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U.S. IMMIGRATION LAW AND POLICY: 1952–1979

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A REPORT

PREPARED AT THE REQUEST OF

nator EDWARD M. KENNEDY, *Chairman*

OMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

UPON THE FORMATION OF

THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

PREPARED BY THE

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INTRODUCTION

by Senator Edward M. Kennedy, Chairman

Immigrants are America's roots. Except for native Indian citizens, all Americans are either immigrants or refugees themselves or the descendants of immigrants or refugees. Yet, over the years, our memory of this unique national heritage has faded. Immigration has become a controversial issue, clouded by misunderstandings and false stereotypes, or overwhelmed by the fear of illegal immigration.

One of the oldest themes in our history has now become one of our most contentious issues. In part, this development is a product of the times—a reflection of our preoccupation with stubborn and increasingly critical domestic and international challenges. But part of the problem derives as well from our existing immigration law and policies.

The current Immigration and Nationality Act is a generation out of date. It is out of touch with the times, and inadequate to meet modern needs. It was enacted in 1952 over President Truman's veto, at the depth of the cold war and the restrictionist atmosphere of that era. It was flawed from the beginning with discriminatory and anti-alien provisions. Some of the more blatantly racist and objectionable sections—such as the national origins quota system and the Asia-Pacific Triangle provisions—were repealed in 1965.

But not much else has changed. The 1952 Act is still the basic statute governing immigration. But after more than a quarter century, its provisions and administrative procedures are seriously inadequate. And, until the last 2 years, little has also been done to strengthen the role of the Immigration and Naturalization Service in implementing the law.

These liabilities of law and practice are combined today with mounting pressures from international migration. Many Americans have a sense of helplessness in dealing with these issues. Amid so many conflicting passions, it is difficult to develop a thoughtful and humane solution to some obvious problems.

Congress has recognized the urgent need for a comprehensive review of immigration law and practice. In 1978, both the Senate and the House of Representatives enacted legislation creating a Select Commission on Immigration and Refugee Policy, and the bill was signed by President Carter on October 5, 1978 (Public Law 95–412).

The Commission will undertake the thorough study of immigration policy that is needed. Such review is beyond the scope of a single committee of Congress or executive department to accomplish.

The membership of the Commission reflects the need for this broader view, by including 16 members drawn from the following areas:

Four members to be selected from each of the Judiciary Committees of Congress; four cabinet members: the Secretary of State, the Attorney-General, the Secretary of Health, Education, and Welfare, and

the Secretary of Labor; four public members to be appointed by the President, including the chairman.[1]

On March 22, 1979, the President announced that former Governor Reubin Askew of Florida would serve as chairman of the Select Commission, to be joined by Mr. Joaquin F. Otero, international vice president of the Brotherhood of Railway and Airline Clerks; Judge Cruz Reynoso, Associate Justice of the Third Appellate District Court in California; and Ms. Rose Matsui Ochi, executive assistant to Los Angeles Mayor Tom Bradley and director of criminal justice planning for Los Angeles.

As the Commission begins its work, it is important for it to look to the past as well as to the future to have a clear understanding of where our country has been on immigration law and policy since the last major law was enacted in 1952. As the inscription on the National Archives suggests, "past is prologue."

To assist the Commission in gaining an appropriate historical perspective, as well as to inform the Congress and the public at large about developments in immigration law and the controversies and issues that have surrounded it in recent years, I asked the Congressional Research Service of the Library of Congress to prepare a report on immigration developments since the 1952 law was enacted.

That report, *U.S. Immigration Law and Policy: 1952–1979*, is now available. It has been prepared by Joyce Vialet, specialist in Social Legislation at the Congressional Research Service. Working with the staff of the Senate Judiciary Committee, she has produced an excellent review of legislation and major developments in the immigration field over the past three decades.

The report highlights immigration and refugee legislation during the 1950's that led to the successful effort to amend the 1952 Act. This struggle was consummated in the bill sent to the Congress by President Kennedy in 1963, and which provided the momentum for the 1965 amendments. The tug and pull over immigration legislation during this period also tells us a great deal about the nature of the controversies we will face over immigration proposals in the days ahead.

The report reviews the critical issues of illegal, undocumented immigration, as well as the history of temporary worker programs. It reminds us that these issues are not new, nor are the proposals to deal with them.

Finally, the report provides the first comprehensive review of legislative developments in the immigration and refugee field since the 1965 amendments.

I commend the following report to Members of Congress and the American public. I also commend it to the members of the Select Commission, as they undertake their important assignment. Our Nation's badly flawed immigration laws need a comprehensive overhaul, in order to bring them into line with America's great immigration and humanitarian heritage, and to help us meet the critical economic and foreign policy needs in the decades ahead.

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[1] See appendix I for background material on the Select Commission on Immigration and Refugee Policy.

LETTER OF SUBMITTAL

THE LIBRARY OF CONGRESS,
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Washington, D.C., April 11, 1979.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request, I am submitting a report on the development of immigration law and policy, 1952–1979.

The report was written by Joyce Vialet, Specialist in Social Legislation, Education and Public Welfare Division. It presents a comprehensive overview and analysis of the major policy issues relating to immigration since 1952. It also traces the development of the Immigration and Nationality Act of 1952 which, with substantial amendment, remains the basic law in the area of immigration.

We hope that this report will serve the needs of the Committee on the Judiciary in its review of immigration law and policy, as well as the needs of other committees and Members of Congress concerned with immigration.

Sincerely,

GILBERT GUDE, *Director.*

Enclosure

SUMMARY OF DEVELOPMENTS

I. THE IMMIGRATION AND NATIONALITY ACT AND REACTION, 1952–1953

The Immigration and Nationality Act enacted on June 27, 1952 [1] was a major recodification and revision of existing immigration and nationality law.[1a] It followed a comprehensive study of existing law and policy by the Senate Judiciary Committee, published under the title, "The Immigration and Naturalization Systems of the United States." [2] This study formed the blueprint for the legislation enacted in 1952 under the leadership of Senator Pat McCarran (D.–Nev.) and Representative Francis Walter (D.–Pa.).

Prior to the 1952 recodification, the two major immigration laws were the Immigration Act of 1917,[3] setting forth qualitative grounds for exclusion, and the Immigration Act of 1924,[4] setting forth numerical limitations, primarily in the form of the national origins quota system. The 1952 Act codified and carried forward, with modifications, the essential elements of both acts, as well as those provisions of the Internal Security Act of 1950 [5] relating to the exclusion of Communists.

Characterized by supporters and opponents alike as basically a restrictionist measure, the 1952 Act was very much a product of its times. It was enacted in the post-World War II period, during the Korean War and at the height of the Cold War with Stalin's Russia. It was strongly opposed by those who had hoped the new internationalism following World War II would bring with it the opportunity for formulating a less restrictive immigration policy. Led by House Judiciary Chairman Emanuel Celler (D.–N.Y.) and Senators Hubert Humphrey (D.–Minn.) and Herbert Lehman (D.–N.Y.), and subsequently backed by President Harry Truman, those who hoped to liberalize the immigration law in 1952 suffered a resounding defeat.

The legislation initially passed the House by a vote of 206 to 68, and the Senate by voice vote. President Truman vetoed the bill, concentrating his criticism on the continuation of the national origins quota system, of which he said:

> The basis of this quota system was false and unworthy in 1924. It is even worse now. At the present time this quota system keeps out the very people we want to bring in. It is incredible to me that, in this year of 1952, we should again be enacting into law such a slur on the patriotism, the capacity, and the decency of a large part of our citizenry.

---

[1] Pub. L. 414, 82d Congress; 66 Stat. 163; 8 USC 1101 *et seq.*

[1a] With extensive amendment, the 1952 Act remains our basic law today. Major provisions of the law in its current form are summarized in appendix II.

[2] S. Rept. 1515, 81st Congress, 2d session, 1950.

[3] Act of Feb. 5, 1917; 39 Stat. 874.

[4] Act of May 26, 1924; 43 Stat. 153.

[5] Act of Sept. 23, 1950; 64 Stat. 987.

Today, we have entered into an alliance, the North Atlantic Treaty, with Italy, Greece, and Turkey against one of the most terrible threats mankind has ever faced. We are asking them to join with us in protecting the peace of the world. We are helping them to build their defenses, and train their men, in the common cause. But, through this bill we say to their people: You are less worthy to come to this country than Englishmen or Irishmen. . . .

Today, we are "protecting" ourselves as we were in 1924, against being flooded by immigrants from Eastern Europe. This is fantastic. The countries of Eastern Europe have fallen under the Communist yoke—they are silenced, fenced off by barbed wire and minefields—no one passes their borders but at the risk of his life. We do not need to be protected against immigrants from these countries—on the contrary we want to stretch out a helping hand, to save those who have managed to flee into Western Europe, to succor those who are brave enough to escape from barbarism, to welcome and restore them against the day when their countries will, as we hope, be free again. . . . These are only a few examples of the absurdity, the cruelty of carrying over into this year of 1952 the isolationist limitations of our 1924 law.

> In no other realm of our national life are we so hampered and stultified by the dead hand of the past, as we are in this field of immigration.[6]

President Truman made the general observation that, "By and large, the changes that would be made by the bill do not depart from the basically restrictive spirit of our existing laws—but intensify and reinforce it."[7] The bill passed both Houses by the two-thirds majority necessary to override the veto—in the House by a vote of 278 to 113, and in the Senate by 57 to 26.

Although presumably some of its supporters were motivated by racial prejudice, in the words of one commentator, passage of the 1952 Act was "in essence an act of conservatism rather than of intolerance."[8] It embodied the political choice of limiting immigration by continuing the national origins quota system which had become an institution, albeit a controversial one, after 30 years of existence. Just as importantly, it reflected the view that Communist subversion represented a serious danger to the country, against which our immigration law formed a vital line of defense.

Summary of Major Provisions

As indicated above, the 1952 Act carried forward many of the provisions and underlying policies of the legislation it repealed and superseded. Significant modifications made by the 1952 Act were summarized as follows in a recent treatise on immigration law:

> Different from the earlier laws, the 1952 Act:
> (1) made all races eligible to naturalization and eliminated race as a bar to immigration;

---

[6] House Doc. 520, 82d Cong., 2d sess., June 25, 1952, pp. 4–5.
[7] Ibid., p. 8.
[8] Robert A. Divine. American Immigration Policy, 1924–52 (New Haven, Yale University Press). 1957, p. 190. (Cited as Divine (1957).)

(2) eliminated discrimination between sexes with respect to immigration;

(3) introduced a system of selective immigration by giving a quota preference to skilled aliens whose services are urgently needed in the United States;

(4) placed a limit on the use of the governing country's quota by natives of colonies and dependent areas;

(5) provided an escape clause permitting the immigration of certain former voluntary members of proscribed organizations;

(6) broadened the grounds for exclusion and deportation of aliens;

(7) tightened criteria for the regularization of status of deportable aliens in the United States and added a provision for adjustment from nonimmigrant status to that of permanent resident; and

(8) provided greater procedural safeguards to aliens subject to deportation.[8a]

The 1952 Act was, and remains, lengthy and complex legislation. Many of the original provisions are still law today, including the provision for dual administration by the State Department and the Justice Department, carried forward from previous legislation; the basic distinction between immigrants and nonimmigrants; and the lengthy and detailed lists of the grounds for exclusion and deportation.

From a policy point of view, probably the most important provisions of the 1952 Act were those relating to numerical restriction, including the national origins quota system, the Asia-Pacific Triangle, the four-point selection system, and the absence of a numerical ceiling on Western Hemisphere immigration. None of these provisions, discussed briefly below, remains in the current law, reflecting the major shift in immigration policy which has occurred since 1952.

A. NUMERICAL RESTRICTIONS

As enacted, the 1952 Act retained the national origins quota system of the 1924 Act, with some modifications. Under the national origins quota formula which went into effect on July 1, 1929, the annual quota of any nationality was "a number which bears the same ratio to 150,000 as the number of inhabitants in the United States in 1920 having that national origin bears to the number of white inhabitants of the United States in 1920, with a minimum quota of 100 for each nationality."[9] Natives of countries in the "barred zone," encompassing most oriental countries, were generally inadmissible as immigrants, with certain exceptions.

This system was modified by the 1952 Act which set the annual quota for an area at 1/6 of 1 percent of the number of inhabitants in the continental United States in 1920 whose ancestry or national origin was attributable to that area. All countries were allowed a minimum quota of 100, with a ceiling of 2,000 on most natives of countries in the Asia-Pacific triangle, which broadly encompassed the Asiatic countries.

[8a] Elizabeth J. Harper, Immigration Laws of the United States, third ed. (Indianapolis, Bobbs-Merrill Co., Inc.). 1975. pp. 21–22. (Cited as Harper (1975).)

[9] H. Rept. 1365, 82d Cong., 2d sess., Feb. 14, 1952, p. 37.

Aliens were chargeable to their country of birth, with the exception of those of Asian ancestry; aliens with 50 percent or more Asian ancestry were chargeable to the Asian quotas. It should be noted that the provisions relating to Asian countries represented a liberalization of the previous law, which had barred immigration from most Asian countries.

In general, race played a less important role in the determination of immigration policy in the 1950's than it had in the 1920's. The national origins quota system originally derived from popular biological theories of the period alleging the superiority of certain races. Two statements by Dr. Harry N. Laughlin, a eugenics consultant to the House Judiciary Committee on Immigration and Naturalization in the early 1920's, clearly indicate the important role these theories played in the development of immigration policy immediately after World War I:

> We in this country have been so imbued with the idea of democracy, or the equality of all men, that we have left out of consideration the matter of blood or natural born hereditary mental and moral differences. No man who breeds pedigreed plants and animals can afford to neglect this thing.
>
> * * * * * * *
>
> The National Origins provisions of the immigration control law of 1924 marked the actual turning point from immigration control based on the asylum idea . . . definitely in favor of the biological basis. . . .[9a]

The difference between the climate of opinion in the 1920s and the early 1950s is apparent in the following statement in the 1950 report of the Senate Judiciary Committee, "Without giving credence to any theory of Nordic superiority, the subcommittee believes that the adoption of the national origins quota formula was a rational and logical method of numerically restricting immigration in such a manner as to best preserve the sociological and cultural balance in the population of the United States."[10] In contrast to the 1920s, the case for the national origins quota system in the early 1950s was not generally argued on the grounds of racial superiority. Instead the argument was based partly on sociological theories of the time relating to cultural assimilation.

Two other features of the numerical restrictions adopted in 1952 are of particular interest. These are the four-point selection system, and the continued absence of a numerical restriction on Western Hemisphere immigration.

The 1952 Act combined a four-category selection system with the national origins quota system in the allocation of visas to Eastern Hemisphere countries. This was a refinement of the two-preference selection system based primarily on family relationship contained in the 1924 Act. The "inclusion, to a certain extent, of the principle of selectivity in our present system," had been recommended in the Senate Judiciary Committee report, which concluded that "under our present system the immigrant selects this country rather than this country

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[9a] Quoted by Abba P. Schwartz, "The Open Society" (New York, Simon and Schuster), 1968. pp. 105–106.

[10] S. Rept. 1515, 81st Cong., 2d sess. (1950), p. 455.

selecting the immigrant."[11] Quoting further, "The subcommittee, therefore, recommends that the immigration laws be amended to provide a means of selecting immigrants for admission whose skills and services are urgently needed in the United States."[12] However, the Senate report noted that "the subcommittee has been unable to arrive at any satisfactory standards which would permit immigration on a purely selective basis, while at the same time preserving the sociological and cultural balance in our population."[13]

The four-category selection system was adopted in a somewhat modified form, with little debate. Fifty percent of each national quota was allocated for first preference distribution to aliens whose services were determined by the Attorney General "to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants and to be substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States." The remaining three preference categories assigned priorities to various types of relatives of U.S. citizens and permanent resident aliens. This four-point selection system was the direct antecedent of our current seven-category preference system.

Finally, the numerical restrictions in the 1952 Act did not apply to the Western Hemisphere. Natives of other countries in the Western Hemisphere were originally omitted from the quota restrictions imposed on the Eastern Hemisphere in the 1920s for three main reasons, according to one source:

> (1) Some of these countries had few or no nationals in the United States upon whom a national origins quota could be based and under the quota system they would have been totally excluded in the future. (2) The borders between this country and Canada and Mexico were considered too extensive to patrol against illegal entries effectively. (3) The desirability of continued favored treatment to sister nations of the Western Hemisphere.[14]

This omission was explained as follows in the 1950 Senate report, "The blanket nonquota status in the case of Western Hemisphere aliens rests chiefly upon considerations arising from geographical proximity of the Western Hemisphere countries and considerations of friendly relations among them."[15]

The Senate report recommended that the nonquota status be retained for Western Hemisphere aliens, and that their immigration "continue to be regulated by the qualitative restrictions in the law, such as those relating to literacy, health, morals, and economic conditions."[16] This recommendation was accepted in the legislation enacted into law in 1952. The present restrictions on Western Hemisphere immigration derive from the amendments enacted beginning in 1965.

Two other immigration-related issues of this period which involved the Western Hemisphere were illegal aliens, and the importation of

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[11] Ibid., p. 456.
[12] Ibid., p. 457.
[13] Ibid., p. 456.
[14] Marion T. Bennett, "American Immigration Policies" (Washington, Public Affairs Press), 1963, p. 61. (Cited as Bennett (1963).)
[15] S. Rept. 1515, 81st Cong., 2d sess. (1950), p. 473.
[16] Ibid., p. 474.

temporary alien workers, particularly from Mexico under the Bracero program. These are discussed in section III below.

