labor force growth with even more optimistic output growth goals (3.65%).

As a summary, the table below shows the extent of shortfalls or surpluses, given alternate assumptions concerning the supply of and demand for labor.

Table 8
Alternate Assumptions Concerning the Supply of and Demand for Labor

Labor force projection Model and year	Labor Force I	Labor Force II (millions of workers)	Labor Force III
Output Labor Model: Demand (A) assuming no change in productivity			
1985	+5.1	+1.3	-2.6
1990	+1.84	-4.06	-9.66
2000	-11.03	-20.03	-27.33
Cobb-Douglas Model: Demand (B) assuming productivity increase of 1.38% per annum			
1985	+9.83	+6.03	+2.13
1990	+9.86	+3.96	-1.64
2000	+3.99	-5.01	-12.31

Note: (-) indicates shortfall (excess demand for workers) and (+) indicates labor surplus.

By the year 2000, population figures include 8.5 million immigrants, 6 million in the labor force at year 2000 participation rates, thus the maximum anticipated shortfalls are 33.3 to 18.3 million, with zero net immigration over this period. If we also deport the existing pool of approximately 2 million illegal aliens in the work force, the shortfall could be as high as 35.3 million by the year 2000.

Only by combining the most optimistic estimates concerning the rates of growth of the labor force and productivity with lower GNP growth estimates than those made by government agencies can we predict a sufficient supply of labor through the end of this century without increasing immigration.

In addition to the aggregate shortfall detailed above, there is a clear indication that the unskilled and semiskilled job categories will bear the brunt of the shortages. The United States labor force is becoming

better educated and more experienced. Blacks and older immigrant groups who previously were counted on to do distasteful but necessary work in our modern economy are moving up the socioeconomic scale, leaving new immigrants (legal and illegal), students, and some women at the low end of the occupational scale (Piore, 1978). For students, this is likely to be their first experience in the job market, perhaps on a part time or temporary basis, and as the percentage of the population in this category declines in the next few years, so should their share in low-skill employment. Tomorrow's women will have increased access to education and training opportunities and accordingly will be better able to compete for jobs in the higher skill occupations.

It seems that without a substantial increase in immigration, traditional domestic sources of supply will not provide the necessary volume of unskilled labor to meet even a moderate target rate of growth for U.S. GNP. Employers faced with this shortage may react in various ways. Industries may move abroad at an increasing rate in search of a steady supply of labor, a response which has already begun to take place. Mechanization of jobs previously done by hand, such as the picking of certain crops, is a second alternative, as is upgrading pay and working conditions to draw higher skilled workers into lower skilled jobs.

Harold Wool, as excerpted in the Monthly Labor Review (March 1976), projects the supply of labor for "lower level" jobs* through the 1980s under assumed conditions of full employment. He demonstrates that while the civilian labor force is projected to grow at a yearly rate of

* He defines lower-level jobs as those with the smallest percentage of the most "competitive" workers, defined as whites with 12 or more years of education between the ages of 25 and 34.

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1.75% in the period 1970-1985, the supply of labor for lower level jobs will increase by only 0.64% per year, with almost all of this increase concentrated in the 1970-1980 period. "Comparisons of these labor supply projections with recent Bureau of Labor Statistics projections of employment or labor demand by occupation under a full employment model in turn result in potential surpluses of workers for high-level occupations and potential shortages for lower level occupations." * Unfortunately, Wool does not make clear the extent to which immigration both legal and illegal, enter into his calculations.

In 1968 Leonard Lecht made projections of a similar nature in Manpower Requirements for National Objectives in the 1970s. Analysis of his work in retrospect illustrates some of the problems in projecting current trends any significant distance into the future. He assumed 4.5 percent per annum growth of GNP, 3.5 percent yearly growth of labor productivity, and a constant unemployment rate of 3.9 percent. As a result he overestimated 1975 GNP by about one-sixth. Yet his estimate of the 1975 labor supply is surprisingly close to the actual number, since the overestimate of GNP growth is offset for the most part by the overestimate of the growth of productivity. The table below compares his projections to the actual numbers.

Table 9
Actual and Projected Figures for 1975 by Lecht

	<u>Lecht</u>	<u>Actual</u>	<u>Difference (%)</u>
Total labor force (million)	93.6	94.8	-1.3
Employed labor force (")	89.8	87.0	3.22
GNP (billion dollars)	1967	1687	16.6

* Wool, Harold. Future labor supply for lower level occupations, Monthly Labor Review, March 1976.

Nevertheless, there is compelling evidence that the aging demographic structure of the United States will lead to an increasing shortfall of labor to fill low skilled jobs. The demand for migrants to fill the gap may be as high as 15 to 30 million workers by the year 2000, if United States GNP is to continue to grow at past rates of 3 percent or better, unless one of two circumstances occurs: either there will have to be a massive increase in participation rates or much accelerated growth of investment and productivity coupled with a much higher rate of savings than has obtained in recent decades. In short the United States has an almost certain need for migrant labor in the decades ahead, if it is to maintain its position in the international economy. The migrants need not come from the south, but given the likelihood of a sustained surplus of unskilled labor in Mexico even by its highest growth projections, most of the migrants will be Mexican.

Summary and Conclusions

Despite limited information about current labor market structure and rather speculative projections about government policy and private expectations affecting future investment and growth in Mexico and the United States, the following propositions seem reasonably secure:

1. Mexico's supply of labor will grow at 3.6 percent annually, and reach a total of 40 million workers by the end of the century. (Underemployment is now 4 to 6 million.)

2. Mexico's gross national product is likely to grow at about 6 percent annually over the same 20 year period, provided that the economy has access to substantial inputs of skilled labor, technology, capital and intermediate goods, and some consumer goods.

3. A 6 percent rate of GNP growth will suffice to keep pace with increases in the labor force including a modest rise in participation rates, and will not begin to absorb the 4 to 6 million workers plus more than 3 million Mexican workers presently employed full or part time in the United States.

4. For Mexico to begin to mop up its underemployment, enabling it to raise real wages of less skilled workers significantly, GNP would have to grow at a sustained rate of over 7 percent annually until the year 2000, a goal almost unprecedented among developing nations. Such an achievement would place an even greater dependence on foreign trade, capital, technology, entrepreneurship, and skilled labor, much of which would have to come from direct foreign investment. While such investment might well be in close association with Mexican capital and entrepreneurship, its role in the economy would be critical. The United States would almost certainly have to figure very importantly in the process.

5. Even if total labor demand should grow at the same pace as supply, structural problems are certain to become serious, leading to shortages in more skilled occupations and surpluses in less skilled ones. The faster the rate of output growth, the greater the structural imbalances and hence the greater the need to link labor markets between the United States and Mexico in order to balance supply and demand for skills.

6. The level of income of the mass of Mexican workers, and their income shares, are likely to be influenced most importantly by the tightness or slackness of the labor market. There are presently about 4.0 million Mexicans working in the United States during some part of the year, and the number is growing at about 170,000 per year. (See Table 1.) Such a flow will have to be sustained if Mexico is to achieve a significant tightening of its labor market, even at the most optimistic GNP growth projections, in view of the current high level of underemployment. If Mexico is successful in raising real wages toward United States levels, there are likely to be increased entrants from Central America into the Mexican work force especially in the southern regions.

We in no way wish to give the impression that there is a pool in Mexico which can supply 20 million workers to the United States in the next 20 years, or that such a massive influx of people of another cultural heritage would not give rise to social problems and conflicts. The traditional "pool" from which migrants flow both to America and metropolitan areas within Mexico is a declining fraction of the total population, and as the marginal product of labor in this sector rises as a result of out-migration, the relative incentive to leave declines. In short, there is no endless queue of Mexicans clamoring to enter our country, as it

seems some policymakers fear. Although on the basis of the imprecise figures we have it would not be unheard of to have a million Mexican immigrants entering the United States in one year, this pace has historically never lasted for five years, much less 20, and problems of assimilating this many newcomers are numerous and are too complex to be covered here.

7. The demand for labor in the United States, based on rather modest growth projections for GNP of 3 percent per annum, will almost certainly outstrip supply in the next twenty years, placing enormous pressures on the labor market which will encourage increasing levels of immigration. The political-economic conditions associated with the proximity of the two countries, plus the likelihood of surplus unskilled labor in Mexico in the years ahead, will make continued and growing migration from that country a sine qua non of mutual growth with social and political stability.