B. SUBVERSIVES

The Immigration and Nationality Act of 1952 also reflected the intense concern of the Congress during the early 1950s regarding Communist infiltration. The subject of subversives was treated at length in the 1950 Senate report, and the importance of the issue as an immigration problem was emphasized as follows:

> . . . the conclusion is inescapable that the Communist Party and the Communist movement in the United States is an alien movement, sustained, augmented, and controlled by European Communists and the Soviet Union. The severance of this connection and the destruction of the life line of communism becomes, therefore, substantially an immigration problem.[17]

The Congress decided in 1950 that the issue of subversives was too important to await inclusion in the omnibus immigration bill. Provisions relating to the exclusion and deportation of subversives, specifically including Communists and Fascists, were enacted as part of the Internal Security Act of 1950. These provisions developed directly from legislation dating back to the beginning of the century. "Anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials," were added to the list of excludable aliens in an early revision and recodification of the immigration laws enacted on March 3, 1903,[18] not long after the assassination of President William McKinley. This and related penalty provisions were incorporated with some elaboration but little substantive change in the Act of Feb. 5, 1917.[19]

Legislation prohibiting the entry of anarchists, subversives, and others believed to be dangerous to the national security was subsequently recodified in the Anarchist Act of 1918,[20] enacted shortly before the end of World War I. From its enactment in 1918 until its repeal in 1952, this statute was the basic law in the area rather than the Immigration Act of 1917. Most subsequent enactments, including legislation enacted in 1920, 1940, and section 22 of the Internal Security Act of 1950, amended the 1918 legislation.

The 1950 legislation marked the first time that Communists and Fascists were specifically excluded from admission by name. Robert Divine comments as follows on the significance of this fact:

> In the passage of the Internal Security Act of 1950 the restrictionists finally achieved one of their oldest objectives, the specific exclusion of Communists and Fascists from admission into the United States. While this action embodied only a slight change in existing legislation, it marked a highly significant shift in the formulation of immigration

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[17] Ibid., p. 787.
[18] 32 Stat. 1213.
[19] 39 Stat. 874.
[20] Act of Oct. 16, 1918; 40 Stat. 1012.

policy. Previously the primary motivation of the restrictionists had been racial and cultural nationalism—the desire to preserve the predominant cultural patterns and ethnic composition of the United States by limiting immigration. With the rise of totalitarian governments and the crisis of the second World War, a new stress on nationalism in its most fundamental meaning, the security of the nation, became evident. Beginning in 1940, when the jurisdiction over immigration affairs was transferred from the Department of of Labor to the Department of Justice, the intense concern for the loyalty of immigrants developed and grew, reaching a peak with the coming of the cold war with Russia. The fear of Communistic infiltration, which played such a large role in mid 20th-century American life, permeated discussions of immigration legislation and tended to replace the old fear of ethnic invasion as the dominating concern in immigration policy.[21]

The immigration provisions of the Internal Security Act of 1950 were incorporated in the 1952 legislation with several significant changes, allowing for an exemption in the case of an alien seeking entry as an immigrant if he shows that his membership in a proscribed organization was involuntary or qualifies as a defector. The provisions relating to the exclusion of various classes of potentially subversive aliens and alien members of proscribed organizations have remained unchanged since 1952, although their application has been restricted by judicial decision, and, in instances where a waiver is possible, their administration today is considerably more relaxed than it was in the 1950s.

More specifically, the Immigration and Nationality Act, in sec. 212 (a)(28) (8 U.S.C. 1182(a)(28)), provides for the exclusion of aliens who are members of proscribed political organizations, primarily the Communist Party and affiliated groups. This provision may be waived in the case of aliens seeking to enter as nonimmigrants, if such a waiver is sought by the Secretary of State and approved by the Attorney General. In recent years, waivers for nonimmigrants have been sought and approved in the vast majority of cases. This trend was reinforced by the passage in 1977 of an amendment to the State Department's basic enabling legislation, requiring the Secretary of State to recommend that the Attorney General grant a waiver unless the Secretary determines it would be contrary to the security interests of the United States, and so certifies to the Congress. The Immigration and Nationality Act also provides for the exclusion, without the possibility of a waiver, of any alien believed to be seeking entry to engage in activities which would be prejudicial to the public welfare (sec. 212 (a)(27); 8 U.S.C. 1182(a)(27)), or who is believed likely to engage in subversive activities after entry (sec. 212(a)(29); 8 U.S.C. 1182 (a)(29)).

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[21] Divine (1957), p. 163.

Report of the President's Commission on Immigration and Naturalization

In his message vetoing the Immigration and Nationality Act, President Truman suggested the creation by the Congress of a bipartisan "representative commission of outstanding Americans to examine the basic assumptions of our immigration policy, the quota system and all that goes with it, the effect of our present immigration and nationality laws, their administration, and the ways in which they can be brought into line with our national ideals and our foreign policy."[22] Not surprisingly, having enacted the new Immigration and Nationality Act over the President's veto, the Congress did not act to establish such a Commission.

On September 4, 1952, President Truman issued Executive Order 10392 establishing the President's Commission on Immigration and Naturalization, "to make a survey and evaluation of the immigration and naturalization policies of the United States," and to "make recommendations to the President for such legislative, administrative, and other action as in its opinion may be desirable in the interests of the economy, security, and responsibilities of this country," not later than Jan. 1, 1953. The Chairman of the Commission was Philip B. Perlman, former Solicitor General of the United States. The staff director was Harry N. Rosenfield, a former member of the Displaced Persons Commission and an immigration lawyer.

The report of the President's Commission, entitled "Whom We Shall Welcome," was highly critical of the new immigration legislation, recommending that "it should be reconsidered and revised from beginning to end."[23] If the 1952 Act embodied the restrictionist view that, quoting Divine, "immigration was a source of potential danger to the Nation, . . . [and] the basic aim of immigration policy should be to protect the institutions and traditions of the United States," the Truman Commission report reflected the opposite premise, "that immigration policy should express a spirit of friendliness and generosity to the less fortunate people of the world."[24] The views expressed in the Truman Commission report were as liberal as those which led to the 1952 legislation were conservative.

The Commission summarized its conclusions as follows:

> The immigration and nationality law embodies policies and principles that are unwise and injurious to the nation.
>
> It rests upon an attitude of hostility and distrust against all aliens.
>
> It applies discriminations against human beings on account of national origin, race, creed and color.
>
> It ignores the needs of the United States in domestic affairs and foreign policies.
>
> It contains unnecessary and unreasonable restrictions and penalties against individuals.
>
> It is badly drafted, confusing and in some respects unworkable.

---

[22] H. Doc. 520, 82d Cong., 2d sess., June 25, 1952, p. 8.
[23] U.S. President's Commission on Immigration and Naturalization, "Whom We Shall Welcome" (Washington, G.P.O.), 1953, p. 263. (Cited as President's Commission Report (1953).)
[24] Divine (1957), p. 165.

> It should be reconsidered and revised from beginning to end.[25]

The 1953 report examined our immigration policy primarily in the context of the domestic economy and our foreign policy. In terms of the domestic economy, the 1952 legislation was found wanting because of the need for additional manpower in an expanding economy in a period of almost full employment. The report stressed the ability of the Nation to absorb more immigrants than the law permitted to enter, and the economic need for them. This point was argued on the grounds that the population was growing older, women outnumbered men, and that there was a lack of reserve manpower for national defense purposes. The Commission recommended:

> The maximum annual quota immigration should be one-sixth of 1 percent of the population of the United States, as determined by the most recent census. Under the 1950 census, quota immigration would be open to 251,162 immigrants annually, instead of the 154,657 now authorized.[26]

The Commission was even more critical of the 1952 legislation on foreign policy grounds. Quoting again:

> American immigration policies have frustrated and handicapped the aims and programs of American foreign policy throughout the period since 1924. The interference is acute today. . . .
>
> The major disruptive influence in our immigration law is the racial and national discrimination caused by the national origins system.[27]

It emphasized what it saw to be the inadequacy of the immigration law in the face of "the new circumstance of American leadership in the world rivalry between democratic freedom and Communist tyranny," [28] as well as the inappropriateness of our approach to the refugee situation which remained in the wake of World War II.

The Commission recommended that the national origins quota system be abolished and replaced by a "unifled quota system, which would allocate visas without regard to national origin, race, creed, or color." [29] It also recommended that "all immigration and naturalization functions now in the Department of State and the Department of Justice should be consolidated into a new agency, to be headed by a Commission on Immigration and Naturalization whose members should be appointed by the President and confirmed by the Senate." [30] The Commission's distrust of the Congress as the direct and primary overseer of immigration policy was apparent in its recommendation that this Commission be responsible for determining the annual quota of visas and for distributing them according to five criteria: the right of asylum, reunion of families, needs in the U.S., special needs in the Free World, and general immigration.

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[25] President's Commission Report (1953), p. 263.
[26] Ibid.
[27] Ibid., p. 52.
[28] Ibid.
[29] Ibid.. p. 263.
[30] Ibid.

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Additional recommendations were made under the headings of Fair Hearings and Procedure; Admissions and Deportation; Security; and Citizenship.

The report of the President's Commission had no immediate impact on U.S. immigration policy. The 1952 Act had been enacted over the President's veto by an overwhelming vote, and clearly represented the sense of the majority in Congress at that time. The Truman Commission's viewpoint gradually was to become the majority position over the next 13 years, culminating in the abolition of the national origins quota system in 1965. But in the interim, despite President Eisenhower's repeated criticism of the 1952 Act, changes in the law were either piecemeal or, in the case of refugees and temporary agricultural workers, outside the framework of the basic immigration statute.

II. IMMIGRATION AND REFUGEE LEGISLATION DURING THE EISENHOWER YEARS, 1953–60

A number of bills constituting major revisions of the permanent immigration law were introduced but not enacted during the period following the Immigration and Nationality Act of 1952. For the most part, the Congress limited itself during the Eisenhower years to "some tinkering with machinery," in Elmer Fried's phrase.[1] In addition to "tinkering" with the permanent law, much of the legislative action in the decade involved liberalizing the admission of various refugee and immigrant groups for temporary periods of time.

83D AND 84TH CONGRESSES, 1953–56

With the exception of the Refugee Relief Act of 1953, no major legislation was enacted in the area of immigration in the period immediately following the 1952 Act. However, the Refugee Relief Act was an important exception from several perspectives. First, it was the beginning of a long series of emergency refugee enactments continuing to the present which have been enacted outside the basic framework of the Immigration and Nationality Act. The necessity for such emergency legislation had been predicted by President Truman in his veto of the Immigration and Nationality Act the year before. Referring to the Displaced Persons Act of 1948, which expired at the end of 1951, he said:

> The inadequacy of the present quota system has been demonstrated since the end of the war, when we were compelled to resort to emergency legislation to admit displaced persons. If the quota system remains unchanged, we shall be compelled to resort to similar emergency legislation again, in order to admit any substantial portion of the refugees from communism or the victims of overcrowding in Europe.[2]

Secondly, the Refugee Relief Act of 1953 was "the first major breach in the numerical restrictions of the Act of 1952 and the national origins formula." [3]

President Dwight D. Eisenhower took an active interest in the subject of immigration, beginning with his State of the Union address in February 1953 when he called upon Congress to review the existing law and "enact a statute which will at one and the same time guard our legitimate national interests and be faithful to our basic ideas of freedom and fairness to all." [4] The Refugee Relief Act originated as an administration bill accompanied by a letter from President Eisenhower, dated April 22, 1953, citing the plight of war refugees and

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[1] Elmer Fried, "Immigration and Nationality Law," New York University Law Review, vol. 35, January 1960, p. 188.
[2] H. Doc. 520, 82d Cong., 2d sess., June 25, 1952, p. 3.
[3] Bennett (1963), p. 195.
[4] Congressional Record, Feb. 2, 1953 : 752.

escapees from behind the Iron Curtain, as well as the problem of overpopulation in Europe. Quoting:

> These refugees, escapees, and distressed peoples now constitute an economic and political threat of constantly growing magnitude. They look to traditional American humanitarian concern for the oppressed. International political considerations are also factors which are involved. We should take reasonable steps to help these people to the extent that we share the obligation of the free world.[5]

The President recommended the enactment of emergency immigration legislation providing for the special admission of 120,000 immigrants per year for the next 2 years, and urged the Congress to act quickly "in order to help resolve this current immigration and refugee problem in the tradition of our American policy." [6]

On February 8, 1956, during the second session of the 84th Congress, President Eisenhower sent to the Congress the first of three special messages on the subject of immigration. He portrayed the 1952 legislation as "essentially a codification of many separate and, sometimes, overlapping and inconsistent immigration and nationality laws," noting that, "It was thought inappropriate, in connection with that legislation, to revise our basic immigration policies." [7] Quoting further:

> The time has now come to consider those policies. Experience in the postwar world demonstrates that the present national-origins method of admitting aliens needs to be reexamined, and a new system adopted which will admit aliens within allowable numbers according to new guidelines and standards.[8]

The President called for a congressional study and examination of our basic immigration policies with a view toward the formulation of a new system based on such factors as "the needs of this country for persons having specialized skills or cultural accomplishments, close family relationships, the populations and immigration policies of countries sending immigrants to this country, their past immigration and trade relationships with this country, and their assistance to the joint defense of the friendly free nations of the world." [9]

In the meantime, he recommended a "four-point program designed to reshape our existing immigration laws," which he summarized as follows in a subsequent letter to Senator Arthur Watkins:

> This program would revise and bring up to date the quota system and remove the quota mortgages; provide a fair and workable substitute for the private bill system of granting relief from deportation in hardship cases; make a series of other improvements and provide an exclusive, speedy, and fair system of judicial review of administrative deportation orders. I emphasized then and I emphasize now that this

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[5] Final Report of the Administrator of the Refugee Relief Act of 1953, as Amended, Senate Committee Print, 85th Cong., 1st sess., Nov. 15, 1957, p. 1.
[6] Ibid., p. 2.
[7] H. Doc. No. 329, 84th Cong., 2d sess., Feb. 8, 1956, p. 2.
[8] Ibid.
[9] Ibid.

country should have larger immigration and that the national origins system should be reviewed in its entirety.[10]

A. LEGISLATION ESTABLISHING TEMPORARY PROGRAMS

Strictly speaking, the Act of July 29, 1953 [11] was the first nonquota refugee legislation enacted after the Immigration and Nationality Act. It was one of a continuing series of "orphan acts", and provided for the nonquota admission for permanent residence of 500 eligible orphans under 10 years of age adopted by U.S. citizens serving abroad in the Armed Forces, or employed abroad by the Federal Government. These laws were necessitated by the fact that the Immigration and Nationality Act as originally enacted did not grant such adopted children nonquota or immediate relative status.

The Refugee Relief Act of 1953, as enacted on August 7, 1953 and subsequently amended on August 31, 1954,[12] was, as noted above, the most significant legislation of this period. It has been described as "a smaller version" of the expired Displaced Persons Act of 1948, which like its predecessor "did not represent a single program but was an omnibus refugee law that benefitted diverse groups in various areas." Quoting further:

> It included provisions for German expellees; for escapees in Germany and Austria; and for Italian, Dutch, and Greek refugees and relatives. It also made visas available for 4,000 war orphans. Particularly significant were its provisions for 3,000 visas for Far Eastern refugees; 2,000 for Chinese refugees; and 2,000 for Arabs. This represented a departure from the basic United States immigration policy which had practically excluded Asians.[13]

The 1953 legislation was simultaneously less generous than the DP Act, authorizing a total of 214,000 visas as compared to the approximately 400,000 entries under the earlier legislation; and more generous, in that the visas were not mortgaged against the future quotas of the quota areas from which the refugees came. Of the 214,000 special nonquota visas authorized under the legislation, 205,000 were authorized for use by certain refugees, escapees, expellees, and relations of U.S. citizens. These were divided into several groups, of which the largest were 90,000 visas available to escapees from Communism, and 60,000 for Italian refugees and relatives. Each refugee admitted under the act was required to be sponsored by a U.S. citizen who would give assurance that the refugee would have employment, adequate housing, and would not become a public charge.

The Refugee Relief Act was in effect for just under three and a half years, until December 31, 1956. Legislation enacted on September 11, 1957 authorized the issuance of the 18,656 special visas which remained unused when the law expired to German expellees, Netherlands refugees, and "refugee-escapees" from persecution in Communist countries or countries in the Middle East area.

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[10] "President Eisenhower to Senator Watkins," July 18, 1956, Department of State Bulletin, vol. 35, July 30, 1956, p. 194.

[11] Public Law 162, 83d Cong., 67 Stat. 229.

[12] Public Law 203, 83d Cong., 67 Stat. 400; amended by Public Law 751, 83d Cong., 68 Stat. 1044.

[13] Richard F. Smith, "Refugees," Annals of the American Academy of Political and Social Science, vol. 367, September 1966, p. 45.

The Act of September 3, 1954 [14] made available 385 nonquota immigrant visas to sheepherders from oversubscribed quota areas, primarily Spain.

B. PERMANENT ENACTMENTS

During 1953–56, legislation was enacted exempting from inadmissibility to the U.S. aliens who had committed a single petty offense; [15] tightening the conditions under which "J" exchange visitor nonimmigrants could adjust to permanent resident or temporary worker status; [16] and strengthening the provisions relating to the admission and deportation of aliens convicted of narcotics violations.[17]

C. PAROLE OF HUNGARIAN REFUGEES

The unsuccessful Hungarian revolution of October 1956 was followed by a mass exodus of Hungarian refugees to Austria. On November 8, 1956, President Eisenhower directed that up to 5,000 Hungarians be admitted to the United States using nonquota immigrant visas available under the Refugee Relief Act of 1953. On December 1, he announced the U.S. would offer asylum to 21,500 Hungarians, of whom 6,500 would receive visas under the Refugee Relief Act. The remainder were to enter as "parolees" under section 212(d)(5) of the Immigration and Nationality Act, which authorizes the Attorney General to temporarily admit aliens to the United States for emergency reasons or reasons in the public interest. This marked the first, but by no means the last, use of the parole provision for the mass admission of refugees. A total of 38,000 Hungarian refugees were eventually resettled in the United States, 6,130 with Refugee Relief Act visas and the remainder under the parole provision. Legislation permitting the Hungarian parolees to adjust to permanent resident status was enacted in July 1958.

85TH CONGRESS, 1957–58

On January 31, 1957, President Eisenhower delivered the second of his three messages on the subject of immigration to the Congress. Beginning with the words, "The eyes of the free world have been fixed on Hungary over the past 2½ months," [18] the President focused on the plight of the Hungarian refugees. He also noted the inadequacy of the permanent immigration law to cope with refugee problems, a theme which has continued to the present time. He recommended the enactment of permanent legislation giving the President power to authorize the Attorney General to parole into the country refugees from Communist persecution, as well as legislation permitting the adjustment of status of eligible refugees to that of permanent resident.