8. United States direct investment in Mexico may have a significant impact on employment of low-skilled labor. While its traditional direct investments have been relatively capital-intensive, and may not be expected to produce more than 25,000 to 50,000 jobs per year (Annex 2) assuming an investment rate of 500 million to 1 billion dollars per year, the establishment of a much larger number of In-Bond* assembly plants (maquiladoras) throughout Mexico could generate up to one million additional jobs by 1985. With a rapid growth of output of 6 to 7 percent annually, the combined total of as much as 1.25 million new jobs between 1980 and 1985 would represent 28 percent of the estimated 4.4 million growth in the

* In-Bond industries are assembly plants for foreign businesses exempt from tariffs on their imported intermediate goods and which produce solely for export.

labor force during the same period. Such investment plus immigration of Mexican labor into the United States labor market at or just about current rates could go far to reverse the trend in surplus labor in Mexico and begin to increase the real incomes of Mexico's poor.

9. Perhaps more importantly if Mexico's economy were permitted to develop on a broad front, including light, medium and heavy industry, and if its agriculture were stimulated as well in labor using directions, it could provide new growth centers in North America to serve a continentwide market. Such a balanced transformation of Mexico, linked with access to United States markets, technology, and financial capital, could also help the United States to achieve its own growth objectives, as labor, capital, and technology were permitted to follow lines of dynamic comparative advantage on a region-wide basis. Of course this does imply a rather significant restructuring of United States industry away from more traditional lines of production in which certain economic and social costs will be incurred.

10. The framework of this analysis has stressed the interdependency of output, employment, and income distribution both inside the Mexican and United States economies and between them. A consistency framework for trade and balance of payments projections appears in Annexes 2 and 3. The magnitude of Mexico's prospective economic and population growth underscores the fact that changes south of the border will have far more than incremental consequences for the United States. Stresses and strains within Mexico, if they occur, would shake the continent, but success in Mexican development would be likely to carry with it major benefits for her continental neighbors. To maximize the mutual benefits from Mexico's economic and demographic growth, it may well be necessary for the United States to

engage in a fundamental reassessment of its own national economic goals. Such a reassessment is long overdue, in the face of chronic inflation, balance of trade deficits, slowed output and productivity growth, and one of the lowest rates of saving and investment in the world. It may well be that in the future the United States will need Mexico as much or more than Mexico will need the United States, even without considering important complementarities in the energy area.

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Preface to Annexes 1 to 3

Recent developments in Mexico have put U.S.-Mexican economic relations at a crossroads. The discovery of huge petroleum reserves may profoundly change trade relations between the two countries. Removal of Mexico's foreign exchange constraint through sales of petroleum will allow Mexico to take a more independent stance in regard to its northern neighbor. At the same time the U.S. will find it difficult to reduce its share of imports from Mexico because of its need for petroleum and natural gas as well as American industry's use of Mexican labor in production sharing, not only in the In-Bond industries but, as shown in section VI above, throughout the U.S. economy. If the U.S. does not actively seek to improve relations with Mexico now, especially in regard to her vast labor surplus, Mexico may choose to reduce its dependence on imports from the U.S. over the next two decades. The trade balance could then turn decidedly in Mexico's favor aggravating the U.S. balance of payments problem. The U.S. will have to adjust to becoming more dependent upon Mexican imports than Mexico will be on imports from the U.S. Annex 1 discusses possible trends in U.S.-Mexican trade on the basis of alternative assumptions about the degree of interconnection.

The U.S. share of total direct foreign investment in Mexico has also been slipping in recent years. Although the direct impact of such investment in terms of jobs or additions to total GNP is not very large, foreign investment tends to occur in the most dynamic sectors and fosters domestic imitation which can be potentially important to the pattern of economic change in Mexico. Trade discussions are likely to be linked with measures to expand U.S. direct investment in ways suitable to Mexico's desire for maximum control over its process

of economic growth yet which will elicit important responses from U.S. firms. The U.S. might well consider offering Mexico a new set of trade and investment policies which would at least maintain the present share of U.S. involvement in the Mexican economy. This is an underlying assumption in Annex 2. Failure to do so would result in the erosion of the U.S. market position in Mexico's rapidly evolving economy. The U.S. must recognize, in the light of the facts and figures presented in this paper, that good trade and investment relations with Mexico will be far more important to the U.S. economy through the year 2000 than will its interactions with the Chinese. The political and security implications of economic relations between the two countries will also far exceed the importance of those with China. Annexes 2 and 3 discuss Direct Foreign Investment and the Mexican Balance of Payments in this perspective.

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Annex 1

Some Mexican Trade Projections with Implications
For U.S. Exports and Imports

The United States share of Mexican imports in 1977 was 63.6%. It was higher in the 1950s and 1960s but for the 1970s the U.S. share remained close to 63%. Canada is the United States's major trading partner but Mexico is the most important trading partner among the developing countries and is fifth overall. In manufactures alone, Mexico is the third largest importer of U.S. production, even ahead of Japan. Given the growth potential described elsewhere in this paper, Mexico will soon become the United States's fourth largest trading partner and second largest importer of United States manufactures as its trade with the U.S. surpasses that of the United Kingdom.

Presently, Mexico has a low trade ratio (exports and imports divided by GDP). In 1977 it was .21, lower than all South American countries and Canada with the exception of Brazil (.15) and Argentina (.17). Among the major oil exporting nations the lowest trade ratio is found in Indonesia which was .4 in 1977. (Trade data from International Financial Statistics, International Monetary Fund, June 1979). The World Bank projects an increase in the Mexican trade ratio to .265 by 1982 associated with an 8% rate of growth of GNP in the early 1980s. Whether or not the ratio moves that fast, there will have to be an increase if Mexico intends to shift from import substitution to export promotion. This shift will be essential for rapid growth in output and productivity. The petroleum industry will provide another major push. Before too long, if Mexico wishes to gain increased access to the major industrial markets it will probably elect to join GATT (General Agreement on Trades and Tariffs) and to continue to lower many of its import barriers.

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If Mexican GNP grows at about 6 percent per year until the year 2000, and its trade ratio increases to .35, Mexican imports will grow at 10 percent per year, from 6 billion current dollars in 1977 to more than 52 billion 1977 dollars in the year 2000.

Exports will grow at a slightly lower rate under the 6 percent growth assumption which is consistent with the World Bank forecast that its current account will remain in deficit. The United States share of Mexican exports is likely to increase, assuming eventual agreement on natural gas sales, increased sales of petroleum products, and further establishment of In-Bond* industries throughout Mexico. The Balance of Trade between Mexico and the United States on current account, traditionally in favor of the United States, has been steadily decreasing and may soon shift to a Mexican trade surplus.

Because of the political realities of petroleum and natural gas consumption in the United States, Mexico will find itself with substantial bargaining power in future trade negotiations and may well choose to link sales of natural gas and petroleum to the establishment of additional In-Bond industry and improved access to the United States market for cash crop exports on a much broader basis than simply winter vegetables and fruits. Mexico's major exports in 1977 by order of importance were crude petroleum, coffee, cotton, tomatoes, assorted machinery, and shrimp. Mexico will be attempting to enter the international market in producer goods and consumer durables in the next twenty years. This will depend on foreign markets and on United States direct investment to provide managerial ability, technical information, and specific links to the United States domestic market. For these reasons, although the United

* In-Bond industries are assembly plants for foreign businesses exempt from tariffs on their imported intermediate goods which produce solely for export.

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States bargaining position with Mexico has eroded, it has not disappeared. It will become apparent to both sides that continued and improved access to the United States domestic market may help to accelerate and diversify Mexican trade so as to minimize dependence on petroleum. Failure by the United States to capitalize on its location and historical advantage in trade with Mexico will almost certainly result in a negative balance of trade with Mexico and slow growth of its own economy.

In 1976 and 1977 Mexico was able to reduce its total imports in spite of poor harvests and increased government imports of grains. This reduction in imports was largely borne by the private sector and was associated with a slowdown of the rate of growth of GDP to 1.7 percent in 1976 and 3.2 percent in 1977. Bottlenecks in production caused by austerity measures essential during the difficult transition from a more to a less inflationary regime were a major cause of the slowdown, but these bottlenecks were removed in 1978 as the current account was allowed to return to its petroleum deficit position. In 1978 President Lopez Portillo called for 16.5 billion dollars worth of new investment in Pemex by 1982 and 1 billion dollars worth of new investment per year in electrical power generation to permit a 10 percent annual growth in electricity output. Most of the capital goods needed for expansion of electrical power and about half of those for petroleum investment must be supplied from abroad (U.S. Department of Commerce, Overseas Business Review 78-42).

Mexico still imports few consumer goods. According to the OBR (*ibid*), in the near future she will need heavy industry equipment, construction machinery, tractors and other heavy agricultural equipment, locomotives, railway rolling stock, iron and steel items (automotive and machine parts, pipe, sheet metal, etc.) and scrap, chemicals, and a wide variety of raw and semi-processed materials. The current account deficit is likely to

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remain high at least until 1982, partly to speed growth and partly because Mexican public sector deficits have historically risen as a share of GNP as the six-year presidential term comes to an end, which will be 1980-82 (World Bank, 1978).

The growth of trade largely depends on the willingness of the Mexican government to accelerate its petroleum production. In the past, realized investment in the petroleum sector has tended to lag behind government forecasts. Estimates of the growth of GDP of 8-9 percent per year starting in 1980 depend on petroleum production growing much more rapidly than is consistent with current Mexican government plans. Real growth of the Mexican economy is more likely to hold at around 6 to 7 percent per year even under the most favorable conditions. Attempts at faster growth will run up against a shortage of skilled labor and managerial capacity and will produce severe inflationary pressures. A slower growth of petroleum exports implies a slower growth of the trade ratio which will probably not exceed .25 by 1985.

The following table provides estimates of Mexican trade with the United States to 2000, assuming growth of the Mexican economy at 6 percent per year and at 7 percent per year.

Table A - 1
MEXICAN U.S. TRADE PROJECTIONS TO THE YEAR 2000 UNDER
DIFFERENT ASSUMPTIONS OF THE U.S. SHARE ^a
(in millions of 1977 dollars)

	Total Exports	Exports to the U.S.	Assumed U.S. Share (%)	Total Imports	Imports from the U.S.	Assumed U.S. Share (%)
U.S. - Mexican Trade-Linked Projection ^b						
1980	8,400	5,900	70	11,400/11,800	7,500/7,800	66
1985	14,600	10,800	74	15,400/16,800	10,800/11,800	70
1990	22,000/23,000 ^c	16,500/17,200	75	23,000/26,000	16,800/19,000	73
2000	50,500/57,200	37,500/42,900	75	52,400/63,200	39,300/47,400	75
Independent Mexican Trade Policy Projection ^d						
1980	8,400	5,900	70	11,400/11,800	7,300/7,600	64
1985	14,600	10,100	69	15,400/16,800	9,200/10,100	60
1990	22,000/23,000	14,300/15,000	65	23,000/26,000	13,100/14,800	57
2000	50,500/57,200	32,800/37,200	65	52,400/63,200	26,200/31,600	50

^a The trade ratio is assumed to rise to .225 in 1980, .25 in 1985, .28 in 1990, and .35 in the year 2000. Imports are projected to exceed exports by the average of the two estimates for the current account deficit taken from either the 6 percent or 7 percent growth projections in the Mexican Balance of Payments Table A-3.

^b Assuming a rising share of United States-Mexican trade in total Mexican exports and imports.

^c The figure on the left side of the slash assumes a growth rate of the Mexican economy of 6 percent per year. The one on the right assumes a growth rate of 7 percent per year.

^d Assuming a declining share of United States-Mexican trade in total Mexican exports and imports.

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Annex 2 United States Direct Investment in Mexico

At the end of 1976 total United States Direct Foreign Investment was about 3 billion. Of this amount 2.2 billion was in manufacturing, mostly chemicals, transportation equipment, primary and fabricated metals, food processing, non-electrical machinery, and electrical and electronic machinery and apparatus. Most investment was in import substituting industries with high capital requirements so that except for In-Bond clothing and electronic industries, employment generation per unit of capital was lower than for the Mexican manufacturing sector as a whole.

The United States has traditionally accounted for more than 70 percent of total Direct Foreign Investment in Mexico.

Table A-3

Total United States Direct Foreign Investment in
Mexico Valued at the End of the Year
(millions of dollars)

<u>1963</u>	<u>1965</u>	<u>1967</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
907	1177	1343	1631	1786	1838	2025	2379	2854	3177	2984	3175

In 1973, under the Echeverría administration, laws were passed which were intended to limit foreign participation in Mexican industry. However, even before the new laws were enacted, foreign participation in total private fixed investment had declined from 5 percent in the 1960s to 4 percent in the early 1970s.

The downward trend continued and foreign participation in private fixed investment fell to 3 percent by 1977.

The Law for the Promotion of Mexican Investment and the Regulation of Foreign Investment limited foreign ownership in equity in new business to 49 percent. In some industries foreign ownership was limited to 40 percent

or forbidden altogether.

Two laws having to do with patents, trademarks, and inventions shortened the period of patent protection to ten years. Trademarks had to be Mexicanized, and under certain conditions could be expropriated by the government. For some products, including some chemicals and pharmaceuticals, patent protection is not available.

In 1977 a decree was issued which allowed the Mexican government to set a foreign currency budget for any foreign business in order to improve Mexico's balance of payments.

These laws, along with recession and devaluation of the peso resulted in a decline in new direct foreign investment (DFI) from a high of 678 million (U.S. dollars) in 1974 to an estimated low of 530 million in 1978. Recent estimates by the Banco de Mexico indicate that 1979 investment may be considerably above values in recent years.

World Bank projections of new DFI are .95 percent of GDP, a much higher share than historical rates. In the 1960s new DFI was as high as .65 percent of GDP. In the 1970s values have ranged from .44 percent of GDP to .6 percent of GDP.

Increased foreign investment will be welcomed by Mexico if it serves to generate substantial increases in employment and if investors are willing to locate away from the major urban centers. Under Lopez Portillo many import licensing restrictions have been removed and new foreign industry with 51 percent of the equity owned by a Mexican silent partner may qualify for low cost loans or grants if the establishment of the business meets the needs of the surrounding community. By and large foreign business receives the same treatment as domestic business. Expectations of lowered inflation and reduced government borrowing (external debt limit of 3 billion dollars in 1978) over the next five years should encourage

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foreign investment. Because of past investment patterns and the location advantage of sharing a common border, the United States should continue to dominate foreign investment in Mexico.

Especially important to Mexico are the In-Bond industries. In 1974 almost 25 percent of Mexican exports to the United States was value added generated through production sharing. Mexico allows complete foreign ownership of In-Bond industries and frees them from patent limitations. No duty is charged by either the United States or Mexico on the components that move to Mexico and back across the border. Customs duties are charged only on the value added component.

In 1971 Mexico was fifth among all countries in terms of value added as a processing platform for the United States. In 1977 Mexico was third, after West Germany and Japan, in spite of having temporarily priced itself out of the processing market at the end of 1974 due to an overvalued peso and a rise in the minimum wage in the In-Bond industries, which drove labor costs above those in Japan for comparable work. Richard Bolin (1977) estimated that 250,000 jobs may have been created directly and indirectly with an investment per job ratio of only \$700.

Bolin believes, on the basis of past growth of the In-Bond industry, that as many as 300,000 jobs may exist in this sector by 1983 with another 600,000 jobs generated indirectly (letter to another dated May 1, 1979). In-Bond industry requires little Mexican investment besides needed infrastructure, creates more employment than a comparable level of investment in other industries, and provides foreign exchange earnings. For these reasons, trade discussions with Mexico should definitely be linked with further United States investment in Mexican production-sharing industry.

Each of the 300,000 direct jobs is estimated to produce \$5,000 value added per year. The 600,000 indirect jobs are estimated to produce

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half as much. Total addition to GNP due to the In-Bond industry in 1983 is estimated at 3 billion dollars (Bolin, 1977). The figures on increased jobs per dollar of investment, both direct and indirect, cited above seem to be somewhat exaggerated. However the amount of additional In-Bond investment may well exceed the Bolin projections (his are through 1983) by the mid-1980s if the United States and Mexico can agree to additional incentives for such industries and given the likelihood that United States firms will elect to shift some Asian production toward Mexico and to significantly expand their value-added links to Mexican markets. For this reason we project a total increase of direct and indirect employment in such industries of one million jobs by the mid-1980s, plus up to 50,000 jobs per year in other United States direct investment in Mexico, totalling 1.25 million new jobs by 1985 if a major new effort can be established between the United States and Mexico in these areas.