In addition to the recommendations relating to refugees, which were partially enacted on a temporary basis, the President also reiterated many of the recommendations he had made in his message to the 84th Congress regarding the need for the reform of the immigra-

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[14] Public Law 770, 83d Cong., 68 Stat. 1145.
[15] Ibid.
[16] Act of June 4, 1956, Public Law 555, 84th Cong., 70 Stat. 241.
[17] Act of June 18, 1956, Public Law 728, 84th Cong., 70 Stat. 567, 575.
[18] H. Doc. 85, 85th Cong., 1st sess., Jan. 31, 1957, p. 1.

tion law. He again urged the Congress "to reexamine the method laid down in the law for the admission of aliens," [19] noting that "in the 4½ years that have elapsed since the enactment of the Immigration and Nationality Act, the practical application of that law has demonstrated certain provisions which operate inequitably and others which are outmoded in the world of today." [20] In the meantime, he recommended "certain interim measures which should be taken to remove obvious defects in the present quota system," [21] including basing the quotas on the 1950 census, pooling unused quota numbers, and eliminating mortgages on future quotas carried forward from the Displaced Persons Act of 1948.

In the Congress, there was little interest in a reexamination of the basic principles of the immigration legislation enacted 5 years previously. However, major compromise legislation was enacted on September 11, 1957. providing relief, in most cases on a temporary basis, for various hardships which had arisen under the 1952 Act and particularly under the quota system.

The extent to which the legislation eventually enacted as the Act of September 11, 1957 [22] was a compromise measure was stressed by both Senator James O. Eastland, Chairman of the Senate Judiciary Subcommittee on Immigration, and Senator John F. Kennedy, the bill's chief sponsor. The two Senators held diametrically opposite views about the basic principles of the McCarran-Walter Act, and particularly the national origins quota system. Senator John Kennedy stressed that, because of the urgent need for short-term remedial action, "the bill which is now before us does not . . . go to the heart of what many of us believe are critical weaknesses in our immigration policy." Quoting further:

> I believe that a full examination of certain aspects of immigration policy should be undertaken by the Congress at an early date, for I do not believe that our immigration policy is geared to the challenges and requirements of the age in which we live. Therefore, let it be clear to all that this bill is not the final answer to our immigration problems. It is merely designed to meet some pressing and obvious situations which require legislative action now.[23]

Although speaking from the opposite philosophical point of view, Senator Eastland agreed with Senator Kennedy about the limited nature of the 1957 legislation in the overall context of immigration policy. As floor manager for the bill, he opened his remarks as follows:

> Mr. President, this bill is a compromise. It does not touch the basic provisions of the McCarran-Walter Act. It is designed to relieve certain hardship conditions which have arisen in the administration of that act.
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> At the outset, I wish to emphasize that in making these adjustments the bill does not modify the national origins quota provisions which have been a part of our immigration

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[19] Ibid., p. 3.
[20] Ibid., p. 1.
[21] Ibid., p. 3.
[22] Public Law 85–316; 71 Stat. 639.
[23] Congressional Record [daily ed.], August 21, 1957: 14131.

and nationality system since 1924, and which were carried forward in the Immigration and Nationality Act.[24]

The Act of September 11, 1957, while not directly modifying the quota system, addressed the problem of quota oversubscription by removing the mortgages on quotas imposed under the Displaced Persons Act and other acts. In addition, it provided for the granting of nonquota status to aliens qualifying under the first three preference groups on whose behalf petitions had been filed by a specified date, the first of a series of such enactments. As noted above, the act also authorized the issuance of the approximately 19,000 nonquota visas that had remained unused under the Refugee Relief Act. Among those eligible for these visas were "refugee-escapees," defined as persons fleeing persecution in Communist countries or countries in the Middle East. This definition of "refugee" was incorporated in the permanent immigration law in 1965, and continues to the present day. The 1957 Act was popularly referred to as the "Refugee-Escapee Act."

Additionally, the 1957 Act amended the Immigration and Nationality Act to grant nonquota status under the definition of "child" to certain stepchildren, adopted children, and illegitimate children of U.S. citizens; authorized a temporary program for the issuance of nonquota immigrant visas to certain alien orphans; provided the Attorney General discretionary authority to admit certain relatives of U.S. citizens and permanent resident aliens who would be otherwise excludable for criminal or moral grounds, for misrepresentation, or, until June 30, 1959, because of tuberculosis; and permitted the waiving of fingerprint requirements in the case of nonimmigrants.

The 5-year virtual moratorium on immigration legislation following the Immigration and Nationality Act of 1952 came to a decisive end with the enactment of the 1957 legislation. A series of bills relating to immigration was enacted in 1958, all of which liberalized the law on either a permanent or temporary basis.

The *Act of July 25, 1958* [25] authorized eligible Hungarian refugees who had been paroled into the United States to adjust to immigrant status after two years residence. The *Act of August 8, 1958* [26] amended the Immigration and Nationality Act to liberalize the "registry provision" (sec. 249), under which certain aliens illegally in the United States may be granted lawful residence, by advancing the date from which continuous residence was required from July 1, 1924, to June 28, 1940. The *Act of August 20, 1958* [27] amended the Immigration and Nationality Act to facilitate the naturalization of adopted children and spouses of certain U.S. citizens performing religious duties abroad.

The *Act of August 21, 1958* [28] amended the Immigration and Nationality Act (sec. 245) to liberalize the criteria for adjustment of status by nonimmigrants to that of permanent resident. It also extended for an additional year the provision of the Act of September 11, 1957 allowing nonquota status for certain first preference applicants.

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[24] Congressional Record [daily ed.], August 21, 1957 : 14124.
[25] Public Law 85–559 ; 72 Stat. 419.
[26] Public Law 85–616 ; 72 Stat. 546.
[27] Public Law 85–697 ; 72 Stat. 687.
[28] Public Law 85–700 ; 72 Stat. 699.

The *Act of September 2, 1958* [29] made 1,500 special nonquota immigrant visas available to the victims of volcanic eruptions and earthquakes in the Azores, and 3,000 nonquota visas available to displaced Dutch-Indonesians.

86TH CONGRESS, 1959–60

Like the preceding Congress, the 86th Congress was active in the area of immigration legislation, although it stopped short of the overall immigration reform called for by President Eisenhower, as well as by both party platforms in the 1956 election campaign. Rather, the legislation enacted in the 86th Congress followed "the pattern set by previous immigration legislation passed since the enactment of the Immigration and Nationality Act of 1952 in that certain provisions amend existing law while others are set up as independent statutory provisions, although they effect the operations of the Immigration and Nationality Act." [30] This observation was made regarding legislation passed in 1959, but it is applicable to the "Fair Share Refugee Law" as well, the major legislation passed in 1960.

The major immigration legislation enacted by the 86th Congress was prompted by the humanitarian goals of facilitating the reunification of families in the immigration process, and assisting in the settlement of world refugee problems. Like the September 11, 1957 Act, the laws enacted in pursuit of these goals were compromise measures, in that they were not unacceptable to restrictionists and only partially satisfactory to those who agreed with President Eisenhower that, "In the world of today our immigration law badly needs revision." [31]

The major immigration legislation enacted in 1959 was the Act of September 22, 1959.[32] It was designed to assist in reuniting families both on a permanent basis, through amendments to the Immigration and Nationality Act, and through temporary programs. The bill originated in the House, where it was introduced by the co-author of the McCarran-Walter Act, Representative Francis Walter, Chairman of the House Judiciary Subcommittee on Immigration. As Auerbach notes, the bill reflected the finding of the House Judiciary Committee that "the recognized principle of avoiding separation of families could be furthered if certain categories of such relatives were reclassified in the various preference portions of the immigration quotas." [33] No changes were made in the actual quotas themselves. The changes in the preference categories resulting from the Act of September 22, 1959 are shown in the following chart, reproduced from the *Department of State Bulletin:* [34]

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[29] Public Law 85–892; 72 Stat. 1712.
[30] Frank L. Auerbach, "Immigration Legislation, 1959," Department of State Bulletin, Oct. 26, 1959, p. 600.
[31] "Liberalization of Restrictions upon Immigration," H. Doc. 360, 86th Cong., 2d sess., March 17, 1960, p. 2.
[32] Public Law 86–363; 73 Stat. 644.
[33] Auerbach, *op. cit.*, p. 600. Quoted from H. Rept. 582, 86th Cong., 1st sess., June 26, 1959, p. 2.
[34] Auerbach, *op. cit.*, p. 601.

	Quota preferences under previous law	Quota preferences under Public Law 86–363
1st preference	50 percent of each quota to skilled aliens and spouses and children if accompanying or following to join them.	Same.
2d preference	30 percent of each quota to parents of U.S. citizens.	30 percent of each quota to parents and unmarried sons and daughters of U.S. citizens.
3d preference	20 percent of each quota to spouses and children of permanent resident aliens.	20 percent of each quota to spouses and unmarried sons and daughters of permanent resident aliens.
4th preference	25 percent of portion of each quota not used by 1st 3 preference groups, to brothers, sisters, sons, and daughters of U.S. citizens.	50 percent of the portion of each quota not used by the 1st 3 preference groups, to brothers, sisters, and married sons and daughters of U.S. citizens and their spouses and children if accompanying them.

The legislation also amended the Immigration and Nationality Act to specifically preclude the granting of nonquota or preference status to adult aliens adopted by U.S. citizens or permanent resident aliens.

Additionally, in two temporary measures aimed at facilitating family reunification, Public Law 86–363 granted nonquota status to second, third, and fourth preference aliens who had registered and had their petitions approved by specified dates; and made nonquota visas available to certain immediate relatives of aliens who had entered the country under the Refugee Relief Act of 1953.

Other immigration legislation enacted in 1959 included the *Act of August 4, 1959*,[35] which made several changes in the naturalization provisions of the Immigration and Nationality Act exempting certain naturalized citizens from losing citizenship by residing abroad; and the *Act of September 9, 1959*,[36] which amended the Act of September 11, 1957 by extending the authority contained in that act to waive the excludability of certain aliens afflicted with tuberculosis, and to issue nonquota immigrant visas to eligible alien orphans.

The most significant immigration legislation enacted in 1960 was the "Fair Share Refugee Act,"[37] also referred to as the World Refugee Year Law. In a proclamation issued May 19, 1959, President Eisenhower proclaimed the period from July 1, 1959 to June 30, 1960 as World Refugee Year, "as a practical means of securing increased assistance for refugees throughout the world."[38]

The legislation enacted into law originated as H.J. Res. 397, introduced by Representative Francis Walter and was, in his words, "designed primarily to eliminate the remaining camps in Europe in which refugees have resided for a long period of time."[39] The act established a temporary program, to terminate on July 1, 1962, for paroling in refugees who were under the mandate of the U.N. High Commissioner for Refugees, thereby limiting the program mainly to Western Europeans. The number of the refugee-escapees who could be admitted was limited to one-fourth of the total number resettled by other countries.

Provision was made for the adjustment of status of such refugees to that of permanent resident after a 2-year residence in the United States, providing they were otherwise eligible. This procedure con-

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[35] Public Law 86–129; 73 Stat. 274.
[36] Public Law 86–253; 73 Stat. 490.
[37] Act of July 14, 1960, P.L. 86–648; 74 Stat. 504.
[38] Proclamation No. 3292, in H. Rept. No. 1433, 86th Cong., 2d sess., March 29, 1960, p. 4.
[39] Congressional Record, April 5, 1960: A2997.

tinues in the present permanent law in the form of the provision for "conditional entry" of refugees who may adjust to permanent resident status after 2 years.

The Fair Share Law was criticized by the administration and by some Members of Congress from both parties for its limited scope and temporary nature, which had been fully intentional. Supporting the legislation, Senator Eastland said during the Senate floor debate, "This is not a general refugee measure. The primary purpose of the joint resolution is to enable the United States to participate in World Refugee Year and to make a concerted effort to close the refugee camps which are still maintained in Europe, and have been since the close of World War II." [40] Objections were raised to the failure of the bill to integrate refugee admission procedures into the permanent immigration law; to the discrimination against refugees from the Middle East and Asia, who had not been generally determined as falling within the mandate of the U.N. High Commissioner; and to the "fair share" concept, which made the U.S. refugee effort proportionate to that of other countries, substituting, in Senator Hubert Humphrey's words, "a concept of 'fellowship' . . . for the concept of leadership which has been our tradition." [41]

In addition to these temporary refugee provisions, Public Law 86–648 contained provisions amending the Immigration and Nationality Act to include illicit possession of marijuana among the grounds for exclusion and deportation; and further liberalizing the provision for adjustment of status to that of permanent resident by, among other things, extending eligibility to aliens paroled into the United States. It also included temporary extensions of both the alien orphan program, and the legislation granting nonquota status to Portuguese nationals in the Azores and Dutch-Indonesians expelled from Indonesia.

CUBAN REFUGEES

With the fall of the Batista Government in late 1959, Cuban refugees began entering the United States in large numbers. Until diplomatic relations between the U.S. and Cuba were broken on January 1, 1961, the majority of Cubans entering this country obtained visas and entered either permanently as immigrants, or temporarily as nonimmigrants, under the provisions of the Immigration and Nationality Act. Cubans with nonimmigrant status who wanted to remain in this country requested political asylum, again through the channels provided by the 1952 legislation.[42] Those who entered without visas were generally paroled into the country under the discretionary authority of the Attorney General.

Direct Federal financial assistance for the Cuban refugees began in December 1960, when President Eisenhower authorized $1 million from the President's Contingency Fund under the Mutual Security Act of 1954, as amended, for use in establishing and operating a Cuban Refugee Emergency Center in Miami, Florida. This was largely in response to an appeal in October 1960 from a Miami citizens' com-

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[40] Congressional Record [daily ed.] July 1, 1960: 14387.
[41] Congressional Record [daily ed.], July 1, 1960: 14387.
[42] J. Patton Hyman, "Immigration: the Status of Cuban Refugees in the United States," University of Florida Law Review, summer 1968, p. 74.

mittee, for financial assistance in coping with the large number of refugees entering the Miami/Dade County area.

SUMMARY, 1953–60

Immigration and refugee policy during the period 1953–60 was characterized by tension between the restrictive provisions of the Immigration and Nationality Act, particularly the national origins quota system, and the generally perceived need for more humanitarian measures regarding admission of refugees and family reunification. In order to bypass the heavily oversubscribed quotas under the Immigration and Nationality Act, a series of temporary programs were enacted which provided for nonquota admission of refugees. These included the Refugee Relief Act of 1953, the Refugee-Escapee Act of 1957, the Fair Share Refugee Law of 1960, a series of alien orphan measures, as well as measures relating specifically to the adjustment of status of Hungarian parolees and the nonquota admission of Portuguese and Dutch-Indonesians.

There was also a series of temporary programs designed to reduce the quota backlogs by giving nonquota status to immigrants who had registered under the different preferences and had their applications approved by specified dates. Finally, during this period there was, as President Eisenhower noted, an "avalanche . . . of private bills for the relief of aliens." [43] According to Marion Bennett, "Twenty percent of all legislation introduced in the 85th Congress constituted 4,364 private immigration bills, affecting 5,282 persons. In fiscal 1958, 501 of these bills became private laws." [44]

Immigration during the decade 1951–60 totalled 2,515,479, the highest since the 1920s (see table 1). This is not surprising, since the two intervening decades included the depression of the 1930s, and World War II. Less than half—1,098,790—of the immigrants were admitted under the quota system.[45] While many came under the special temporary programs, many others entered as nonquota immigrants (e.g., from the Western Hemisphere) under the basic law.

The gradual recognition that the national origins quota system was not functioning effectively as a means of regulating immigration helped pave the way for the major policy revision which came in 1965. Permanent refugee provisions were to come even sooner, in 1962, based with modifications on the provisions of the Fair Share Law.

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[43] H. Doc. 329, 84th Cong., 2d sess., Feb. 8, 1956, p. 3.
[44] Bennett (1963), p. 226.
[45] Ibid., p. 236.