Annex 3 Past Value and Projections of the Mexican Balance of PaymentsThrough the Year 2000: Discussion and Table

The first projection in Table A-3 assumes a growth rate of GDP of 6 percent per year until 2000, generated without external borrowing and with moderate levels of direct foreign investment (DFI). Present goals of 16.5 billion dollars worth of new investment in the government-owned PEMEX will probably result in a continued current account (trade balance of goods and services) deficit and continued external borrowing until 1985. From 1985 on it is assumed that the government will keep the balance of payments in equilibrium and allow the current account deficit to roughly equal the inflow of new DFI.

New DFI in the 1960s ranged from about .60 percent to .65 percent of GDP. In the 1970s through 1977 values fluctuated more widely from a high of .60 percent in 1970 to a low of .45 in 1975 and 1977 (preliminary estimate, Banco de Mexico, 1979). In the 6 percent growth projection new DFI is assumed to be as low as .55 percent of GDP or as high as .70 percent of GDP. The latter figure is higher than has been seen in the last two decades but is lower than recent figures for Venezuela (.76 percent of GDP in 1977) and Brazil (1 percent of GDP in 1977 from International Monetary Fund, June 1979).

World Bank projections assume that the balance on current account will remain in deficit in the foreseeable future. It is imperative that Mexico avoid allowing the peso to become overvalued relative to the dollar in terms of rates of inflation in the two countries and the relative cost of tradeables. In 1974 due to overvaluation of the peso and a rise in the Mexican minimum wage along the United States border, Mexican wages in terms of dollars rose higher than comparable wages in Japan (Solín, 1978).

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The inflated wage bill diverted investment toward Asia and cost Mexico thousands of jobs. Now that Mexico has a major source of export earnings in petroleum there should be no reason to attempt to lower the cost of producer goods imports through currency overvaluation. Allowing the current account deficit to offset long term capital flows will help to maintain the peso and Mexican wages and exports at a competitive level.

The second projection is based on a growth rate of GDP of 65 percent until 1980 and of 7 percent from 1980 to 2000. The World Bank's long-range projection (1978) was also 7 percent. Growth of the labor force as projected by Wharton at 3.6 percent per year through 1983 would require a growth rate of about 6.6 percent simply to maintain present employment levels. Long term growth above 7 percent is probably not possible given the present skill levels and managerial capacity in the Mexican economy. The capital requirement for increasing the growth rate by a percentage point from the earlier projection will mostly be generated by internal savings which were 22 percent of new GDP from 1970-1977 and are estimated to continue at that level, and by external borrowing. Capital is related to GDP through an assumed capital/output ratio of 2.1 which corresponds with Wharton's figures for 1978-1983 (Wharton, Jan. 1979).

New DFI will contribute somewhat less in bringing about the increased growth rate. In this projection new DFI is estimated to be .65 percent of GDP at a minimum and .90 percent of GDP at a maximum. The latter value is a very ambitious projection, almost as high as present levels in Brazil where there are fewer barriers to DFI. Brazil presently has the highest rate of new DFI as a percent of GDP (1 percent) of any major country in the western hemisphere and one of the highest in the world. A leap of new DFI in Mexico to .90 percent of GDP implies that there will be a new attitude towards DFI in Mexico on the part of the Mexican government

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and foreign investors.

External borrowing in the 7 percent growth projection model is quite small. It is predicted on the premise that private and public investment are complementary in Mexico, and that the Mexican government will not resort to foreign borrowing to meet public consumption goals. This was not always so in the past, but may be possible by 1985 with increased installed capacity in the petroleum sector generating additional government revenues.

Total external debt is estimated to be about 35 billion dollars in 1985 in the 6 percent growth projection model and about 40 billion dollars in 1985 in the 7 percent growth projection model. The former figure, given an expected increase of exports as a percent of GDP to about 11 percent by 1985, implies a debt service ratio (debt service/exports) of less than .4; the latter figure of less than .42. The debt service ratio for 1977 was .48. The World Bank has estimated a fall in the debt service ratio to .39 by 1982 based on projections of a substantial increase in the export to GDP ratio and rapid growth of the economy in the early 1980s. In any case the falling debt service ratio from a peak of .48 in 1977 is likely to improve Mexico's profile in the eyes of the international financial community.

Table A - 4

Mexican Balance of Payments: Selected Years from 1962-1978 and
Alternative Projections to the Year 2000 for the Current and Long-term Capital Accounts
(in millions of dollars)

	I. Balance of goods & services	II. Long- term capital	II. A. External credit	II. B. Direct foreign invest- ment	II. C. Other	III. Errors and omissions	IV. Short- term capital	V. Variation in bank of Mexico reserves
1962	- 120.2	224.7	147.5	90.3	- 13.1	- 87.6	----	16.9
1968	- 632.2	379.0	136.6	116.8	125.6	302.2	----	49.0
1970	- 924.0	503.9	324.2	200.7	- 21.0	e/323.2	----	102.1
1972	- 789.4	790.4	537.8	214.9	17.7	e/263.7	----	264.7
1973	- 1175.4	1676.1	1370.7	286.9	18.5	-378.4	----	122.3
1974	- 2558.1	2730.8	1999.2	362.2	369.4	-135.8	----	36.9
1975	- 3768.9	4339.9	3477.5	362.3	500.1	-406.0	----	163.1
1976	- 3068.6	4630.9	4464.4	299.1	-112.6	-2454.2	551.0	-320.9
b/1977	- 1550.3	4380.3	4149.9	327.3	- 96.9	- 458.7	-1867.1	504.2
b/1978	- 2462.5	4330.6	4076.8	293.6	- 39.8	81.6	-1727.1	222.5

Projection d/

1980	-3000	3000	2400	600
1985	e/- 660/-840	660/840	----	660/840
1990	- 890/-1130	890/1130	----	890/1130
2000	-1620/-2060	1620/2060	----	1620/2060

Alternative Projection g/

1980	-3600	3600	3000	600
1985	e/-2260/-2440	2260/2440	1450/1320	810/1120
1990	-2890/-3130	2890/3130	1750/1550	1140/1580
2000	-5720/-6160	5720/6160	3480/3060	2240/3100

* Until 1976 Short-term capital was included in Errors in omissions.

a. Sources: Indicadores Economicos, August, 1973 (Vol. I, No. 9), November 1973 (Vol. I, No. 12), September 1976 (Vol. IV, No. 10), and April 1979 (Vol. VII, No. 5). Banco de Mexico

b. The figures for 1977 and 1978 are preliminary estimates.

c. Errors and omissions in 1970 and 1972 include the values for special drawing rights.

d. Both projections are in 1977 dollars. estimate of Direct Foreign Investment of .55% of GDP and the right side represents an estimate of D.F.I. of .8% of GDP.

APPENDIX VI

BUILDING THE CACTUS CURTAIN:
MEXICAN IMMIGRATION AND U.S. RESPONSES

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Introduction: The Limits of Government Intervention

Of the three major clusters of issues currently affecting relations between the U.S. and Mexico--energy, trade, and immigration--the concerns raised by Mexican migration to the U.S. are likely to be the most enduring and conflictual during the remainder of this century. Managing the Mexican immigration phenomenon in a manner acceptable to policy-making elites, special interest groups, and mass publics in the two countries is likely to prove very difficult, because this migratory movement is so deeply rooted in the political economies of both the U.S. and Mexico, and because there are severe limits on the capacity of governments on both sides of the border to intervene effectively in the migration process, at least in the short-to-medium run.

The limits to government intervention arise from several key features of Mexican migration to the United States. First, this is a deeply institutionalized, multi-generational social process. There has been a continuous flow of Mexican migrants to the U.S. since the 1880s, and in the principal regions of origin in Mexico it is common to find several different generations within the same families who have worked in the United States. For example, among 185 Mexican migrants whom I interviewed during 1978 in California and Illinois, 82% had fathers who had migrated at least once to the U.S., and 53% had grandfathers who had done the same. (Similar proportions were found among a much larger sample of former migrants to the U.S. whom I interviewed in 1976 in the state of Jalisco, Mexico.) While migration to the U.S. in search of employment becomes a "way of life" for only a small minority of Mexico's work force, a much larger proportion of the Mexican population--particularly in rural areas and smaller cities--grows up viewing short-term employment in the U.S. as one of the very few options available to them for dealing with acute economic needs and for accumulating the capital needed to achieve some long-term socio-economic mobility for themselves or their children.

The forces operating to push and pull Mexican labor into the U.S. are extremely powerful, and are likely to remain so in the foreseeable future. On the Mexican side, the major push factors are low wage scales, high unemployment and underemployment, maldistribution of income and land, high inflation, and population growth. Wage differentials between the U.S. and Mexico have not been narrowed during the past 60 years (the overall differential is still about 8-to-1; a 13-to-1 differential is not uncommon between U.S. wages and those prevailing in many agricultural areas of Mexico), and a massive devaluation of the Mexican peso in late 1976 greatly increased the attractiveness of U.S. earnings. Inflation in Mexico during the 1970s has been running at a rate more than triple the average rate recorded in the preceding two decades, and it is widely expected that inflationary pressures will be even greater in the 1980s, due to the influx of revenues from oil and gas exports. And while Mexico has experienced a sharp drop in its birth rate since 1969, population pressures on land and non-agricultural employment opportunities will remain severe for at least the next 15 years. Because of the current age structure of the Mexican population (about 46% of the population is under 15 years of age), Mexico is demographically locked into a huge expansion of its labor force -- at a rate of 700,000 - 800,000 new job seekers each year. Even under the most optimistic assumptions about economic growth rates and governmental job-creation efforts, there is no way that the Mexican economy can absorb these huge increments to the labor force, let alone make a dent in the current backlog of unemployment and underemployment, which is estimated to affect about 9 million workers -- more than 40% of the total Mexican labor force.

On the U.S. side, the employer demand for Mexican labor remains high, and is likely to increase in the remainder of this century (more on this below). While continued mechanization will eliminate many of the jobs now held by

Mexican workers in U.S. agriculture, increased demand for their labor in urban services, construction, and light industry will more than offset the loss of agricultural employment opportunities in most parts of the U.S. Southwest and Midwest. There will also be considerably greater dispersion of Mexican labor through the U.S. economy: The shift of Mexican labor from a relatively few, large-scale enterprises to more numerous, small-scale businesses -- a shift which has been notable in the period since 1969 -- will continue.

The Mexican migration phenomenon, even today, is the result of literally millions of uncoordinated, micro-level decisions: decisions by individuals, kinship groups, and business firms on both sides of the border. The sheer number of decisions to be influenced makes this phenomenon less susceptible to government control. Even more important are the high stakes involved, for prospective Mexican migrants as well as their U.S. employers. Basic human needs motivate most Mexican workers who seek employment in the U.S.; the income earned there may make the difference between a child's having adequate medical care, or dying from lack of it; between enabling a child to remain in school long enough to complete a primary or secondary education, or pulling him out of school to contribute to the family income; between having enough capital to start a household of one's own, or living with parents and sharing already overcrowded housing and cropland. Such elemental human needs and desires will continue to drive Mexican workers across the border, no matter how harshly U.S. immigration laws are enforced, and no matter what hardships they have to endure to get here.

Nor does the Mexican government possess the legal authority, nor the political capacity, to prevent the emigration of its own citizens. While some members of the U.S. policymaking community have argued that Mexico should assist the U.S. in patrolling the border to reduce undocumented immigration -- in much the same way that Mexico, through "Operation Condor," has helped to reduce

illicit drug traffic into the U.S. -- such expectations ignore Mexico's constitutional prohibition on government actions restricting freedom of movement by Mexican citizens. They also ignore the political realities of the situation: Short of a complete turn to repressive, totalitarian rule, no Mexican President could withstand the firestorm of protest which would inevitably result from overt collaboration with the U.S. in helping to prevent the emigration of Mexican workers.* While morally and politically more acceptable within Mexico, efforts by the Mexican government to crack down on the "coyotes" (professional "people smugglers") who organize much of the clandestine migration from Mexico to the U.S. have proven ineffectual. A recent coyote crackdown undertaken by the state government of Baja California in the border city of Tijuana (under an agreement between Baja California Governor Roberto de la Madrid and San Diego County U.S. Attorney Michael Walsh) succeeded only in shifting their operations to different parts of the city.

On the U.S. side, it is no more possible to legislate away the demand for Mexican labor on the part of U.S. employers than it was for the U.S. to legislate away the consumer demand for alcoholic beverages or narcotic drugs. The small businesses which have become the primary employers of Mexican migrant labor have already been driven to the wall by large domestic and foreign competitors, and their survival often depends upon continued access to Mexican labor. Individual citizens who depend upon Mexican workers for what they regard as essential services (child care, household maintenance, garden care, etc.) are also unlikely to dispense with these workers.

*The extreme political sensitivity of this issue in Mexico is illustrated by the spate of articles, editorials, and commentaries appearing in the Mexican press during July, 1979, in response to a leaked U.S. government memorandum in which high-level Mexican officials were quoted (erroneously, it turned out) as being prepared to cooperate with the U.S. in "regularizing" the border to reduce clandestine immigration. See Excelsior, 14 July 1979, p. 1; Uno Más Uno, 15 July 1979, p. 7; Excelsior, 18 July 1979, p. 7; Uno Más Uno, 23 July, 1979, p. 2.

Given the fact that the economic and demographic forces underlying the migration of Mexican workers to the U.S. are likely to remain strong at least until the end of this century, combined with the highly institutionalized nature of emigration to the U.S. from many parts of Mexico and the existence in the U.S. of large kinship networks formed by earlier waves of migrants which promote and facilitate the migration of relatives still based in Mexico, it will be extremely difficult to control the level of Mexican immigration through public policy, however well-conceived and effectively implemented. Public policy can, however, have a major impact on the form which future immigration will take: legal or illegal, temporary or permanent.

For example, it is clear from the available evidence that the majority of Mexican migrants--even many of those who acquire permanent legal resident status--do not want to stay in the U.S. permanently. They want to earn enough to be able to support their families in Mexico at a decent standard of living, or to accumulate enough money to achieve some specific goal (build a house, buy some cattle or a piece of land, educate a child, start a small business, etc.) which would be unattainable if they remained in their home community. Studies show that illegal immigrants from Mexico tend to remain in the U.S. for shorter periods of time, and are less likely to settle permanently in the U.S., than illegals from other countries. Return migration from the U.S. to Mexico is heavy, particularly during the period from October through December each year. My own research among migrants from the state of Jalisco shows that for every one Mexican who settled permanently in the U.S., eight migrated temporarily and returned to their home communities, spending a lifetime total of slightly less than 13 months at work in the United States. Clearly, the number of Mexican migrants working temporarily in the U.S. has increased substantially in the past decade; this population of sojourners may be increasing by 100,000 - 200,000 each year. But

these increases in the flow of transient Mexican workers do not translate directly into increments to the permanent stock of Mexican immigrants living in the United States.

But a continuation of the present U.S. government policy--a gradual tightening of the southern border, through increased enforcement manpower and hardware--may turn what is now a largely floating population of Mexican migrants into a population that is more permanently anchored in the United States. In my interviews with illegal Mexican migrants during 1978, I found that some were delaying their planned return to Mexico--particularly if they had dependents living with them in the U.S.--due to the greater cost and difficulty of re-entry which has resulted from increased border surveillance. The coyotes upon whom many Mexicans (and a growing number of illegal migrants from Central America and South America) depend for entry into the U.S. have raised their fees substantially, to \$250 or more per head, in response to stepped-up border enforcement efforts during the past 2-3 years. As long as the number of opportunities to migrate legally to the U.S. remains as limited as it is today, each increment in U.S. enforcement activities along the border will have the effect of inducing more illegal migrants to stay in the U.S. for longer periods, or to settle here permanently. This has obvious implications for public schools and other social services which would be drawn upon more heavily by an immigrant population containing more permanent settlers than sojourners.