TABLE 1.
IMMIGRATION TO THE UNITED STATES
1820-1976

/From 1820 to 1867, figures represent alien passengers arrived; from 1868 through 1891 and 1895 through 1897, immigrant aliens arrived; from 1892 through 1894 and 1898 to the present time, immigrant aliens admitted./

Year	Number of persons	Year	Number of persons	Year	Number of persons	Year	Number of persons
1820-1976 1/	47,601,208						
1820 ...	8,385						
1821-1830 .	143,439	1861-1870 .	2,314,824	1901-1910 .	8,795,386	1941-1950 .	1,035,039
1821 ...	9,127	1861 ...	91,918	1901 ...	487,918	1941 ...	51,776
1822 ...	6,911	1862 ...	91,985	1902 ...	648,743	1942 ...	28,781
1823 ...	6,354	1863 ...	176,282	1903 ...	857,046	1943 ...	23,725
1824 ...	7,912	1864 ...	193,418	1904 ...	812,870	1944 ...	28,551
1825 ...	10,199	1865 ...	248,120	1905 ...	1,026,499	1945 ...	38,119
1826 ...	10,837	1866 ...	318,568	1906 ...	1,100,735	1946 ...	108,721
1827 ...	18,875	1867 ...	315,722	1907 ...	1,285,349	1947 ...	147,292
1828 ...	27,382	1868 ...	138,840	1908 ...	782,870	1948 ...	170,570
1829 ...	22,520	1869 ...	352,768	1909 ...	751,786	1949 ...	188,317
1830 ...	23,322	1870 ...	387,203	1910 ...	1,041,570	1950 ...	249,187
1831-1840 .	599,125	1871-1880 .	2,812,191	1911-1920 .	5,735,811	1951-1960 .	2,515,479
1831 ...	22,633	1871 ...	321,350	1911 ...	878,587	1951 ...	205,717
1832 ...	60,482	1872 ...	404,806	1912 ...	838,172	1952 ...	265,520
1833 ...	58,640	1873 ...	459,803	1913 ...	1,197,892	1953 ...	170,434
1834 ...	65,365	1874 ...	313,339	1914 ...	1,218,480	1954 ...	208,177
1835 ...	45,374	1875 ...	227,498	1915 ...	326,700	1955 ...	237,790
1836 ...	76,242	1876 ...	169,986	1916 ...	298,826	1956 ...	321,625
1837 ...	79,340	1877 ...	141,857	1917 ...	295,403	1957 ...	326,867
1838 ...	38,914	1878 ...	138,469	1918 ...	110,618	1958 ...	253,265
1839 ...	68,069	1879 ...	177,826	1919 ...	141,132	1959 ...	260,686
1840 ...	84,066	1880 ...	457,257	1920 ...	430,001	1960 ...	265,398
1841-1850 .	1,713,251	1881-1890 .	5,246,613	1921-1930 .	4,107,209	1961-1970 .	3,321,677
1841 ...	80,289	1881 ...	669,431	1921 ...	805,228	1961 ...	271,344
1842 ...	104,565	1882 ...	788,992	1922 ...	309,556	1962 ...	283,763
1843 ...	52,496	1883 ...	603,322	1923 ...	522,919	1963 ...	306,260
1844 ...	78,615	1884 ...	518,592	1924 ...	706,896	1964 ...	292,248
1845 ...	114,371	1885 ...	395,346	1925 ...	294,314	1965 ...	296,697
1846 ...	154,416	1886 ...	334,203	1926 ...	304,488	1966 ...	323,040
1847 ...	234,968	1887 ...	490,109	1927 ...	335,175	1967 ...	361,972
1848 ...	226,527	1888 ...	546,889	1928 ...	307,255	1968 ...	454,448
1849 ...	297,024	1889 ...	444,427	1929 ...	279,678	1969 ...	358,579
1850 ...	369,980	1890 ...	455,302	1930 ...	241,700	1970 ...	373,326
1851-1860 .	2,598,214	1891-1900 .	3,687,564	1931-1940 .	528,431		
1851 ...	379,466	1891 ...	560,319	1931 ...	97,139	1971 ...	370,478
1852 ...	371,603	1892 ...	579,663	1932 ...	35,576	1972 ...	384,685
1853 ...	368,645	1893 ...	439,730	1933 ...	23,068	1973 ...	400,063
1854 ...	427,833	1894 ...	285,631	1934 ...	29,470	1974 ...	394,861
1855 ...	200,877	1895 ...	258,536	1935 ...	34,956	1975 ...	386,194
1856 ...	200,436	1896 ...	343,267	1936 ...	36,329	1976 ...	398,613
1857 ...	251,306	1897 ...	230,832	1937 ...	50,244	1976, TQ	103,676
1858 ...	123,126	1898 ...	229,299	1938 ...	67,895		
1859 ...	121,282	1899 ...	311,715	1939 ...	82,998		
1860 ...	153,640	1900 ...	448,572	1940 ...	70,756		

1/ Since July 1, 1868, the data is for fiscal years ending June 30. Prior to fiscal year 1869, the periods covered are as follows: from 1820-1831 and 1843-1849, the years ended on September 30--1843 covers 9 months; from 1832-1842 and 1850-1867, the years ended on December 31--1832 and 1850 covers 15 months. For 1868, the period ended on June 30 and covers 6 months. The transition quarter (TQ) for 1976 covers the 3-month period, July-September 1976.

Source: U.S. Immigration and Naturalization Service, 1976 Annual Report, p. 39.

III. ILLEGAL IMMIGRATION AND THE BRACERO PROGRAM

In 1952, the Congress enacted the Immigration and Nationality Act restricting quota immigration to 154,657. The same year, a total of 528,815 deportable aliens were apprehended by the Immigration and Naturalization Service (INS). Two years later, in 1954, the number of deportable aliens apprehended rose to 1,089,583. During the same period, close to 200,000 temporary Mexican Bracero workers were admitted in 1952, and more than 300,000 were admitted in 1954. Participation in the Bracero program rose to a high of 445,197 in 1956, and remained above 400,000 for the rest of the decade.

Observers have commented on the apparent contradiction in our immigration policy reflected in the relatively unconcerned attitude toward both legal and illegal Mexican temporary workers, in contrast to the restrictionist attitude toward immigrants and refugees embodied in the Immigration and Nationality Act. Quoting from one author:

> With illegal immigration from Mexico rising in an almost geometric progression, the 1944–1954 decade represented a curious social paradox: the political forces clamoring for an ever more restrictionist general immigration policy were either strangely silent with respect to the situation on our southern border or openly condoned it. The late Senator Pat McCarran, co-author of the Immigration and Nationality Act, whose name in most person's minds is synonymous with restrictionist immigration thinking, defended the illegal traffic over our southern border on the grounds that legal entry of Mexicans for employment in American agriculture and industry involved too much "red tape." [1]

A probable explanation for this apparent contradiction is that the Mexican temporary workers and illegal entrants were not perceived as posing a threat on national security grounds as Communist infiltrators, although this possibility was raised; nor were they perceived as permanent additions to our population.

The illegal immigration problem of this period and the Bracero program are inextricably linked, although there is considerable controversy over the cause and effect relation of this linkage. The problem of illegal immigration from Mexico was at its height during the period 1944–54, while the Bracero program began in 1942 and continued until 1964. A review of the history of the legal importation of temporary labor through 1952 follows below, as background for a discussion of illegal immigration and of the subsequent course of the Bracero program.

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[1] Eleanor Hadley. "A Critical Analysis of the Wetback Problem," Law and Contemporary Problems, Duke University School of Law, vol. XXI, spring 1956, p. 336, (Cited as Hadley (1956).)

THE LEGAL ADMISSION OF TEMPORARY WORKERS, 1942–52

In 1942, in response to the U.S. manpower shortage arising from World War II, the United States and Mexico negotiated a treaty permitting the entry of Mexican farm workers, known as "braceros", under contract to U.S. employers, with the contracts guaranteed by the U.S. Government. This emergency wartime measure was the beginning of the Bracero program, which continued under various legal authorizations for 22 years and involved approximately 5 million Mexican workers.

The detailed formal diplomatic accord negotiated with Mexico in August 1942 reflected, in part, the desire of the Mexican Government to protect its nationals. The large-scale deportation of Mexican nationals from the United States during the depression of the 1930s caused considerable political sensitivity in Mexico, and led to the enactment of legislation by the Mexican Government prescribing the conditions under which its citizens could accept foreign employment. The bilateral agreement reflected these conditions as well as the desire of the United States to protect its own workers from adverse effects due to the importation of foreign labor. The general provisions of this and subsequent related agreements were summarized as follows in the comprehensive 1950 Senate Judiciary Committee Report on Immigration and Naturalization Systems of the United States:

> These international agreements have generally provided that (1) such laborers would be exempt from selective service; (2) such laborers would be exempt from certain requirements of our immigration laws, such as literacy requirements and payment of head tax or other admission charges; (3) such laborers would be guaranteed round-trip transportation; (4) hours of work and wages would be equal to those of domestic labor in the United States; and (5) the foreign government would determine the number and types of laborers who could leave that country without adversely affecting its economy.[2]

The legislative authority for the admission of Mexican farm workers under the Bracero program was initially the ninth proviso of section 3 of the Immigration Act of 1917, which authorized a waiver of exclusion to certain inadmissible aliens—in this case contract laborers. A certification by the U.S. Employment Service that local workers were unavailable was also required as a condition of entry.

On April 29, 1943, the 78th Congress enacted Public Law 45, authorizing the U.S. Government to temporarily admit "native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States."[3] Public Law 45 provided the authority and funds for the recruitment, transportation, and placement of agricultural workers not only from Mexico but from what were then the British West Indies, notably Jamaica, and the Bahamas. It exempted foreign workers entering under its authority from a variety of provisions of the Immigration Act of 1917, including the prohibition against the admission of contract laborers, and the requirement of a bond from the employer.

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[2] S. Rept. 1515, 81st Cong., 2d sess., p. 579.
[3] 57 Stat. 70, 73.

Public Law 45 was the first of a series of acts during the period 1943–47 referred to as the farm labor supply appropriations acts. Together with the international agreement with Mexico, renegotiated on April 26, 1943 and at several subsequent dates, they formed the basis for the emergency labor supply program which operated under direct governmental supervision until December 31, 1947. During this period, the U.S. Government actively assisted U.S. employers in the recruitment of the Mexican workers and guaranteed the contracts.

With the lapse of the special wartime legislation at the end of 1947, the Mexican program continued to be regulated by international agreement at the specific request of the Mexican Government, in contrast to the British West Indies (BWI) and other temporary worker programs. During the period 1948–1951, the importation of workers from Mexico proceeded under a frequently revised agreement, and for a particularly stormy period in 1948–49, under no treaty at all. During this postwar period, Mexican temporary workers were admitted under the ninth proviso, as were other temporary workers, and clearance was required from the U.S. Employment Service. In contrast to the war period, the U.S. employer paid all transportation and recruitment expenses for the braceros, and the U.S. employer, rather than the U.S. Government, was the contractor.

While apparently preferable to U.S. growers, this arrangement was much less satisfactory to the Mexican Government, and of concern to our State Department because of its potential for damaging U.S.–Mexican relations. Quoting from a U.S. Labor Department history of the Bracero program, "The Mexican Government expressed concern about what it considered to be inadequate compliance measures, methods for determining the prevailing wage rate, and the lack of formal Government participation in the program as a guarantor of employers fulfilling the contracts." [4]

In 1950, the Senate Judiciary Special Subcommittee to Investigate Immigration and Naturalization considered temporary agricultural workers in its comprehensive report discussed above. The subcommittee found "that the agricultural labor supply in the United States, particularly in the Southwestern States, requires supplementation," and made the following recommendation:

> . . . provisions should be made in permanent legislation which would permit the admission of temporary agricultural labor in a nonimmigrant classification when like labor cannot be found in this country. The determination of the necessity for the importation of such labor in any particular instance should be made by the Commissioner of Immigration and Naturalization upon application by the interested employer before the importation and after a full investigation of the facts and consultation with appropriate agencies.[5]

This recommendation was essentially enacted into law in the Immigration and Nationality Act of 1952, and remains in effect today. However, the importation of Mexican agricultural labor was authorized

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[4] U.S. Department of Labor, "The Admission of Aliens into the United States for Temporary Employment," in Study of Population and Immigration Problems, Special Series No. 11. House Judiciary Committee, Subcommittee No. 1, 1963, p. 36.

[5] S. Rept. 1515, 81st Congress, 2d sess., p. 586.

by separate legislation, Public Law 78,[6] in 1951. The expiration date was extended by successive amendments until December 31, 1964.

A report issued prior to the enactment of Public Law 78, in March 1951 by President Truman's Commission on Migratory Labor, was critical of the post-war administration of the alien contract labor program. Specifically, the Commission criticized the administration of the Mexican segment of the program in terms of the failure of the responsible U.S. Government agencies to adequately protect domestic farm labor. Its conclusions in this regard were based largely on an examination of wage rates in the occupation (cotton picking) and States (California during the war; Texas, New Mexico, and Arkansas after the war) most heavily impacted by Mexican workers. They found that "changes in wages in the principal areas of employment and the principal crop of employment have been inverse to the numbers of contract Mexicans." [7] The Commission generally concluded that "alien labor has depressed farm wages and, therefore, has been detrimental to domestic labor." [8]

Considering the program in the context of national immigration policy, the Commission was equally critical:

> Thus, temporary foreign laborers passing in and out of this country with little restriction have come to substitute for a supply subject to stringent numerical restrictions, thereby furnishing the very competition to American labor that it is the purpose of the immigration law to prevent.
>
> This undermining of national policy stands out more clearly in that it has been the negotiators for foreign governments, notably of Mexico, rather than our own representatives, who have secured reasonable limitation of numbers and some protection to labor standards. While their motive is primarily to protect the standards of their own nationals working in the United States, the effect of their concern, fortunately, is also to help sustain the tenets of American policy. The contrast in this curious difference of attitudes is heightened by the fact that through the negotiations of their governments, foreign laborers have actually achieved, in most instances, better living and working conditions than domestic workers whose protection is a main concern of American immigration law.[9]

The responsible U.S. administrative agencies, rather than the U.S. employers or the braceros themselves, were the primary objects of the Commission's criticism. Thus, the passage quoted above is preceded by the following observation:

> . . . official vigilance for the protection of living and working standards of alien farm laborers was largely abandoned in the postwar phase. Responsible United States administrative agencies practically ceased to exert effective effort to preserve the requirements of national immigration policy. The same ineffectiveness or laxity that undermined protective standards

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[6] Act of July 12, 1951; 65 Stat. 119.
[7] U.S. President's Commission on Migratory Labor, Migratory Labor in American Agriculture, Washington, 1951, p. 58.
[8] Ibid., p. 59.
[9] Ibid., pp. 64–65.

> in the contract spread also to the official scrutiny of the number of foreign laborers that employers claimed they needed.[10]

The Commission was particularly concerned about the United States' willingness to operate temporary worker programs such as the British West Indies program, without benefit of formal government-to-government agreements, which existed in the case of the Mexican Bracero program. The first recommendation by the President's Commission on Migratory Labor on the subject of alien contract labor pertained to the desirability of equal treatment of the different sending countries based on intergovernmental agreements, as follows:

We recommend that:

> (1) Foreign labor importation and contracting be under the terms of intergovernmental agreements which clearly state the conditions and standards of employment under which the foreign workers are to be employed. These should be substantially the same for all countries. No employer, employer's representative or association of employers, or labor contractor should be permitted to contract directly with foreign workers for employment in the United States. This is not intended to preclude employer participation in the selection of qualified workers when all other requirements of legal importation are fulfilled.[11]

Public Law 78, authorizing the terms and conditions of the Mexican worker program, was enacted on July 12, 1951, against the background of the reports and recommendations discussed above, and in response both to the domestic manpower shortage resulting from the Korean War, and Mexico's dissatisfaction with the terms of the 1949 agreement governing the temporary export of her workers. An amendment to the Agricultural Act of 1949, Public Law 78 evolved from legislation (S. 984-H.R. 3048, 82d Congress) originally introduced by Senator Allen J. Ellender (D.-La.) which, he indicated, "authorized the Government to carry out its part of the agreement reached on the importation of farm agricultural workers at Mexico City in February [1951]."[12] Quoting from the Senate report on the genesis of the legislation enacted as Public Law 78:

> As an alternative method to the recruitment of farm workers in Mexico by private employers and subsequent posting of compliance bonds, it was suggested at the conference that an agency of the United States recruit such workers and that the Government of the United States guarantee compliance with the individual work contract. It was understood that the United States Government is not now authorized to undertake such a program. The United States delegation agreed to have such legislation introduced in the Congress, and since its enactment would require time for following legislative procedure, the Mexican Government agreed to continue the present international agreement until June 30, 1951.[13]

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[10] Ibid., p. 64.
[11] Ibid., p. 66.
[12] U.S. Senate Committee on Agriculture and Forestry, "Farm Labor Program," Hearings, 82d Cong., 1st sess., 1951, p. 8.
[13] S. Rept. 214, 82d Cong., 1st sess., 1951, p. 3.

As enacted on July 12, 1951, Public Law 78 established the basic framework under which the Mexican Bracero program operated until the mid 1960's, as refined by subsequent amendments and international agreements. Public Law 78 authorized the Secretary of Labor to take certain steps to recruit and transport Mexican workers, subject to the following restrictions:

> SEC. 503. No workers recruited under this title shall be available for employment in any areas unless the Secretary of Labor has determined and certified that (1) sufficient domestic workers who are able, willing, and qualified are not available at the time and place needed to perform the work for which such workers are to be employed, (2) the employment of such workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed, and (3) reasonable efforts have been made to attract domestic workers for such employment at wages and standard hours of work comparable to those offered to foreign workers.

Among other things, the legislation in combination with the revised 1951 International Agreement which followed it, provided that the U.S. Government establish and operate reception centers at or near the Mexican border; provide transportation, subsistence, and medical care from the Mexican recruiting centers to the U.S. reception centers, and guarantee performance by employers in matters relating to transportation and wages, including all forms of remuneration.

U.S. employers were required to pay the prevailing wages in the area, and to guarantee the workers employment for three-fourths of the contract period. Additionally, they were required to provide the workers with free housing and adequate meals at a reasonable cost, and they were responsible for the round-trip cost of transportation to the U.S. Government-operated reception centers. They were also required to reimburse the Government for essential expenses of the program, including penalties for workers not returned to the reception centers.

During the course of the debate on Public Law 78, the Labor Department argued that domestic workers should be provided with the same benefits as those provided foreign workers, including free transportation, housing, and basic medical care. Congressman W. R. Poage (D.-Tex.), the vice chairman of the House Committee on Agriculture, argued against this position as follows:

> It seems to me that this very provision is one of the greatest safeguards that you can provide for American labor. If it, in fact, costs the employer more to bring in foreign labor, then no matter what kind of laws you write he is not going to bring in foreign labor, as long as American labor is cheaper.[14]

The exact extent of the cost differential is not clear. For instance, under the terms of Public Law 78, U.S. employers were not required to post bonds, and the workers—limited to adult males—were also exempt from both social security and income tax withholding provisions.

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[14] U.S. House of Representatives Committee on Agriculture, "Farm Labor," Hearings, 82d Cong., 1st sess., 1951, p. 16.

As enacted, Public Law 78 was restricted in its application to "agricultural workers from the Republic of Mexico." However, as originally introduced, the bill applied to "agricultural workers within the Western Hemisphere." The omission of the British West Indies (BWI) and other foreign temporary worker programs from the purview of the legislation was done at the request of U.S. employers who argued that the existing arrangements were satisfactory to all concerned.

All other temporary workers, including those entering under the BWI program, have been admitted under the terms of Public Law 414, the Immigration and Nationality Act of 1952, since it went into effect on December 24, 1952. Temporary alien workers, referred to as H–2 workers, are included in one of the categories of nonimmigrants defined under section 101(a)(15)(H), as follows:

> (H) An alien having a residence in a foreign country which he has no intention of abandoning . . . (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country.