Another way in which public policy has dramatically affected the form taken by Mexican migration to the U.S. is through the reduction of legal immigration opportunities. Between 1951 and 1964, at least 178,000 and as many as 445,000 Mexican workers were permitted to migrate legally to the U.S. each year as temporary contract-laborers under the so-called "bracero" program. This program operated under a series of bilateral agreements between the U.S.

and Mexican governments. The massive upsurge in illegal immigration from Mexico beginning in the late 1960s can only be explained as a result of the termination of the bracero program (by unilateral action of the U.S. Congress) in 1964. Those who had formerly gone to the U.S. as braceros continued to go, but now as illegals; and the numerous offspring of most of this bracero generation had little alternative to illegal entry, if they sought to work in the United States. Moreover, by the late 1960s, U.S. permanent resident visas (the only kind which permit the immigrant to work legally in the U.S. for an indefinite period of time) had become difficult to obtain, and the Mexican demand for such visas had increased to unprecedented levels.

The supply of permanent legal resident visas available to Mexican nationals was reduced by a series of amendments to the Immigration and Nationality Act passed by Congress in 1965 and 1976. Moreover, very restrictive administration of one portion of the immigration law by the U.S. Department of Labor has limited the number of Mexicans permitted to enter the U.S. legally as temporary workers on "H-2" visas to about 1,000 - 2,000 per year in recent years. Employers whom I interviewed in 1978 complained that existing Department of Labor procedures and requirements make it considerably more difficult for them to obtain legal "H-2" foreign workers than to recruit illegal migrants. Not surprisingly, most of them do not even attempt the legal recruitment route.

In sum, U.S. laws and policies have had the effect of restricting the legal entry option to a very small, elite group of persons who can afford the long delays and expenses involved in obtaining a permanent-resident visa. This closure of the legal entry option for the vast majority of Mexican nationals seeking to go to the U.S. has itself been a key factor promoting illegal immigration during the past 15 years.

The Role of Mexican Labor in the U.S. Economy and Economic Growth

The U.S. public and many of its political leaders tend to view migrant labor from Mexico as superfluous from the standpoint of U.S. economic needs. The migrants are not seen as necessary for the functioning and growth of the U.S. economy, and their presence here is believed to affect adversely the economic interests of large numbers of American citizens. Such views are strikingly at odds with the analyses and projections of many leading economists and demographers, who foresee an increasingly important--and essential--role for Mexican labor in the U.S. economy during the next twenty years and beyond.

This will inevitably be a period of growing scarcity of domestic labor in the youngest age brackets, due to the sharply depressed birth rate in the U.S. since the late 1950s, and due to the increasing unwillingness of the younger, better-educated, higher-aspiring generation of Americans to do low-status, manual labor. At the same time, the number of low-skill, entry-level jobs in the U.S. economy is expected to increase substantially, especially in the labor-intensive urban service sector, despite mechanization and other technological advances.

Filling these jobs will be important to U.S. economic growth. There is general agreement, even among those now seeking to restrict it, that immigration was a major factor contributing to U.S. economic growth, at least until World War I. The elastic supply of labor provided by immigration from Mexico, Europe and Asia stimulated capital investment, removed bottlenecks in productive processes, and enabled many American workers to move up the occupational ladder. Some economists argue that immigration has never ceased to perform these functions in the U.S. and other advanced capitalist countries,*

*For a detailed exposition of this argument, see Michael Piore, Birds of Passage: Migrant Labor in Industrial Societies (Cambridge and New York: Cambridge University Press, 1979).

and that immigration on a large scale will be necessary to replenish the U.S. labor supply and ensure adequate rates of economic growth in future decades. In fact, the fertility rate in the U.S. is now so low that substantial increases in permanent immigration may be needed to avoid absolute population decline. If current fertility trends persist, beyond the time that zero population growth is reached, there would have to be about 800,000 new permanent immigrants--legal and illegal--settling in the U.S. each year in order to maintain a stable population.* Given net legal immigration estimated at about 265,000 per year, illegal migration would have to add 535,000 permanent residents indefinitely to prevent population decline in the United States.** There is no evidence that illegal migration from Mexico and all other source countries combined is currently contributing a half-million or more annually to the U.S.'s permanent population. Indeed, a reasonable estimate of the increment from illegal Mexican migration would be closer to 80,000-100,000 per year.*** Thus if permanent immigration does not rise substantially above presently-estimated levels, the U.S. would have to subsidize child-bearing among the indigenous population through various financial incentives in order to avoid population decline. (France and other European countries already have found it necessary to experiment with such incentives for child-bearing.) As demographer Charles Keely has concluded, claims that combined legal and illegal immigration will prevent achievement of zero population growth in the United States are unfounded. ****

*Charles F. Westoff, "Some Speculations on the Future of Marriage and Fertility," Family Planning Perspectives, Vol. 10, No. 2 (March-April, 1978), p. 82.

**Charles B. Keely, "U.S. Immigration: A Policy Analysis" (New York: The Population Council, 1979), pp. 46-47.

***David M. Heer, paper presented at the Annual Meeting of the Population Association of America, 1978.

****Keely, "U.S. Immigration: A Policy Analysis," p. 46.

While the economic consequences of zero population growth or absolute population decline are currently the subject of considerable debate among academic researchers, most economists seem pessimistic that an adequate rate of economic growth in the U.S. could be maintained under such conditions. Stanford University economist Clark W. Reynolds recently estimated (conservatively, in his view) that in order to maintain a 3.5% annual growth rate (a modest growth rate, by the standards of today's advanced industrial nations) in the U.S., we will have to import 15-20 million immigrants between now and the year 2000.* He points out that, given prevailing fertility patterns and the already high rate of labor force participation among the U.S. population (one of the world's highest labor force participation rates), it is highly unlikely that domestic population sources will be adequate to meet the country's labor needs. At the same time, as noted above, Mexico will continue to have a large labor surplus for the remainder of this century and probably well into the next, regardless of current investments in family planning and other programs which will eventually ameliorate population pressures.

The implication of these trends is clear: The decades to come will bring increasing complementarity between the labor forces of Mexico and the United States. Given recent and foreseeable economic and demographic trends within the U.S., a strong case could be made that it is not in the national interest of the U.S. to take further steps to restrict the entry of Mexican labor, if the national interest lies in having a dynamic, growing economy which is competitive with foreign economies and which offers ample opportu-

*Clark W. Reynolds, "Prospects for Employment Creation in Mexico During the Next Decade: Implications for the Relationship between Mexican Labor Supply and Future Employment Opportunities in the United States" (Stanford, Calif.: Food Research Institute, July, 1979); and Reynolds, commentary presented at the Colloquium on "The Political Economy of Contemporary Mexico," Woodrow Wilson Center, Washington, D.C., September 13, 1979.

ties for upward mobility for the country's disadvantaged minority citizens.

Mexican Immigration: Public Perceptions and Empirical Realities

Even now, there is abundant evidence that Mexican migrants--legal and illegal--more than pay their own way in our economy and society.* The vast majority of them pay income taxes, social security, and other kinds of taxes, while making very few demands on tax-supported social services; and they are among the most highly productive and reliable members of our work force. In many ways they subsidize the living standards of the U.S. middle class, and they do no demonstrable harm to the U.S. poor, whose problems are essentially unrelated to immigration.

Nevertheless, it is clear that the post-1970 wave of Mexican migration to the U.S. has aroused deep-seated anxieties among the general public in this country. A large majority of Americans seems to view the Mexican migrant as an intolerable burden (someone who, upon entering the U.S., heads straight for the welfare lines), as a threat to their personal economic interests, or as a racial/cultural contaminant. Such perceptions on the part of the general public and an array of special interest groups produce an incessant clamor for a more restrictive, punitive policy toward undocumented immigration. How does this public clamor arise?

In historical perspective, this is nothing new for the United States. "Nativist," anti-immigrant sentiment has bubbled just beneath the surface during much of our history, dating back at least to the Know-Nothing Party of the pre-Civil War era. Three times during the past 58 years (in 1920-21, 1930-35, and 1953-54), anti-immigrant hysteria among the U.S. public has cul-

*The relevant empirical evidence, from more than 500 academic and governmental reports, is summarized in my forthcoming book, Building the Cactus Curtain: Mexican Immigration and U.S. Responses, from Wilson to Carter (Berkeley, Calif.: University of California Press, April, 1980).

minated in mass round-up and deportation campaigns aimed specifically at Mexican workers. Viewing our anti-Mexican, nativist movements as a cyclical phenomenon--i.e., something that seems to happen at least once in a generation--it could be argued that the U.S. is now overdue for another such spasm.

As the current decade draws to a close, however, there are some new elements in the American mood which make it even more likely that the 1980s will be a decade of rising public agitation about Mexican immigration. The politics of immigration in the U.S. today is also very much the politics of inflation, of resource scarcity, of the high cost of government. We are manifestly in the "era of limits." There is a pervasive sense of constraints on our resources; of constraints on the ability of the U.S. economy to provide jobs for all who seek them; a sense that our capacity to integrate poorly educated, low-skilled, culturally "different" people into meaningful and productive roles in our society has already been exceeded.

There is generalized anxiety and frustration over the country's high rate of inflation--the worst since the immediate post-World War II period, and undoubtedly a less transitory phenomenon. Real, after-tax incomes for most citizens are declining. Pay checks that don't go nearly as far as they once did are blamed increasingly on runaway government spending, which in turn is blamed on "give-away" programs (welfare, foreign aid, etc.) that are of benefit mostly to blacks, Chicanos, Puerto Ricans, illegal immigrants, and foreigners still living in their own countries. In this sense, today's anti-immigrant sentiment forms part of the public backlash against the expansion of the "social welfare economy" in the United States since the 1960s. It is evident that many Americans are looking for someone to beat up on for double-digit inflation, high taxes, and other vexing problems; foreign migrants fit the bill very nicely.

Historically, public concern about immigration has risen and fallen in rather close correspondence to the rate of unemployment in the United States. Today, however, it seems that anti-immigrant sentiment is more closely indexed to the rate of inflation, and the attendant concern with government spending is a principal contributing factor. As long as the rate of job creation in the U.S. remains high (as it has during the latter half of this decade), and as long as "structural" unemployment remains concentrated among young blacks and other minorities, the average American who worries about immigration is not likely to be afraid of losing his job to a migrant, but rather of having to pay higher taxes.

Perhaps the single most consistent theme in public opinion surveys, letters to newspapers, and constituent letters to U.S. Congressmen is the notion that undocumented migrants are a burden on the U.S. economy and society. These workers are not seen as contributing anything desirable or necessary to the U.S.; rather, they are viewed as superfluous, free-loading, and potentially disruptive. They are believed to consume lots of costly social services, to demand bi-lingual education for their children, and to be generally dysfunctional to American society -- as well as costly to the individual taxpayer. There is virtually no awareness among the general public that the vast majority of undocumented migrants from Mexico pay federal and state income taxes, Social Security taxes, sales and even property taxes, the total amount of which greatly exceeds the cost of the social services they use. Nevertheless, they are seen as draining the public system, rather than contributing to it.

The employment consequences of Mexican immigration are still of concern to some segments of the U.S. population, particularly inner-city

blacks and Chicanos, and to some special-interest groups like organized labor. For example, 55% of the blacks interviewed in January, 1979, in a national New York Times/CBS News survey thought that most illegal immigrants take jobs away from American citizens, as compared with 34% of the whites interviewed.* There were also some striking regional differences in the answers to this question about job displacement. Forty-five percent of the interviewees living in the Northeast believed that most illegal migrants take jobs away from Americans, but only 28% of the respondents living in the West perceived this kind of job displacement effect. The South and the Mid-West fell between these two extremes, with the Midwestern respondents more closely resembling the Westerners, who saw little job displacement effect.

These regional differences may reflect, in part, a kind of "personal unfamiliarity" gradient, or a "relative-dependence-on-Mexican-labor" gradient. As one moves across the country from East to West, you encounter more people who have some personal familiarity with Mexicans in their own community, and greater awareness of the extent to which their local economy is dependent on Mexican labor for certain kinds of services. Another factor may be the relative strength of labor unions in different parts of the country. For generations, the American Federation of Labor and subsequently the AFL-CIO has been the most vociferous proponent of a restrictive immigration policy, among the major special-interest groups in the United States; and unions are strongest in the industrialized states of the Northeast.

*New York Times/CBS News National Survey, January, 1979. The data from this survey cited here and elsewhere in this paper were provided to the author by the Director of Special Projects, The New York Times. Some of these data are reported in William K. Stevens, "Millions of Mexicans View Illegal Entry to U.S. as Door to Opportunity," The New York Times, February 12, 1979, pp. 1A and B10.

To some degree, the controversy over illegal immigration from Mexico is another facet of the more generalized conflict among regions of the U.S.: conflict over government resources, employment opportunities, energy, representation in Congress, and a dozen other dimensions of regional competition. In particular, the "illegal alien" issue pits the Northeast against the Southwest, or the Snowbelt against the Sunbelt states. Congressmen from the Northeast can please their constituents by proposing draconian schemes for reducing immigration, the costs of which would fall most heavily upon the constituents of Congressmen from the Southwest. It is probably no coincidence that some of the strongest supporters of restrictionist legislation in recent decades have tended to be legislators from the Northeast.* In other words, the "illegal alien" issue seems to play well in Newark or Philadelphia or perhaps even in Peoria, but perhaps not so well in Albuquerque or Houston or San Diego.

It is clear that much of the anti-immigrant hostility about in the land today is racially motivated. It would be reasonable to expect that if the majority of foreigners entering the U.S. today were not brown or black-skinned, there would be considerably less public concern about it. But this goes beyond simple racism. Mexican migrants still suffer from the negative stereotype of Mexicans as a nationality which became embedded in the U.S. consciousness during the 19th Century: the image of the docile, indolent, backward, undisciplined, theiving, spend-thrift, "mañana-minded," altogether inferior specimen who cannot appreciate the Protestant work ethic and who is only interested in a "free ride." We should not forget

*This is not to say that Congressional delegations from the Southwest do not contain any "restrictionists." However, Congressmen and Senators from the border states have generally been more cautious about embracing restrictionist "solutions," often in deference to Chicano groups and to private-sector interests which favor continued immigration.

that, as recently as 1926, it was both socially and politically acceptable --even advantageous--to talk about Mexican immigrants on the floor of the U.S. Congress in terms depicting them as a truly sub-human species of being, capable only of the most animalistic functions and responses. The residue of this negative stereotype is still evident, especially in public perceptions of the Mexican migrant as a "welfare cheat" or a common criminal, who is likely to "breed like a rabbit" upon arrival in the U.S.

Mexican migrants entering the U.S. in the late 1970s have also been stigmatized by their association with the Chicano population and racial/ethnic minorities in general. Most Americans seem to feel that there should be no more "special privileges" for ethnic minorities of any kind, whether immigrant or non-immigrant. Egalitarianism is out; "reverse discrimination" suits are in. It is believed that without extraordinary and unacceptable intervention by government, ethnic minorities "just can't make it anymore" in the United States. This allegedly applies with particular force to Hispanics, who are late-arrivals in the scramble for upward mobility. Thus Mexican immigrants are viewed negatively today in part because they are seen as enlarging what is seen as a "problematic", "dysfunctional" minority group, unwanted and rejected by the dominant society--i.e., the Chicanos.

Such racially-based hostility is also related to the so-called "separatist issue," which seems to underlie much of the public and governmental uneasiness about the volume of Mexican immigration in recent years. The notion of cultural pluralism is under fire--if not in disrepute--in the United States today.* Cultural pluralism is seen as leading to

*A 1979 national survey by Louis Harris found evidence of an increase in public tolerance for cultural diversity, compared with previous samplings. However, responses to questions on this sensitive issue may partly reflect "social desirability response set"--i.e., a desire on the part of the survey respondent to conform to what he perceives to be socially acceptable norms of thought, in the presence of an interviewer unfamiliar to him.

political separatism -- a "Spanish-speaking Quebec in the Southwest."*

It is feared that, for some reason, the current generation of Mexican immigrants and those which will follow it will not replicate the assimilation patterns of previous immigrant groups; they will refuse to jump into the American "melting pot" and instead adopt a militantly separatist stance. As federalism in Canada continues to break down, with a Quebec secession attempt increasingly likely, more and more Americans become concerned about the potential for social and political disruptions stemming from Mexican immigration. If Quebec does secede from the Canadian union, the inevitable backlash within the U.S. will increase public hostility toward the Mexican/Chicano population.