The H–2 temporary labor provision is administered by the Attorney General in consultation with "appropriate agencies of Government," under section 214(c), as follows:

> The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

According to the House report on the 1952 Act, the purpose of the section 101(a)(15)(H) temporary worker provision and section 214(c), which provides for its administration by the Attorney General, was to "grant the Attorney General sufficient authority to admit temporarily certain alien workers, industrial, agricultural, or otherwise, for the purpose of alleviating labor shortages as they exist or may develop in certain branches of American productive enterprises, particularly in periods of intensified production." [15]

Regulations published by the Justice Department's Immigration and Naturalization Service require Labor Department certification of the unavailability of domestic workers as a prerequisite for admitting H–2 workers, thus following the pattern established during the initial period of the temporary foreign labor programs, and after 1947. However, Labor Department certifications in the case of H–2 workers are advisory only, and may be overriden by the Justice Department, which has final authority. The H–2 provisions differed in this respect from those governing the Bracero program, under which the role of the Labor Department was considerably more extensive. This difference

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[15] H. Rept. 1365, 82d Cong., 2d sess., 1952, pp. 44–45.

was explained as follows by a Labor Department representative during 1963 hearings:

> In all foreign-labor programs we have the responsibility for certification as to need and as to the conditions of employment. In other words, we certify that the conditions of employment of the temporary entrants will not adversely affect domestic workers similarly employed.
>
> In the Mexican program, we also have responsibility for carrying out the international agreement and the standard work contract. What this means is that we have the compliance responsibility. . . .
>
> In the other foreign-labor programs, our only responsibility is the certification as to the need for the workers, and that they will not adversely affect the domestics. Responsibility for the enforcement of that contract then falls within the purview of the Immigration and Naturalization Service.[16]

Illegal Immigration, 1944–54

During the 10-year period 1934–43, apprehensions of deportable aliens by INS averaged under 12,000 a year. The number rose abruptly from 11,175 in fiscal year 1943 to 31,174 in 1944, more than doubled to 69,164 in 1945, and continued upward to 1,089,583 in fiscal year 1954 (see table 2). Despite their limitations, then as now, INS apprehension figures are the best available indication of the degree of illegal immigration. Without question, illegal immigration was very high during this period, rivaling the 1970's.

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[16] U.S. House of Representatives Committee on the Judiciary, Study of Population and Immigration Problems, Administrative Presentations (III), Special Series No. 11, 1963, p. 2.

TABLE 2.

ALIENS APPREHENDED, ALIENS DEPORTED, AND ALIENS REQUIRED TO DEPART
YEARS ENDED JUNE 30, 1892-1976
AND TRANSITION QUARTER - JULY-SEPTEMBER 1976

Period	Aliens apprehended 1/	Aliens expelled		
		Total	Aliens deported	Aliens required to depart 2/
1892-1976	10,858,439	11,093,287	709,957	10,383,330
1892-1900	-	3,127	3,127	-
1901-1910	-	11,558	11,558	-
1911-1920	-	27,912	27,912	-
1921-1930	128,484	164,390	92,157	72,233
1931-1940	147,457	210,416	117,086	93,330
1931	22,276	29,861	18,142	11,719
1932	22,735	30,201	19,426	10,775
1933	20,949	30,212	19,865	10,347
1934	10,319	16,889	8,879	8,010
1935	11,016	16,297	8,319	7,978
1936	11,728	17,446	9,195	8,251
1937	13,054	17,617	8,829	8,788
1938	12,851	18,553	9,275	9,278
1939	12,037	17,792	8,202	9,590
1940	10,492	15,548	6,954	8,594
1941-1950	1,377,210	1,581,774	110,849	1,470,925
1941	11,294	10,938	4,407	6,531
1942	11,784	10,613	3,709	6,904
1943	11,175	16,154	4,207	11,947
1944	31,174	39,449	7,179	32,270
1945	69,164	80,760	11,270	69,490
1946	99,591	116,320	14,375	101,945
1947	193,657	214,543	18,663	195,880
1948	192,779	217,555	20,371	197,184
1949	288,253	296,337	20,040	276,297
1950	468,339	579,105	6,628	572,477
1951-1960	3,584,229	4,013,547	129,887	3,883,660
1951	509,040	686,713	13,544	673,169
1952	528,815	723,959	20,181	703,778
1953	885,587	905,236	19,845	885,391
1954	1,089,583	1,101,228	26,951	1,074,277
1955	254,096	247,797	15,028	232,769
1956	87,696	88,188	7,297	80,891
1957	59,918	68,461	5,082	63,379
1958	53,474	67,742	7,142	60,600
1959	45,336	64,598	7,988	56,610
1960	70,684	59,625	6,829	52,796
1961-1970	1,608,356	1,430,902	96,374	1,334,528
1961	88,823	59,821	7,438	52,383
1962	92,758	61,801	7,637	54,164
1963	88,712	76,846	7,454	69,392
1964	86,597	81,788	8,746	73,042
1965	110,371	105,406	10,143	95,263
1966	138,520	132,851	9,168	123,683
1967	161,608	151,603	9,260	142,343
1968	212,057	189,082	9,130	179,952
1969	283,557	251,463	10,505	240,958
1970	345,353	320,241	16,893	303,348
1971	420,126	387,713	17,639	370,074
1972	505,949	467,193	16,266	450,927
1973	655,968	584,847	16,842	568,005
1974	788,145	737,564	18,824	718,740
1975	766,600	679,252	23,438	655,814
1976	875,915	793,092	27,998	765,094
1976 TQ	221,824	199,207	8,927	190,280

1/ Aliens apprehended first recorded in 1925. Prior to 1960, represents total aliens actually apprehended. Since 1960, figures are for total deportable aliens located, including nonwillful crewman violators.

2/ Aliens required to depart first recorded in 1927.

Source: U.S. Immigration and Naturalization Service, 1976 Annual Report, p. 126.

The Bracero program has been identified as being among the causes of the upward swing in illegal entries beginning in 1944, 2 years after the program's inception. Quoting from a midfifties analysis:

> Apparently, the relation between this Mexican contract labor program and the spiraling illegal immigration was this: Contract workers returned with exciting tales of the money that could be earned in the United States. The next year these same workers wanted to repeat their performance and their neighbors wanted to join. The result was that there were many more Mexicans who wanted to come to the United States than there were certifications of need issued by the Secretary of Labor. Further, managing to be among the workers selected by the Mexican officials for the program characteristically required the persuasion of a bribe. Thus, it seemed to many much simpler to seek American employment on their own. Accordingly, those with experience volunteered or were persuaded to lead others.[17]

Other causes cited for the increasing number of illegal entrants during this period were the United States' economic recovery following the depression of the 1930s; the economic imbalance between the U.S. and Mexico, exacerbated by population pressure and inflation in Mexico; rapid Mexican economic development in areas immediately south of the U.S. border; and the expansion of unskilled farm labor requirements in the U.S. Southwest.[18]

The legal and illegal entry of temporary Mexican workers were also related in other ways because of the mechanics of the Bracero program. For example, the initial agreement between the United States and Mexico prohibited the contracting of Mexican workers in States where they were subject to discrimination. Texas was excluded from participation in the program on these grounds during the wartime period. However, thousands of aliens entered the United States illegally during this period, going particularly to Texas, New Mexico, and Southern California. This led, in 1947, to a process initially proposed by Mexico[19] and sanctioned by international agreement of "legalizing the illegals," which, according to the President's Commission on Migratory Labor in early 1951, "was to be the dominant feature of the Mexican alien farm-labor program not only for 1947 but also in the years since."[20] Quoting further:

> For the 3 years, 1947–49, the Mexican farm-labor program in summary amounts to this: 74,600 Mexican nationals under contract were brought from the interior of Mexico; 142,200 wetbacks already in the United States were legalized by being put under contract. Legalization of wetbacks occurred again in 1950. Meanwhile, the accelerated wetback traffic continued unabated.[21]

The process of legalizing the illegals took a variety of forms over the years and proceeded both under the auspices of and outside of existing legislation and international agreements. It was deplored by

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[17] Hadley (1956), p. 344.
[18] President's Commission on Migratory Labor (1951), pp. 71–73.
[19] Ibid., p. 52.
[20] Ibid., p. 38.
[21] Ibid., p. 53.

the President's Commission on Migratory Labor, which recommended that, "The Department of State should negotiate with the Government of Mexico such a workable international agreement as will assure its operation as the exclusive channel for the importation of Mexican nationals under contract, free from the competition of illegal migration." [22] They also recommended that:

> (1) The Immigration and Naturalization Service be strengthened by (a) clear statutory authority to enter places of employment to determine if illegal aliens are employed, (b) clear statutory penalties for harboring, concealing, or transporting illegal aliens, and (c) increased appropriations for personnel and equipment.
>
> (2) Legislation be enacted making it unlawful to employ aliens illegally in the United States, the sanctions to be: (a) removal by the Immigration and Naturalization Service of all legally imported labor from any place of employment on which any illegal alien is found employed; (b) fine and imprisonment; (c) restraining orders and injunctions; and (d) prohibiting the shipment in interstate commerce of any product on which illegal alien labor has worked.[23]

Mexico was also increasingly concerned about the continuing high level of illegal immigration, which it viewed as something of a diplomatic embarrassment and also as a form of unilateral contracting by U.S. employers. The 1951 international agreement, negotiated after the enactment of Public Law 78, was purposefully set for a duration of only 6 months, in order "to create pressure upon the Congress to take measures to eliminate illegal migrants." [24]

Attempts to pass legislation prohibiting the employment and establishing penalties for the harboring [25] of illegal aliens in 1951 and 1952 were only partially successful. The result was the Act of March 20, 1952,[26] subsequently recodified as sections 274 and 287(a)(3) of the Immigration and Nationality Act of 1952. Under the law then and now, the willful importation, transportation, or harboring of illegal aliens is a felony, punishable by a $2,000 fine or imprisonment of up to 5 years, or both. However, employment is specifically exempted from the penalties for harboring, in what was popularly referred to as the Southwest or Texas proviso. During the Senate floor debate in February 1952, Senator Paul Douglas offered an amendment to provide penalties for the employment of illegal aliens if the employer had "reasonable grounds to believe a worker was not legally in the United States." It was resoundingly defeated by a vote of 69–12 following a heated debate, with the arguments similar to those used during the seventies for and against employer sanctions.

In addition to being a diplomatic embarrassment to Mexico and the United States, the issue of illegal entrants became the focus of considerable press attention in the early fifties, as it did subsequently in the seventies. "Time," "Life," and "The Nation" all published articles on

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[22] Ibid., p. 66.
[23] Ibid., p. 88.
[24] Labor Department report, House Judiciary hearings (1963), p. 38.
[25] The Supreme Court had ruled that the provision in the Immigration Act of 1917 prohibiting the harboring of illegal aliens did not include a penalty, *U.S.* v. *Evans,* 333 U.S. 483 (1948).
[26] P.L. 283, 82d Cong., 2d sess., 66 Stat. 26.

the subject in the spring of 1951. However, during the period 1941–52, the INS border patrol was cut by 350 officers, while apprehensions increased by 4,000 per cent.[27] Congress was described as being "splendidly indifferent to this whole situation on the southern border," [28] as reflected here by the cut in the INS budget.

Congress, however, was only partially to blame, since the INS budget cuts accurately reflected Justice Department priorities. This changed in 1954, when the decision was made within the executive branch to increase the border patrol and attempt to get control of the situation. The result was Operation Wetback, an area sweep operation which simultaneously helped end the illegal alien problem of the midfifties, and left scars in the Mexican-American community which remain today.

The decisions leading to Operation Wetback followed a visit by Attorney General Herbert Brownell to the California border in August 1953. During the course of the trip, he described the situation as "shocking," and characterized the previous decisions to cut border patrol manpower for economy reasons, which he had himself supported 4 months previously, as "the most pennywise and pound-foolish policy I've ever seen." [29] The increase in the border patrol from 1,079 to 1,479 over the period fiscal year 1954–55 reflects the results of Attorney General Brownell's conversion.

General Joseph Swing, a former classmate of President Eisenhower's at West Point, was appointed Commissioner of INS in the spring of 1954. According to Richard Craig, General Swing "discouraged the attorney general from sending U.S. troops to the border in an effort to halt the influx," [30] although reports on this differ as they do in general regarding the tactics of Operation Wetback.

The operation was described as follows in the 1955 INS annual report:

> "*Wetbacks*". A large scale task force operation in the Southwest, working in proximity of the border, accounted for a great majority of apprehensions. This "Special Mobile Force Operation" began in California in the last few days of fiscal 1954, and after the backbone of the wetback invasion was broken in California, shifted to south Texas. Mobile task forces were assembled and set into action. Light planes were used in locating illegal aliens and directing ground teams in jeeps to effect apprehensions. Transport planes were used to airlift aliens to staking areas for prompt return to Mexico.
>
> Uncounted thousands of aliens departed California of their own accord during the operation. When the operation shifted to Texas, 60,456 aliens returned to Mexico through ports of entry during the first 30 days to avoid arrest. Others simply fled across the Rio Grande River.
>
> These activities were followed by mopping up operations in the interior and special mobile force units are continuing to discover illegal aliens who have eluded initial sweeps through

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[27] Hadley (1956), p. 348.
[28] Ibid.
[29] Ibid., p. 350.
[30] Richard Craig, The Bracero Program. Interest Groups and Foreign Policy (Austin, University of Texas Press), 1971, p. 128. (Cited as Craig (1971).)

such cities as Spokane, Chicago, Kansas City, and St. Louis, which removed 20,174 illegal Mexican aliens from industrial jobs.

The volume of apprehensions of Mexican nationals continued to decrease following the apprehension and expulsion of large numbers of wetbacks and the mass exodus of thousands of others who departed of their own accord. Nevertheless, vigorous efforts were continued to apprehend those who managed to escape detection and those who succeeded in their attempts to enter illegally or abandoned status after legal entry. By the end of June 1955, the rate of apprehensions had dropped to 11 percent of that of June 1954, and 59 percent of those apprehended were taken into custody within 48 hours after crossing the border.[31]

The 1955 INS Annual Report concluded that, "The so-called 'wetback' problem no longer exists . . . The border has been secured." [32] It also emphasized the future desirability of the prevention of illegal entries, as opposed to the expulsion process of which Operation Wetback was an example. Quoting:

> To maintain that state of security the Service cannot afford to revert to its operational procedures in effect before the past year. The prevention of illegal entries, as the major ingredient of border control, is more difficult, requires more ingenuity, more men and equipment, but is, in the long run, more economical and more humane than the explusion process.[33]

Without question, the Bracero program was also instrumental in ending the illegal alien problem of the mid-forties and fifties. It should be noted that throughout its duration, and particularly during the fifties, one of the major arguments used in support of the Bracero program was that it offered an alternative and, therefore, at least a partial solution to the illegal alien problem. This position was taken by both the Mexican Government and the U.S. State Department, among others. It was stated in a 1954 House report, as follows:

> Reason clearly indicates that if a Mexican who wants to come to the United States for this employment can enter this country legally, with all the protection and benefits that a well-considered and well-administered employment program give him he will do so, rather than come in illegally and be deprived of the benefits of such a program and any rights or standing in American courts. If, because the program is not available or is not realistically geared to the requirements of employers or workers, the Mexican seeking employment finds its impossible or difficult to come in legally, many of them will find their own way across the long border between the United States and Mexico and get employment where they can, under whatever wages and working conditions they are able to obtain.[34]

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[31] U.S. Department of Justice, Annual Report of the Immigration and Naturalization Service, 1955, pp. 14–15.
[32] Ibid., p. 15.
[33] Ibid.
[34] H. Rept. 1199, 83d Cong., 2d sess., 1954, p. 3.

In their accounts of Operation Wetback, Julian Samora and Richard Craig stressed the importance of "public sentiment, including that of the growers" [35] as a factor in the success of the INS operation. According to Craig:

> Based upon coordinated action of many elements at various levels, Operation Wetback was an overwhelming success. The greater part of what it accomplished was due to cooperation from grower interests. Such complicity did not come by accident. From the operation's inception, General Swing took pains to cultivate grower cooperation. Farmers were promised assistance in securing domestics and legally contracted braceros to replace wetbacks. In return, most of them cooperated.[36]

Similarly, in his comments on the success of Operation Wetback in dealing with the illegal alien problem, Ernesto Galarza indicated that a key factor was

> . . . the change in attitude of farm employers, hundreds of whom had come to accept the legal *braceros* as a practical and safe alternative [to Wetbacks] and had joined associations to procure them. By the time the operation was launched the bracero system had shown its economic and political feasibility.[37]

In his otherwise highly critical examination of the Bracero program, Galarza credits it with "the dramatic reduction, if not the total elimination, of the Wetback traffic," although by dubious means: "The [illegal] traffic became suppressed only when it became possible to assure farm employers, substantially on their terms, that they could have as many contract laborers as they might demand." [38]

The probable causal relationship between the Bracero program and the swelling illegal alien traffic which began in 1944, 2 years after the inception of the legal program, must also be kept in mind. Julian Samora, Eleanor Hadley, and others have argued that the Bracero program stimulated illegal migration to the United States, in part because more Mexicans wished to come than were legally permitted, and partly because it was often easier to enter illegally than legally. Samora notes that during the 22-year life of the Bracero program, over 5 million illegal aliens were apprehended, a figure exceeding the 4.8 million braceros contracted.[39]

In short, the Bracero program appears to have been simultaneously a major cause of as well as a significant cure for the illegal alien problem of this period—and Galarza and others argue that the cure was effected at a heavy price as far as the welfare of domestic farm labor was concerned.

The Bracero Program: 1952–64

The use of Mexican workers under the Bracero program was considerably more extensive during the fifties than it had been during the wartime period. Statistics on the admission of Mexican, British West

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[35] Julian Samora, "Los Mojados: "The Wetback Story" (Notre Dame, University of Notre Dame Press), 1971, p. 52.
[36] Craig (1971), p. 129.
[37] Ernesto Galarza, "Merchants of Labor, the Mexican-Bracero Story" (Charlotte, McNally & Loftin, Pub.), 1964, p. 70.
[38] Ibid., p. 255.
[39] Samora (1971), p. 19.

Indians, Bahamians, and other foreign agricultural workers during the period 1942–64 are shown in table 3. The Mexican figures, which dwarf the others, rose steadily after the enactment of Public Law 78 in 1951 until a peak of 445,197 in 1956, and remained over 400,000 until 1959, when they began a steady decline.

TABLE 3.—FOREIGN WORKERS ADMITTED FOR TEMPORARY EMPLOYMENT IN U.S. AGRICULTURE, BY YEAR AND NATIONALITY [1]

Year	Total	Mexicans	British West Indians	Bahamians	Canadians	Others
1942 [2]	4,203	4,203	----------	----------	(3)	----------
1943	65,624	52,098	8,828	4,698	(3)	----------
1944	84,419	62,170	16,574	3,048	1,414	[4] 1,213
1945	73,422	49,454	17,291	2,100	4,055	[4] 522
1946	51,347	32,043	11,081	2,690	5,533	----------
1947	30,775	19,632	1,017	2,705	7,421	----------
1948 [5]	44,916	35,345	2,421	1,250	5,900	----------
1949	112,765	107,000	1,715	1,050	3,000	----------
1950	76,525	67,500	4,425	1,800	2,800	----------
1951	203,640	192,000	6,540	2,500	2,600	----------
1952	210,210	197,100	4,410	3,500	5,200	----------
1953	215,321	201,380	4,802	2,939	6,200	----------
1954	320,737	309,033	2,159	2,545	7,000	----------
1955	411,966	398,650	3,651	2,965	6,700	----------
1956	459,850	445,197	4,369	3,194	6,700	[5] 390
1957	452,205	436,049	5,707	2,464	7,300	[6] 685
1958	447,513	432,857	5,204	2,237	6,900	[6] 315
1959	455,420	437,643	6,622	2,150	8,600	[6] 405
1960	334,729	315,846	8,150	1,670	8,200	[6] 863
1961	310,375	291,420	8,875	1,440	8,600	[6] 40
1962	217,010	194,978	11,729	1,199	8,700	[6] 404
1963	209,218	186,865	11,856	1,074	8,500	[6] 923
1964	200,022	177,736	[7] 14,361	(7)	7,900	25

[1] This does not include small number of Basques and other workers.
[2] Data for 1942–47 were obtained from USDA reports.
[3] Not available.
[4] Newfoundlanders transported.
[5] Data for 1948–61 were compiled by Bureau of Employment Security, U.S. Department of Labor.
[6] Includes 390 Japanese in 1956; 652 Japanese and 33 Filipinos in 1957; 315 Japanese in 1958; 400 Japanese and 5 Filipinos in 1959; Japanese only in 1960 and 1961; 279 Japanese and 125 Filipinos in 1962; Japanese only in 1963–64.
[7] Bahamians included with British West Indians.

Source: "The Migratory Farm Labor Problem in the United States," 87th Cong., 2d sess., S. Rept. No. 1225, Washington p. 10, 1962; and "Farm Labor Market Developments," Bureau of Employment Security, U.S. Department of Labor, January 1964 and January 1965. U.S. Department of Agriculture. Termination of the Bracero Program, Agricultural Economic Report No. 77, Washington, June 1965, p. 5.

Public Law 78 was extended three times during this period: for 2 years in 1953 without amendment; for 3½ years in 1955 with only minor amendments; and for 2 years in 1958. International agreements were renegotiated with Mexico throughout this period with more or less difficulty. In 1954, for instance, there was a heated dispute between the United States and Mexico regarding Mexico's contention that the prevailing wage determination by the Labor Department was too low.

By the end of the 1950's, the Bracero program was coming under increasing attack by labor and welfare groups, including a four-member consultants' group appointed by Secretary of Labor James P. Mitchell.[40] It was argued that the Braceros were adversely affecting the wages and working conditions of domestic workers, particularly in certain areas and occupations. This position was presented by Secretary of Labor Arthur J. Goldberg who noted that in "Bracero-dominated areas." of which they had identified 80, the prevailing wage standards offered no protection to domestic workers since the prevail-

[40] U.S. Senate Committee on Agriculture and Forestry, "Extension of Mexican Farm Labor Program," Hearings, 87th Cong., 1st sess., 1961, pp. 267–284.

ing wage was in fact set by the Braceros themselves. Quoting Secretary Goldberg:

> And what happens there is that the wage level, which we have been able to fix since the standard was adopted, has remained stationary for 10 years at a time when throughout the country the domestic farm-labor rate has been increasing. And there is no domestic labor really available at the wages which prevail there.
>
> I think the increase in the wages of domestic farm labor since 1946, if I remember correctly, has been 46 percent throughout the country—46 percent wage increases.
>
> Yet in these areas, the wage has remained stationary.[41]

Secretary Goldberg indicated that the Kennedy administration was not advocating termination of the Bracero program. However, they were seeking several substantive and controversial amendments. One of them—the statutory limitation of Braceros to temporary or seasonal agricultural work, excluding the operating of machines and certain processing functions—was adopted. However, an amendment requiring that the wages offered Braceros be based on 90 percent of the statewide or national average, in order to afford protection to "Bracero-dominated areas", was dropped in conference. As noted below, a related measure was adopted administratively the following year. The 1961 legislation extended Public Law 78 through December 31, 1963 and contained the last substantive amendments made to this legislation.

President John F. Kennedy indicated in October 1961 that he was signing the legislation extending the Bracero program through December 31, 1963 reluctantly:

> The adverse effect of the Mexican farm labor program as it has operated in recent years on the wage and employment conditions of domestic workers is clear and cumulative in its impact. We cannot afford to disregard it. We do not condone it. Therefore, I sign this bill with the assurance that the Secretary of Labor will, by every means at his disposal, use the authority vested in him under the law to prescribe the standards and to make the determinations essential for the protection of the wages and working conditions of domestic agricultural workers.[42]

In response to this direction, the Labor Department held public hearings in all States using foreign workers, and in May 1962 set an adverse-effect rate for each State which employers were required to offer foreign workers. Adverse-effect rates were the minimum wage rates which the Department of Labor determined had to be offered and paid by the employers of temporary alien agricultural workers in order to prevent their employment from having an adverse effect on the wages of U.S. workers who were similarly employed.

In the majority of cases, the adverse-effect rates were higher than the prevailing rates. Where piece-rates were paid, the hourly earnings had to equal the established adverse-effect rates. Since U.S. employers were required to offer domestic workers wages equal to foreign workers

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[41] Ibid., p. 230.
[42] Quoted in S. Rept. No. 391, 88th Cong., 1st sess., 1963, p. 13.

as a prerequisite for labor certification, these adverse-effect wage scales were also applicable to domestic workers in cases where farmers intended to seek foreign workers.

In 1963, the Kennedy administration proposed a 1-year extension of the Bracero program. A 2-year extension was defeated in the House on May 29, 1963 by a vote of 158–174. On August 15, a 1-year extension with amendments favored by the Labor Department but opposed by the growers, passed the Senate by a vote of 62–25. An unamended 1-year extension passed the House on October 31 by a vote of 173–160, and the Senate agreed to the House provisions, by 50–36, on December 4, 1963. The bill, extending Public Law 78 until December 31, 1964 without amendment, was signed into law December 13, 1963 (Public Law 88–203).

After the House defeat in May of the 2-year extension, the legislative alternatives presented to the proponents of the Bracero program were quite limited. They were essentially given their choice of a 1-year extension, with or without amendments, or nothing. In bringing the bill to the Senate floor, Senator Ellender promised that he would not seek a further extension of the program in 1964.

However, it was generally assumed by proponents of the program during the 1963 debates that, barring insuperable objections by the Mexican Government, the importation of Mexican workers would continue under the authority of Public Law 414, the Immigration and Nationality Act.

In fact, on December 19, 1964, Secretary of Labor Willard Wirtz published regulations which made it clear that it was not the intention of the Labor Department that the Bracero program continue under the auspices of Public Law 414.

There was a strong reaction to these regulations in the Congress, including a move in 1965 to legislatively transfer responsibility for the certification of temporary alien agricultural workers from the Department of Labor to the Department of Agriculture. This was defeated in the Senate by a vote of 46–45, with the initial tie vote broken by Vice President Hubert Humphrey.[43] Secretary Wirtz prevailed in his intention to prevent the continued importation of temporary Mexican workers under the H–2 provision of the Immigration and Nationality Act, a policy which has been followed with very few exceptions to the present day.

Apprehensions of illegal aliens began mounting steadily with the termination of the Bracero program in the midsixties. Quoting from the INS 1970 annual report:

> Since the expiration of the Mexican Agriculture Act on December 31, 1964, the number of deportable aliens located has continued an upward climb. For the 6-year period, fiscal years 1965–70, 71 percent of the 1,251,466 total deportable aliens located were of Mexican nationality. Year by year, the annual percentage of this nationality group has risen, from 50 percent in 1965 to 80 percent this year.[44]

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[43] Food and Agriculture Act of 1965, Congressional Record, Sept. 13, 1965 : 23504–23530.
[44] U.S. Department of Justice, Annual Report of the Immigration and Naturalization Service, 1970, p. 11.

The patterns of employment which grew up during the Bracero period, as well as the elimination of the legal channels for temporary employment provided by the program, are viewed by many as significant factors in the current illegal migration problem, discussed in section VII below.

IV. IMMIGRATION AND REFUGEE LEGISLATION, 1961–64

The patterns established in the fifties regarding immigration policy and legislation continued into the early sixties. The Immigration and Nationality Act of 1952, including the national origins quota system, determined the basic policy in the area.

In the omnibus 25-section *Act of September 26, 1961*,[1] Congress continued its previous pattern of combining amendments to the 1952 Act—some of which were of major importance—with a temporary provision for the nonquota admission of specified groups of aliens outside the provisions of the permanent law. Further, like much of the immigration legislation enacted in the period following the 1952 Act, Public Law 87–301 was a compromise measure containing provisions aimed at both liberalizing and tightening the regulation of immigration, reflecting the highly divergent views on immigration policy within the Congress.

Among the liberal amendments were permanent provisions closely related to those which had previously been enacted on a temporary basis, granting nonquota status to adopted alien orphans. Like the prior series of temporary provisions, the amended permanent law covered children who were adopted abroad or who were coming to the United States for adoption, although without provision for children adopted abroad by proxy. Prior temporary statutes allowing the admission of aliens afflicted with tuberculosis who were close relatives of U.S. citizens or permanent resident aliens also became part of the permanent law.

The 1961 Act liberalized the quota provisions of the Immigration and Nationality Act in two minor but significant respects. It eliminated the ceiling of 2,000 on the aggregate quota of the Asia-Pacific triangle, and it provided that whenever one or more quota areas have a change of boundaries which might lessen their aggregate quota—such as the West Indian Federation, which was about to be granted independence—they were to maintain the quotas they had before the change took place. The law also eliminated the requirement that a visa applicant state in his application his race and ethnic classification.

One of the most controversial changes in the Immigration and Nationality Act since its enactment was the addition in 1961 of a new section 106 to establish a statutory form of judicial review of deportation and exclusion orders. The provision was generally viewed as a conservative measure and was prompted by the concern of the Justice Department and congressional committees about what they viewed as an exploitation of the various judicial remedies by some aliens seeking to delay or prevent deportation. Accordingly, provisions were adopted intended to prevent repeated proceedings in the U.S. district and appeals courts, and to generally speed up judicial review of both deportation and exclusion proceedings. In minority views appended to the

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[1] Public Law 87–301; 75 Stat. 650.

report on the bill from which the final legislation evolved, House Judiciary Committee Chairman Emanuel Celler and two colleagues summed up their objections as follows: "Because the bill creates unnecessary hardships for many aliens, because it denies access to the district courts for relief and forces the aggrieved alien to go into the court of appeals, and because it narrows relief to a writ of habeas corpus and eliminates relief by declaratory judgment in exclusion cases, we are opposed to the bill." [2]

Additional provisions of the omnibus 25-section act codified as parts of the Immigration and Nationality Act provisions of prior laws granting waivers to certain aliens who were excludable on various grounds, such as conviction for a petty offense; and provisions relating to exchange visitors. It barred the derivation of immigration benefits from sham marriages. Additionally, it contained a number of amendments to the naturalization provisions of the permanent law.

Both the Act of September 26, 1961 and the Act of October 24, 1962 [3] established temporary programs allowing nonquota status for backlogged preference cases, following the precedent set by the series of similar enactments in the fifties. The 1961 Act applied to beneficiaries of second and third preference petitions, and the 1962 Act applied to beneficiaries of first and fourth preference petitions, all filed by specified dates.

The willingness of the Congress to enact these special nonquota programs to relieve backlogged preferences under the quota system appears to reflect a gradual shift in focus, at least on an ad hoc basis, from the regulation of immigration on the basis of national origins to a regulation based on the values represented by the preference system—the admission of aliens with needed skills, and the reunification of families. These values, in reverse order, were soon to become the dominant, rather than the subordinate, themes of our immigration policy under the major amendments to the Immigration and Nationality Act enacted in 1965.

In addition to the temporary program providing nonquota status for backlogged first and fourth preference cases, the Act of October 24, 1962—the last significant immigration enactment before the 1965 amendments—also amended the Immigration and Nationality Act relating to suspension of deportation by redefining the classes of eligible aliens.

Besides the Migration and Refugee Assistance Act of 1962, discussed below, the only other immigration legislation enacted in the 87th and 88th Congresses was the final extension of the Mexican Bracero program until December 31, 1964. Also of importance during this period was the series of hearings by House Judiciary Subcommittee No. 1, which had jurisdiction over immigration. They were announced by Subcommittee Chairman Francis Walter on June 27, 1962, 10 years after the enactment of the 1952 legislation, "to guide the Congress in the consideration of any revision of our immigration policy." [4] The hearings continued after Congressman Walter's death under the chairmanship of Congressman Michael Feighan, until September 1964, resulting in 18 volumes of hearings which covered all aspects of immigration, with special emphasis on population-related issues.

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[2] H. Rept. 565, 87th Cong., 1st sess., 1961, p. 36.
[3] P.L. 87–885; 76 Stat. 1247.
[4] Hon. Francis Walter, Study of Immigration and Population Problems, Congressional Record, [daily ed.], June 27, 1962: 11128.

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Cuban Refugees and 1962 Refugee Legislation

During the period 1961–62, refugees entered the United States in substantial numbers from Cuba, and also from Hong Kong. Cuban refugees began entering the United States in late 1959. Diplomatic relations between the United States and Cuba were severed January 1, 1961, meaning that Cubans could no longer obtain visas to enter this country except through a third country. About this time, the U.S. Government adopted wholesale a practice of paroling the refugees into the country. Up until June 30, 1961, only 4,000 Cubans had been paroled into the United States; 58,530 were paroled during the next 12 months. The number of Cubans entering decreased with the cessation of commercial flights between Havana and Miami following the missile crisis of October 1962, although refugees continued to enter, some coming in small boats across the straits of Florida.

In January 1961, President Kennedy issued a directive officially establishing the Cuban Refugee Program as a part of the U.S. Department of Health, Education and Welfare. An additional $4 million was authorized from the Mutual Security Contingency Fund for use through June 30, 1961. During fiscal 1962, financing was provided from the President's Contingency Fund under the Foreign Assistance Act of 1961, as amended. In June of 1962, the Migration and Refugee Assistance Act (see below) was enacted, and since then funds for the program have been appropriated by Congress under the authority of this Act.

The Hong Kong refugee situation, intensified by the famine in China, was also a matter of considerable concern during this period, and the subject of a series of hearings by the Senate Judiciary's Subcommittee on Refugees and Escapees, chaired by the late Senator Philip Hart. In May 1962, the President and Attorney General agreed to parole in approximately 15.000 Chinese refugees from Hong Kong. This was followed by the admission of a group of Chinese orphans from Hong Kong who were adopted in the United States.

As a member of both the House and Senate, President Kennedy had taken a particular interest in immigration and refugees. He introduced the Senate bill eventually enacted as the Act of September 11, 1957, and in 1959 he introduced a joint resolution broadening the authority of the Attorney General to cope with the admission of refugees on a permanent basis. As a member of the House in 1952, he had voted against the Immigration and Nationality Act, and during the 1960 Presidential campaign, he stressed the need for a major revision of our immigration law.

During his brief term in Office before his assassination in November 1963. President Kennedy sponsored major legislation relating to both refugees and immigration. The Kennedy administration's refugee bill was enacted with amendments as the Migration and Refugee Assistance Act of 1962,[5] and remains the basic refugee assistance statute today.

In his transmittal letter. President Kennedy outlined four principles underlying the bill he was proposing, as follows:

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[5] Act of June 28, 1962; P.L. 87–510; 76 Stat. 121.

1. The United States, consistent with the traditional humanitarian regard of the American people for the individual and for his right to a life of dignity and self-fulfillment, should continue to express in a practical way its concern and friendship for individuals in free world countries abroad who are uprooted and unsettled as the result of political conditions or military action.

2. The successful reestablishment of refugees, who for political, racial, religious or other reasons are unable or unwilling to return to their country of origin or of nationality under conditions of freedom, dignity, and self-respect, is importantly related to free world political objectives. These objectives are: (*a*) continuation of the provision of asylum and friendly assistance to the oppressed and persecuted; (*b*) the extension of hope and encouragement to the victims of communism and other forms of despotism, and the promotion of faith among the captive populations in the purposes and processes of freedom and democracy; (*c*) the exemplification by free citizens of free countries, through actions and sacrifices, of the fundamental humanitarianism which constitutes the basic difference between free and captive societies.

3. Some refugee problems are of such order of magnitude that they comprise an undue burden upon the economies of the countries harboring the refugees in the first instance, requiring international assistance to relieve such countries of these burdens.

4. It is important to assist in the movement of persons to developing countries in need of manpower—the most valuable asset of the free world. The contributions of the United States, together with other free nations, to international migration assistance programs, not only helps build and strengthen developing countries and thus the free world, but it enlarges the oportunities of individuals to live useful, productive lives.[6]

The bill separated from the foreign aid legislation and consolidated in one law existing and new authorizations to conduct and appropriate funds to support United States assistance programs for refugees, escapees, and other selected persons. As enacted on June 28, 1962, the bill also included a House floor amendment offered by Congressman Francis Walter removing the expiration date from the Refugee Fair Share Law, Public Law 86–648. The effect of this was to make permanent the Attorney General's authority to parole in refugees who came under the mandate of the U.N. High Commissioner for Refugees. Prior to the repeal of the provision in 1965, approximately 19,700 persons entered the country under this parole authority.