Public concern about overpopulation of the United States in general is also closely related to the new American nativism. Most Americans continue to believe that the population explosion in Mexico is completely out of control; that Mexico cannot or will not restrain its own population growth; and that most of Mexico's excess population will spill across the border unless the U.S. contains it by closing the border.* Again, there is no public awareness in the U.S. of the sharp drop in the rate of natural population increase in Mexico since the late 1960s (see Cornelius, 1979: 154-156). Moreover, it is usually assumed that virtually all Mexicans who come to the U.S. to work end up settling here permanently, and maintain very high fertility patterns, thereby overburdening U.S. schools, crowding parks and other recreational facilities, using up scarce energy supplies, and so forth. Most members of the general public assume

*While this viewpoint is not widely shared among academic specialists, it does have its proponents. See especially Corwin (1978: 353-354 et passim).

**Such perceptions are strengthened by such statements as former CIA Director William Colby's recent declaration to a Los Angeles Times reporter. Predicting that Mexico's population will double, from 60 to 120 million, by the end of this century, Colby asked: "So what's going to happen to that extra 60-odd million Mexfcans? Twenty million of them are going to come here."

that if the Immigration Service apprehends nearly a million Mexican illegal migrants annually, several million more must have gotten away undetected and taken up permanent residence in the U.S. In the past, Americans have tended to view Mexico as a labor reserve to be dipped into periodically whenever we had manpower shortages. Now, people fear that the U.S. is being "overwhelmed" and "overrun" by this former "reserve army," which now refuses to be drawn upon sporadically and selectively. Most people are totally unaware of the heavy return flow of migrants to Mexico, after short-term employment in the United States. They do not see the migration as a two-way flow: only a one-way flow, from Mexico to the United States. Many would no doubt be shocked to learn that a large majority of Mexicans who come to the U.S. for work do not want to settle permanently here (Cornelius, 1979: 115-117), and most would also be surprised to find that the new generation of Mexican migrants who do end up living in the U.S. on a long-term basis have no more children than the average American couple today (Cornelius, 1979: 215-220).

For other Americans, migration from Mexico is a problem primarily because of its contribution to crime and disregard for the law in the U.S. People living in areas near the southern border often blame Mexican migrants for increased crime rates--especially for theft--in their communities. A number of scholars have looked into this (see Carter, 1978; Martínez, 1979), and I also delved into the matter during my fieldwork in California and Illinois. It turns out that most Americans make no distinction between Mexican migrants and U.S.-born Mexican-Americans living in poverty neighborhoods. In fact, undocumented migrants from Mexico are rarely involved in street crime; it is simply too risky for them to expose themselves to detection by local law officers, who often collaborate closely with the

U.S. Immigration Service. Nevertheless, Mexican "illegals" are commonly believed to be responsible for rising crime rates and law enforcement costs in many southwestern cities. Others criticize the migrants for "making a mockery of our legal system," through illegal entry into the U.S. on a massive scale. And while the vast majority of violent crime in the immediate border area consists of robberies and assaults perpetrated by Mexican nationals upon Mexican migrants attempting to cross the border clandestinely, the average member of the general public is more likely to believe that borderlands violence consists primarily of acts committed by Mexican illegal migrants upon Border Patrolmen and other U.S. citizens.

Many of the people who are angry about Mexican migrants are also angry at their own governmental system. They tend to be persons who have some kind of "beef" with the federal government bureaucracy, which they feel has been unresponsive to their needs or has abused them or cheated them out of some benefit to which they were supposedly entitled. Accordingly, they resent illegal immigrants because the mere presence of these migrants in the U.S. is believed to give them access to valuable benefits to which they (the migrants) have no right, while the average U.S. citizen who is entitled to receive such benefits often finds it difficult to obtain them. Thus, in an important though roundabout way, citizens' perceptions that "the system" simply isn't working anymore, at least to their personal benefit, fuel anti-immigrant hostility.

Recent immigration from Mexico has also coincided with a period of rising protectionism and isolationism among the U.S. public and its representatives in Congress. Such sentiments are partly an after-effect of the Vietnam War, partly a response to adverse economic trends (persistently large U.S. balance-of-payments deficits, the decline of the dollar in

international money markets, the loss of U.S. jobs in "runaway industries" that relocate their labor-intensive production operations in foreign countries, etc.). The new isolationism and protectionism impacts on the immigration issue in a variety of ways. Recent survey data show that Americans today are far more concerned about protecting American jobs from "foreign competition" of any sort, than about such altruistic goals as combating world hunger, helping to raise the standard of living in less developed countries, or promoting and defending human rights in other countries (see, for example, Rielly, 1979: 78). They strongly believe that first priority must go to dealing with U.S. domestic problems; and doing this means either getting rid of illegal immigrants or at least not worrying about them.

The average citizen sees all the benefits of the migratory movement accruing to Mexico and all the costs being borne by the United States. He believes that Mexico as a country is profiting unfairly from the migration, by being allowed to dump its problems of overpopulation, poverty and unemployment upon the U.S. These problems, they feel, are of Mexico's own making; so the solutions must come from Mexico. Very few Americans have any historical perspective on the Mexican immigration phenomenon. They are unaware of the extent to which the U.S. itself--both the government and the private sector--has affected the development of Mexico in ways that have exacerbated that country's employment problems, while intermittently encouraging the entry of Mexican workers into the U.S. labor market through public and private recruitment efforts. Nor is there much concern about the material hardships that would be inflicted upon millions of Mexico's most impoverished people if they or their breadwinners are denied access to income-earning opportunities in the U.S. The opinion that "we can't even take care of our own poor" seems to absolve any sense

of responsibility for the survival of Mexico's poor. In short, there does not appear to be much of a constituency in the U.S. today for international equity, or even for the human rights of foreigners, defined in economic-welfare terms. As one angry New Yorker recently complained, in a long letter to the New York Times, "America does not owe Mexico anything."*

Moreover, many members of the U.S. public believe that, with so much oil and natural gas, Mexico already possesses all the resources it needs to create jobs for its people and stop illegal entry into the U.S.--so why hasn't it done so? This leads many people to conclude that illegal immigration from Mexico is a problem that the U.S. must "solve" by itself, through unilateral, police-type measures: higher and stronger fences along the border, more Border Patrolmen, fines or criminal penalties for U.S. employers who hire illegal migrants. They believe that if enough resources are allocated for effective law enforcement, the U.S. can wall itself off from Mexico's excess population and unemployment problems. Indeed, data from several surveys show that there is broad public support for the "law enforcement" approach (employer sanctions, stepped-up border patrol activities), and one poll even found majority (57%) support for a mass round-up and deportation campaign to rid the country of illegal aliens (Gallup Organization, 1976: 18; Cf. Jasso, 1979). While most scholars who have studied the Mexican migration phenomenon through first-hand field investigation regard this approach as doomed to failure (for a variety of reasons relating both to the nature of the immigration phenomenon and the difficulty of enforcement on the U.S. side), the general public still has considerable confidence in it.

*Letter to the Editor from Steve Teitelbaum, appearing in The New York Times, 25 February 1979, p. 16E.

Conclusion

Public perceptions of Mexican immigration and its consequences--however erroneous--are nonetheless politically significant. They have the effect of reducing the degrees of policy space within which the U.S. and the Mexican governments can maneuver. They especially reduce the prospects for a gradualist, cooperative approach to the illegal immigration issue, and generate constant pressure for a narrow, punitive response by the U.S. government.

The historical record in this century gives little cause for optimism that incremental immigration reform will be possible in this kind of public opinion climate. In the U.S. Congress, long periods of inattention to immigration issues have been followed by sudden lurches toward draconian restrictive measures. If the 1980s are likely to be characterized by what has been termed a "malaise economy" in the U.S.--little or no growth, double-digit inflation, chronic and deepening energy shortages--the chances are that this scenario will eventually be repeated, unless a major effort is made to build informed understanding of the Mexican immigration phenomenon in Congress and the general public.

If there is to be some room for a rational and humane approach to the Mexican immigration issue, the U.S. public and its elected representatives must be convinced that this is not a problem that can be "solved" in the short term, without intolerable costs for both the United States and Mexico. The terms of the debate must be shifted from questions like "What can we do to keep the migrants out?" to "What can be done to maximize the benefits and minimize the costs of the migration, to all parties involved?" Only in this way will the U.S. be able to rise above scapegoating, political expedience, and racial prejudice to design an immigration policy which will serve its own long-term national interests as well as those of Mexico.

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