Abba Schwartz, who was appointed by President Kennedy as Assistant Secretary of State with authority over the Bureau of Security and Consular Affairs, a position created by the 1962 legislation, commented on the general significance of the Migration and Refugee Assistance Act as follows:

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[6] H. Rept. No. 1066, 87th Cong., 1st sess., Aug. 29, 1961, p. 4.

Enactment of this statute was significant, because for the first time in our Nation's history it gave the President and the executive branch a broad and flexible mandate, on a permanent basis, in conducting refugee affairs. It not only sanctioned those affairs of state regularly associated with continuing refugee matters, but it also permitted the President to respond instantly to emergency refugee needs in any part of the world. In omitting any special reference to refugees from communist dominated areas and "cold war" responsibilities on the part of the free world, the statute also broadened our national perspective on the origin and cause of refugee movements, and implied our willingness to assist all who have fled their homes. This was important in view of developing refugee problems in Africa and elsewhere.[7]

The Kennedy Administration Immigration Reform Bill

On July 23, 1963, President Kennedy submitted to the 88th Congress his administration's proposals for "revising and modernizing our immigration law," of which the most important was the repeal, after a 5-year phaseout period, of the national origins quota system. Quoting from his transmittal letter:

> The most urgent and fundamental reform I am recommending relates to the national origins system of selecting immigrants. . . .
>
> The system is based upon the national origins of the population of the United States in 1920. The use of the year 1920 is arbitrary. It rests upon the fact that this system was introduced in 1924 and the last prior census was in 1920. The use of a national origins 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 among applicants for admission into the United States on the basis of accident of birth.[8]

President Kennedy proposed that the existing quotas be reduced by 20 percent a year. The released and unused quota numbers were to be placed in a "quota reserve pool," to be made available under a revised preference system which continued to place first priority on "the skills of our immigrants and their relationship to our needs," followed by preferences based on "the family relationship between immigrants and persons already here, so that the reuniting of families is encouraged." This system was to regulate the distribution of all the visa numbers after the 5-year phaseout was completed. During this interim period, a number of safeguards were provided to "ensure that the pattern of immigration is not distorted by excessive demand from any one country."

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[7] Abba Schwartz, "The Open Society" (New York, Simon & Schuster), 1968, p. 142. (Cited as Schwartz (1968).)

[8] President's Immigration Message to the Congress, July 23, 1963; reprinted in Schwartz (1968), pp. 210–211. The quotes in the discussion immediately following are from this message.

One of the more controversial features of the legislation proposed by the Kennedy administration was the creation of a seven-man immigration board, to be composed of two Members each of the House and Senate, and three members appointed by the President. The immigration board's functions were to include "formulating recommendations regarding the use of the quota reserve pool" and making "a continuous study of our immigration policy."

The proposed immigration board is reminiscent of the Commission on Immigration and Naturalization proposed 10 years earlier by the Truman Commission. Like the earlier Commission, it appears to reflect distrust by the more liberal executive branch of conservative congressional views on immigration policy. The immigration board proposed in President Kennedy's bill would have had considerably less power than the Commission proposed 10 years previously. However, it was not included in the 1965 legislation, discussed in the following section, which evolved directly from the proposals introduced at President Kennedy's request in July 1963.

Other features of particular interest were the repeal of the "special discriminatory formula" relating to the Asia-Pacific triangle; the according of nonquota status to the parents of U.S. citizens; and the continued nonquota status for Western Hemisphere countries, including the newly independent Jamaica, Trinidad and Tobago, which had not been granted nonquota status.

In editorials praising the administration's immigration proposals, both the Washington Post [9] and the New York Times [10] pointed out that the President's proposals did not represent a significant increase in the number of immigrants who would be admissible annually, nor was this among the President's stated purposes. The *Times* quoted as follows from President Kennedy's 1958 book, *A Nation of Immigrants*: "The most serious defect in the present law is not that it is restrictive but that many of the restrictions are based on false and unjust premises." The labels "restrictionist" and "antirestrictionist" used throughout the fifties tended to blur the real nature of the difference between the opponents and proponents of the national origins quota system. President Kennedy's opposition to this system in no way meant that he was committed to unrestricted immigration, as his bill clearly demonstrated.

The administration bill was introduced as S. 1932 on July 24, 1963 by Senator Philip Hart and 26 cosponsors. In the House it was introduced on July 23, 1963 as H.R. 7700 by Congressman Emanuel Celler. However, hearings were not held until after President Kennedy's death.

In his State of the Union Message on January 8, 1964, President Lyndon Johnson emphasized his commitment to the goals of the Kennedy Administration bill, as follows:

> We must lift by legislation the bar of discrimination against those who seek entry into our country, particularly those with much-needed skills and those joining their families. In establishing preferences, a Nation that was built by the immigrants of all lands can ask those who now seek admission: "What can you do for your country?" But we should not be asking: "In what country were you born?" [11]

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[9] "Immigration: A Sea Breeze," Washington Post, July 24, 1963, p. A16.
[10] "A New Immigration Law," New York Times, July 25, 1963, p. 24.
[11] Congressional Record, Jan. 8, 1964: 115.

He reemphasized this commitment in a meeting of key members of the House and Senate and representatives of interested organizations on January 13, 1963.[12]

On that same day, hearings were held by the Senate Judiciary Committee under the acting chairmanship of Senator Edward Kennedy. The hearings were brief, and the record was not published. The first witness was Senator Philip Hart, the chief sponsor of the Administration bill, who argued for the repeal of the provisions of the current law based on race and national origins, as follows:

> Discriminatory provisions against immigrants from eastern and southern Europe, token quotas for Asian and African countries, and implications of race superiority in the Asian-Pacific Triangle concept have no place in the public policy of the United States.
>
> A newcomer should not arrive at our nation's door, hat in hand, apologizing for his parentage or birthplace. This is the great vice of the national origins quota system.
>
> True, we need a careful selection of immigrants. We should discriminate—but not with irrational concepts founded on the theories of ethnic superiority.
>
> Congress must enact a statute that will be discriminatory in the best meaning of the word—on the grounds of security and economic and scientific benefit; on the principles of family unity and asylum to the homeless and the oppressed.[13]

Hearings were held by House Judiciary Subcommittee No. 1, with jurisdiction over immigration, beginning in June 1964 under the chairmanship of Congressman Michael Feighan, who was opposed to aspects of the administration bill, although not ultimately to the repeal of the national origins quota system.

The 88th Congress adjourned without further action beyond the hearing stage. However, the introduction of the Kennedy administration bill and the subsequent hearings had begun the process which led to the enactment of the major 1965 amendments.

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[12] Schwartz (1968), p. 118.

[13] Quoted by Edward M. Kennedy, "The Immigration Act of 1965," The Annals of the American Academy of Political and Social Science, vol. 367, Sept. 1966, p. 141.

V. THE IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1965 AND THEIR AFTERMATH, 1965–68

The Immigration and Nationality Act Amendments of 1965, signed into law on October 3, 1965,[1] repealed the national origins quota system which had formed the basis for the numerical restrictions on immigration since the 1920s. According to one authority on the subject, "The Act of October 3, 1965 represents the most far-reaching revision of immigration policy in the United States since the First Quota Act of 1921." [2]

In terms of policy, the 1965 amendments overshadow the major 1952 recodification, despite the fact that they were enacted within the framework of the 1952 Act. The 1952 Act carried forward the national origins quota system as our basic mechanism for numerical restriction, reaffirming the importance of nationality and ethnic considerations as determinants of our immigration policy. The 1965 amendments rejected these principles, substituting a system of priorities based primarily on reunification of families and needed skills.

It was not the intent of the 1965 legislation to significantly increase the number of immigrants who would be admissible. Throughout the 1965 debates, it was emphasized that the repeal of the national origins quota system as the basis for numerical restriction, not the elimination of numerical restriction itself, was the primary object of the legislation. Quoting from Senator Edward M. Kennedy, floor manager during the debates:

> This bill is not concerned with increasing immigration to this country, nor will it lower any of the high standards we apply in selection of immigrants. The basic change it makes is the elimination of the national origins quota system, in line with the recommendations of the last four Presidents of the United States, and Members of Congress from both parties.[3]

Far from diminishing the importance of the concept of numerical restriction as part of our immigration policy, the 1965 Act in its final form imposed an annual ceiling of 120,000 on Western Hemisphere immigration, which had previously been numerically unrestricted.

The repeal of the national origins quota system had, as Senator Kennedy noted during the debate, been urged by four successive Presidents, beginning with President Truman's impassioned veto message. In an article published the following year, Senator Kennedy pointed out "that a truly concerted effort" to eliminate the quota system "began with the work of President Truman's Commission on Immigration and Naturalization and its historic report, *Whom We Shall Welcome*." [4] However, the system remained essentially unbudgeable

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[1] Public Law 89–236 : 79 Stat. 911.
[2] Harper (1975), p. 38.
[3] Congressional Record. September 17, 1965 : 24225.
[4] Kennedy. Annals, 1966, p. 138.

throughout the fifties. The primary option open to its opponents were end-runs around the system in the form of temporary special programs for the admission of refugees, and to relieve preference backlogs. These programs, combined with increasingly extensive "tinkering with the machinery" of the 1952 Act, constituted the legislative history of our immigration policy between 1952 and 1965.

Supporters of the McCarran-Walter Act viewed this succession of special programs, in combination with the nonquota provisions of the 1952 Act itself, as major factors leading to the final demise of the national origin quota system. Noting that "almost half a million immigrants were permitted to come in as special exceptions to the national-origins formula"[5] during 1953–64, Marion T. Bennett observed:

> Whether by design or circumstance, Congress had, in a 12-year period, by legislative exception to the McCarran-Walter Act of 1952, abandoned the national-origins quota selection system without repealing it outright. It was dead. Its obituary was in the statute books, and its life's failures were delineated in the statistics of the Immigration and Naturalization Service on immigrant admissions for 36 years. It remained only for a successor system of immigrant selection to be identified by formal public law.[6]

The House report on the 1965 legislation made a related observation, as follows:

> The national origins system has failed to maintain the ethnic balance of the American population as it was designed and intended since the nations favored with the high quotas have left their quotas largely unused. Immigration statistics establish that only one of every three immigrants, during the last two decades, actually was admitted to the United States as a quota immigrant under the national origins system.[7]

In addition to this perceived ineffectiveness of the national origins quota system, the circumstances which led to its repeal in 1965 were a complex combination of changing public perceptions and values, politics, and legislative compromise. Public support for the repeal of the national origins quota system reflected genuine changes in public attitudes toward race and national origins. The 1965 immigration legislation was as much a product of the mid-sixties, and the heavily Democratic 89th Congress which also produced major civil rights legislation, as the 1952 Act was a product of the Cold War period of the early 1950's. Senator Edward Kennedy, the Senate floor leader for the 1965 immigration amendments, analyzed the question "as to why Congress acted in 1965" as follows:

> There is little doubt that of key importance was the unusual parliamentary situation in Congress, where the large Democratic majority was generally responsive to the spirit, if not the letter, of the administration's proposal. Republican leaders were also ready to act on the issue. Moreover, in

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[5] Marion T. Bennett, "The Immigration and Nationality (McCarran-Walter) Act of 1952, as Amended to 1965," The Annals of the American Academy of Political and Social Science, vol. 367, September 1966, p. 134.

[6] Ibid., p. 136.

[7] H. Rept. No. 745, 89th Cong., 1st sess., Aug. 6, 1965, p. 11.

the Judiciary Committees of both Houses, the balance of power lay with those who long worked for reform, or who readily recognized the need for changes in policy governing the admission of immigrants. And in the executive branch, for the first time in more than a decade, the White House, under both President Kennedy and President Johnson, was deeply committed to basic reform and actively mobilized its forces to see it through.

The legislative history of the bill, especially the drawing of a consensus which, in effect, neutralized any significant opposition both within and without the Congress, generated an atmosphere receptive to reform which was consonant with changing attitudes among our citizens on questions of race and national origin. And not to be forgotten in any list of reasons is the tremendous effort put forth by the several private organizations, whose many years of work throughout the country were helping to bring the hope of reform into reality.[8]

As Senator Kennedy notes, the compromise and accommodation which went on throughout the processing of the legislation was of considerable importance in neutralizing the opposition. In its final form, the bill contained several key provisions—specifically, the Western Hemisphere ceiling, and the labor certification provision—which made the bill acceptable to those who feared increased immigration and adverse competition from immigrants in the labor market. Without question, these amendments were essential to the bill's final enactment.

The imposition of a ceiling on Western Hemisphere immigration represented a departure from past immigration policy that was second in importance only to the repeal of the national origins quota system. The ceiling was highly controversial and the background leading to its adoption is discussed briefly below.

The inclusion of a numerical restriction on Western Hemisphere immigration in the 1965 amendments was the result of a growing concern that immigration would increase significantly as a result of population pressure in Latin America, combined with political considerations relating to the passage of the legislation. The political situation at the time is described as follows in a House Judiciary Committee report:

> To a considerable extent, passage of the provision for a ceiling on Western Hemisphere immigration came about because a sufficient number of those opposed to it agreed to accept it as the price that had to be paid in order to ensure passage of legislation abolishing the national origins quota system which dated back to the 1920's. This latter goal was the primary purpose of the 1965 legislation since its inception, and this emphasis accounts in large part for the very limited consideration given to the actual implementation of the Western Hemisphere ceiling during the 1965 debate.[9]

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[8] Kennedy, Annals, 1966, p 149.
[9] H. Rept. 94–1553, 1976, p 2

However, the final inclusion of the ceiling in the enacted bill was not simply a quid pro quo in exchange for abolishment of the national origins quota system. The debate for and against the ceiling turned basically on the issue of how many more immigrants would be entering this country, on the one hand, versus foreign policy considerations on the other. There is considerable evidence that the majority in the Congress, as well as the American public, were in favor of restricting rather than liberalizing immigration, and felt that a ceiling on Western Hemisphere immigration was thus necessary. A Harris poll, cited in the Washington Post on May 31, 1965, indicated that those polled were against allowing more people in the United States by a margin of 2 to 1.[10]

The argument in favor of a quota on Western Hemisphere immigration given the most weight was population pressure. It was noted in the "Additional Views" appended to the House Judiciary Committee report on the 1965 legislation that:

> The most compelling reason for placing a numerical ceiling upon the Western Hemisphere relates to the worldwide population explosion and the possibility of a sharp increase in immigration from Western Hemisphere countries. Testimony before the Judiciary Committee identified Latin America as the area of greatest future population growth.[11]

In opposition, the Johnson administration was strongly against the imposition of a ceiling on foreign policy grounds. The argument that such a ceiling would, in the words of Representative Emanuel Celler, "muddy the waters of foreign affairs," [12] combined with support for the administration in its judgment on the conduct of foreign policy, formed the basis for the case against a numerical ceiling on Western Hemisphere immigration.

As enacted, the 1965 amendments provided for a ceiling of 120,000 on Western Hemisphere immigration to go into effect July 1, 1968 "unless legislation inconsistent herewith" was enacted. At the same time, the 1965 Act created a Select Commission on Western Hemisphere Immigration which was instructed to recommend "whether, and if so how, numerical limitations should be imposed upon immigration to the United States from the nations of the Western Hemisphere."

The Select Commission had serious reservations about the ceiling, and recommended that the effective date be postponed for a year in order to permit further study. This recommendation was not acted on, and the ceiling went into effect on July 1, 1968.

Legislative History of the 1965 Amendments

The legislative history of the Immigration and Nationality Act Amendments of 1965 is complex, convoluted, and in some respects, controversial, primarily because a clear consensus was not initially present among the major parties involved. The following is intended only as a brief summary of the key legislative events.

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[10] Immigration, Hearings before the Subcommittee on Immigration and Naturalization of the Committee on the Judiciary, Senate. 89th Cong., 1st sess., 1965, Part 2, pp. 666–667.
[11] H. Rept. 745, 89th Cong., 1st sess., 1965, p. 48.
[12] Congressional Record [daily ed.], Aug. 25, 1965 : 20955.

Legislative activity leading to the final enactment of Public Law 89–236 began during the first session of the 88th Congress, with President John Kennedy's message to Congress on July 23, 1963 recommending extensive reforms in the immigration law, including the abolition of the national origins quota system. Companion bills implementing these recommendations were introduced by Senator Philip Hart (S. 1932) and Representative Emanuel Celler (H.R. 7700). During the second session of the 88th Congress, hearings were held on the Senate side by the Immigration and Nationality Subcommittee of the Senate Judiciary Committee, with Senator Edward Kennedy as acting chairman; and on the House side by Judiciary Subcommittee No. 1, chaired by Representative Michael Feighan. The 88th Congress adjourned without further action on the bills.

On January 13, 1965, at the opening of the 89th Congress, President Lyndon Johnson sent a message to Congress (House Document 52) reaffirming his support of immigration reform. Companion bills, similar to the earlier Kennedy administration bill, were introduced by Senator Philip Hart and 33 cosponsors (S. 500) and by Representative Emanuel Celler (H.R. 2580). The Senate Judiciary Subcommittee on Immigration and Nationality, again with Senator Kennedy as acting chairman, began open hearings on February 10, 1965 and concluded them on August 3, with a total of 56 witnesses testifying before the subcommittee. House hearings, held by Judiciary Subcommittee No. 1 under the chairmanship of Representative Feighan, began March 3 and ended June 1, 1965.

On August 6, the full House Judiciary Committee favorably reported H.R. 2580, with amendments (H. Rept. 745). While the amended version of H.R. 2580 abolished the national origins quota system and retained non-quota status for Western Hemisphere countries, it differed substantially from the administration bill, reflecting the influence of a substitute bill, H.R. 8662, introduced by Subcommittee Chairman Michael Feighan June 1, 1965. The reported bill passed the House August 25 after 2 days of debate by a roll call vote of 318 to 95. An amendment offered by Representative Clark MacGregor (R.–Minn.) which would have placed an annual ceiling of 115,000 on Western Hemisphere immigration was narrowly defeated after a heated floor debate. Except for three minor amendments, the bill as enacted by the House and sent to the Senate was the same one reported by the House Judiciary Committee.

The full Senate Judiciary Committee reported H.R. 2580 to the Senate floor September 15, 1965 (S. Rept. 748). It differed from the House-passed bill most significantly in the inclusion of an amendment offered in committee by Senator Sam Ervin (D.–N.C.) and strongly supported by Senator Everett Dirksen (R.–Ill.), setting a ceiling of 120,000 on annual Western Hemisphere immigration beginning July 1, 1968 unless legislation providing otherwise was enacted by Congress before then. A Select Commission on Western Hemisphere Immigration was also created, with instructions to study the subject in detail and report to Congress with recommendations in January, 1968. The bill was debated on the Senate floor September 17, 20, 21, and 22, and passed by a roll call vote of 76 to 18 with no amendments adopted on the floor.

A conference was requested by the Senate to reconcile differences in the House and Senate-passed versions of the bill, most notably the Western Hemisphere ceiling. The ceiling was retained, and the Conference report was submitted September 29, 1965 (H. Rept. 1101). It was agreed to by the Senate September 30 by a voice vote, and by the House by a roll call vote of 320–69.

H.R. 2580, as amended, was signed into law as Public Law 89–236 by President Lyndon Johnson in a ceremony at the foot of the Statue of Liberty on October 3, 1965. President Johnson said that it was "one of the most important acts of this Congress and of this administration. . . . This bill says simply that from this day forth those wishing to immigrate to America shall be admitted on the basis of their skills and their close relationship to those already here." [13]

Summary of the Major Provisions of the 1965 Amendments

In the process of changing the system for the numerical control of immigration, the 1965 amendments changed some of the basic nomenclature of the Immigration and Nationality Act. The basic distinction between immigrants and nonimmigrants was retained under the amended law. Immigrants are those aliens admitted for permanent residence, as opposed to the different classes of nonimmigrants who are granted temporary admission (section 101(a)(15)). Previously, however, immigrants had been classified as either "quota immigrants" or "nonquota immigrants," designating respectively those aliens admitted within or outside of the numerical restrictions of the quota system. The word "quota" was dropped under the 1965 amendments. Those aliens entering under the Eastern Hemisphere preference system were classified as "immigrants." Those aliens previously classified as "nonquota immigrants" were subsumed under two new categories, "special immigrants" and "immediate relatives," the latter including the spouses and children of U.S. citizens, and the parents of U.S. citizens who are 21 or over.

The 1965 amendments provided that, exclusive of "special immigrants" and numerically exempt "immediate relatives," the number of aliens who may be issued immigrant visas annually was not to exceed 170,000. Since immigrants from the Western Hemisphere, classified as special immigrants, were restricted as of July 1, 1968 to 120,000 visas annually, this meant that the 1965 amendments provided for an annual total of 290,000 visas, under two separate ceilings, beginning in fiscal year 1968.

The total annual immigration quota for 1965 under the 1952 Act had been 158,561 visas for Eastern Hemisphere countries. Immigrants from Western Hemisphere countries were classified as "nonquota immigrants" and could enter without numercal restriction. However, the countries with the largest quotas, notably the United Kingdom and Ireland, did not use their full allotment of quota numbers, which were nontransferable. As an example, in 1964, Great Britain used only 30,560 of its annual quota of 65,361, resulting in a loss of about 35,000 visa numbers that year. Italy, in contrast, had had an annual

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[13] Signing of the Immigration bill, the President's remarks at the ceremony on Liberty Island, with his offer of asylum for Cuban refugees, Oct. 3, 1965. Weekly Compilation of Presidential Documents, Oct. 11, 1965, pp. 364–365.

quota of 5,666 and a waiting list of at the beginning of 1964 of approximately 250,000.

A key amendment of the 1965 Act was the provision 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. . . ." This provision abolished the Asia-Pacific triangle as well as other provisions of the law which had discriminated against aliens because of their birthplace or ancestry. Under the controversial Asia-Pacific triangle provisions, any alien whose ancestry was one-half or more Oriental was not charged to his country of birth, as was normally the case, but to one of the quotas of designated areas in Asia or the Pacific, most of which were limited to 100.

Most of the provisions of the Act went into effect on December 1, 1965. However, the complete abolition of the national origins quota system and the ceiling on Western Hemisphere immigration did not become effective until July 1, 1968.

During the transition period, Western Hemisphere immigration continued to be numerically unrestricted. Eastern Hemisphere immigration continued to be regulated by the national origins quota system, but with an important difference. The unused quota numbers of each prior year during the 2½-year transition period were placed in a pool and redistributed to preference immigrants in countries with oversubscribed quotas.

Beginning on July 1, 1968, immigrants entering from countries in the Eastern Hemisphere were subject to an annual ceiling of 170,000, and a per country limit of 20,000. Within these numerical limitations, visas were available on a first-come, first-served basis under a newly defined seven category preference system. The major difference between the new preference system, which was slightly altered by amendments in 1976, and the previous one was the reversal in emphasis from attracting needed professional and skilled labor to reuniting families.

Refugees, included as the seventh preference category, differ from other immigrants in that they are granted "conditional entry," with an opportunity to obtain permanent resident status after 2 years. The definition of "refugee" included those fleeing from Communist-dominated countries or the Middle East because of persecution, and the victims of a "catastrophic natural calamity" in any Eastern Hemisphere country.

The 1965 Act provided that Western Hemisphere immigration would be limited to 120,000 annually beginning June 30, 1968, unless legislation providing otherwise was enacted prior to that time. It also provided for the establishment of a 15-member Select Commission on Western Hemisphere Immigration, and outlined its composition and areas of study. The Commission was instructed to make a first report to the President and Congress by July 1, 1967 and a final report by January 15, 1968, including recommendations regarding the numerical limitation. No provision was made for the application of the preference system or 20,000 per country limit to the Western Hemisphere. Consequently, when the 120,000 ceiling went into effect, immigrant visas became available on a first-come, first-served basis subject only the exclusionary restrictions, including the labor certification provision.

The labor certification provision, section 212(a)(14) of the Immigration and Nationality Act, was revised by one of the more important of the 1965 amendments to give the Secretary of Labor more power to protect the American labor market from competition resulting from immigration. Under the law as amended, aliens cannot enter this country to perform skilled or unskilled labor unless the Secretary of Labor certifies that there is a shortage of similar workers at the time of their application and at the place where they will be employed, and that their employment will not adversely affect the wages and working conditions of U.S. citizens who are similarly employed. Prior to the amendment, the legislation excluded aliens only if the Secretary of Labor certified that there was *not* a labor shortage and that their entry *would* adversely affect wages and working conditions in this country. The difference was summed up as follows by a representative of the Labor Department. "In the 1952 Act, the alien could enter unless the Secretary of Labor closed the door. Under the 1965 statute, the door is closed to the alien, unless the Secretary of Labor opens it." The provision applied to all Western Hemisphere "special immigrants" other than the parents, spouses or children of U.S. citizens and permanent resident aliens, and to third and sixth preference and nonpreference immigrants.

Cuban Refugees

The other major issue relating to immigration during this period was the admission and status of Cuban refugees. The number of refugees increased dramatically with the Cuban airlift program, announced by President Johnson on October 3, 1965. This followed Fidel Castro's announcements of September 28 and October 1, 1965 that Cubans who wished to leave could do so. President Johnson told the people of Cuba that those who sought refuge here would find it, and he directed the Departments of State, Justice, and Health, Education and Welfare "to immediately make all necessary arrangements to permit those in Cuba who seek freedom to make an orderly entry into the United States of America." [14]

This was followed on November 6, 1965 by the President's announcement of the exchange of diplomatic notes by the Cuban Foreign Ministry and the Swiss Embassy in Havana, which represented U.S. interests in Cuba, constituting a memorandum of understanding regarding procedures and means for the movement of Cuban refugees to the United States.[15]

The legal basis for the Cuban airlift rested in the power granted to the Attorney General under the Immigration and Nationality Act of 1952 to temporarily parole into the United States aliens seeking admission. Quoting from the 1968 report of the Select Commission on Western Hemisphere Immigration:

> The Cuban airlift program represents an administrative exercise of the parole feature of the immigration law. Under it, the number of refugees who may come to the United

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[14] Ibid., p. 366.
[15] Weekly Compilation of Presidential Documents, Nov. 15, 1965, pp. 471–474.

> States from Cuba is unlimited and, apparently, the President plans to continue this unrestricted humanitarian admission program.[16]

Public Law 89–732, approved November 2, 1966,[17] was enacted in response to the problem posed by the growing number of Cuban refugees who were unable to adjust their status to that of alien admitted for permanent residence without first leaving the country and applying for readmission on an immigrant basis. Public Law 89–732 authorized the Attorney General, upon application, to adjust the status of a Cuban refugee who arrived here after January 1, 1959 to that of permanent resident alien after he was physically present in this country for 2 years. Refugees who adjusted their status under the provisions of this Act were counted against the overall annual ceiling of 120,000 on Western Hemisphere immigration until 1976, an action subsequently declared illegal by a U.S. district court.

Report of the Select Commission on Western Hemisphere Immigration

The Western Hemisphere ceiling and the chargeability of Cuban refugees to that ceiling were the two major issues dealt with by the Select Commission on Western Hemisphere in its report submitted in January 1968. As provided by the 1965 legislation, the Select Commission consisted of five Senate appointees, five House appointees, and five Presidential appointees. The latter included the chairman, Richard M. Scammon, the vice president of the Governmental Affairs Institute; Leo Cherne, also from the private sector; and representatives from the Departments of State, Labor, and Justice.

In what was intended as an interim report, the Commission majority made two recommendations, neither of which was implemented. The first recommendation read as follows:

> The Commission is not able to make a final, definitive recommendation with respect to the imposition of an annual ceiling of 120,000 on Western Hemisphere immigration. While the Commission majority favors some type of immigration limitation in the New World as in the Old, implementation of the labor certification provisions of our new legislation is as yet insufficiently advanced to permit a meaningful judgment on the role of this device in the general limitation of immigration. With this situation in mind, the Commission recommends that the effective date for the imposition of the 120,000 ceiling on Western Hemisphere immigration be extended from July 1, 1968, to July 1, 1969.[18]

In the accompanying comments, it was noted that while the 1965 Act had caused "little adverse hemispheric reaction," this may be due to the fact that the ceiling had not yet gone into effect. Quoting further, "our embassies have reported that, in time, a numerical ceiling could lead to waiting lists and visa issuance delays similar to those in parts

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[16] U.S. Select Commission on Western Hemisphere Immigration, report, January 1968, p. 20.
[17] 80 Stat. 1161.
[18] Report of the Select Commission on Western Hemisphere Immigration (1968), p. 9.

of the Eastern Hemisphere and have indicated that some general ill will could result." [19]

In addition to recommending that the effective date for the ceiling be postponed for a year, the Commission also recommended that the date for the filing of the final report be extended from January 1968 to January 1969. Legislation implementing both of these recommendations was introduced by House Judiciary Committee Chairman Emanuel Celler and passed by the House. However, no action was taken by the Senate, with the result that the life of the Select Commission was not extended, and the Western Hemisphere ceiling went into effect on July 1, 1968.

The second recommendation of the Commission majority read as follows:

> In the event a ceiling of 120,000 on Western Hemisphere immigration does become effective July 1, 1968, the Commission recommends that no national origins quotas be adopted; than an annual maximum limitation of no more than 40,000 per country be instituted, and that Cuban refugees on parole in this country not be counted as a part of the ceilings at such time as they adjust their status from parolee to immigrant.[20]

The recommendation against adopting national origin quotas for the Western Hemisphere was not controversial, and no such quotas have been proposed. The other two recommendations were not implemented at that time.

Other Legislation of the 89th and 90th Congresses, 1965–68

Other immigration legislation enacted during the 89th Congress amended the Immigration and Nationality Act to include the Canal Zone within the definition of the term "United States" for the purposes of section 341, thereby authorizing the Attorney General to issue certificates of citizenship in the Canal Zone.[21] The Act of November 6, 1966 [22] amended the naturalization provisions of the Immigration and Nationality Act to provide that time spent abroad by U.S. citizens (or their dependent children) in the employ of the U.S. Government or certain international organizations could be treated as physical presence in the United States for the purpose of transmitting U.S. citizenship to children born abroad.

Legislation enacted during the 90th Congress amended the naturalization provisions of the Immigration and Nationality Act to permit naturalization for certain employees of U.S. organizations abroad engaged in disseminating information which significantly promotes U.S. interests; [23] to provide for the expeditious naturalization of the surviving spouse of a U.S. citizen who dies while serving in active duty status in the U.S. Armed Forces; [24] and to provide for the

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[19] Ibid., p. 11.
[20] Ibid., p. 12.
[21] Act of Nov. 2, 1966, Public Law 89–710; 80 Stat. 1104.
[22] Public Law 89–770; 80 Stat. 1322.
[23] Act of Dec. 18, 1967, Public Law 90–215; 81 Stat. 661.
[24] Act of June 29, 1968, Public Law 90–369; 82 Stat. 279.

naturalization of persons who have served in active-duty status in the U.S. Armed Forces during the Vietnam hostilities, or in other periods of military hostilities.[25] The Act of October 21, 1968[26] amended the Immigration and Nationality Act to eliminate the statutory prescription of certain fees.

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[25] Act of Oct. 24, 1968, Public Law 90–633; 82 Stat. 1343.
[26] Public Law 90–609; Stat. 1199.

VI. WESTERN HEMISPHERE REFORM, A WORLDWIDE CEILING, AND OTHER IMMIGRATION LEGISLATION, 1969–78

During the decade since the 1965 amendments took full effect in 1968, the three most important issues in immigration policy have been the regulation of immigration from the Western Hemisphere, illegal undocumented aliens, and refugees, listed in the chronological order in which they emerged as national issues.

By the end of the 95th Congress in December 1978, only one of them had been dealt with by the enactment of remedial legislation. This was the regulation of Western Hemisphere immigration, a two-step process culminating in the enactment of legislation in 1978 establishing a single worldwide ceiling with a single preference system. This legislation, as well as other immigration legislation enacted during the past decade, is discussed below. The issues of illegal or undocumented aliens and the admission of Indochinese refugees are discussed in the following and final section.

Western Hemisphere Reform and a Worldwide Ceiling

The October 3, 1965 amendments to the Immigration and Nationality Act provided for an annual ceiling of 120,000 on Western Hemisphere immigration which went into effect on July 1, 1968. The principal argument used in support of the controversial ceiling in 1965 was the fear of greatly increased immigration due to the expanding populations of many Western Hemisphere countries. Opponents of the ceiling argued that immigration levels would remain the same, and that the ceiling would be an unnecessary affront to other countries in this hemisphere.

The rapid development of a Western Hemisphere backlog tended to support the arguments of those who had favored the ceiling. During hearings in 1970 before House Judiciary Subcommittee No. 1, the Administrator of the State Department's Bureau of Security and Consular Affairs, Barbara Watson, testified:

> The situation in the Western Hemisphere has evolved rapidly since the imposition of the ceiling 2 years ago. And the results have been so troublesome that serious consideration should now be given to remedial action. In the 2 years since the imposition of the Western Hemisphere limitation, the demand for visa numbers has consistently exceeded the supply. Thus, the waiting period for the issuance of a visa to an alien chargeable to the Western Hemisphere has steadily increased and has now reached 13 months. Furthermore, it appears that the demand will continue to be heavy.

> This situation affects all countries in the Western Hemisphere to some extent, but by far the most seriously affected is Canada.[1]

By the time remedial legislation was enacted in 1976, the backlog amounted to approximately 300,000 persons, or a waiting period of 2½ years.

There was little pressure from either the administration or the Congress to repeal the ceiling after it went into effect. Instead, attention focused on the actual mechanics of the operation of the ceiling, and inequities in the treatment of the two hemispheres under the immigration law.

Beginning in 1970, in the 91st Congress, major omnibus immigration reform bills with the primary purpose of equalizing the provisions of law regulating immigration from the two hemispheres were introduced by key Members of the House and Senate, both for themselves and on behalf of the administration. Initially, the bills provided for a single worldwide ceiling, but during the 93d Congress, the House Judiciary Committee decided that immigration reform should proceed in two stages, and deferred consideration of a unified ceiling until a later date. Quoting from Representative Peter W. Rodino, who at that time was Chairman of Subcommittee No. 1, with jurisdiction over immigration:

> In view of the hardships we are unintentionally causing would-be immigrants from this hemisphere, and the adverse diplomatic effects of the increasingly deteriorating situation . . . it seems possible that further reform of the immigration law will have to be a two-step operation, with the first step being immediate enactment of legislation supplementing the 1965 act by extending its Eastern Hemisphere provisions with only essential modifications to the Western Hemisphere.[2]

Legislation reported by the House Judiciary Committee in the 93d Congress passed the House of Representatives by a vote of 336 to 30 on September 26, 1973. However, the Senate Judiciary Committee, under the chairmanship of Senator Eastland, took no action on the bill. Related but simplified legislation was reported by the House Judiciary Committee in the 94th Congress, passed by the House and Senate, and enacted into law as Public Law 94–571.[3]

The general purpose of the 1976 legislation and the earlier bills from which it had evolved was to complete the work which had inadvertently been left unfinished by the 89th Congress in the enactment of the 1965 legislation, primarily because of its focus on the repeal of the national origins quota system. Quoting from the House report on the 1976 bill:

> However, because the Western Hemisphere has no preference system and no per-country limit, in effect, the United States has two different immigration laws for the two hemispheres. For example, under the provisions determining Eastern Hemisphere immigration, the 22-year-old British citizen

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[1] U.S. House Committee on the Judiciary, Subcommittee No. 1, "Immigration," Hearings, 91st Cong., 2d sess., 1970, p. 154.
[2] Quoted in H. Rept. 93–461, 93d Cong., 1st sess., Sept. 11, 1973, p. 8.
[3] Act of Oct. 20, 1976; 90 Stat. 2703.

daughter of a U.S. citizen or the Spanish wife of a permanent resident alien would receive preferential treatment compared to other intending immigrants whose relational ties were more distant or who were entering under the occupational preferences. However, the 22-year-old Brazilian daughter of a U.S. citizen or the Canadian wife of a permanent resident alien would be required to line up behind the other intending immigrants from this hemisphere—now numbering close to 300,000—and to wait more than 2 years for a visa. In contrast, immigrant visas for the Eastern Hemisphere are immediately available under the relative preference categories for all countries except the Philippines and Korea. . . .

In short, when repealing the national origins quota system, the 89th Congress did not provide an adequate mechanism for implementing the Western Hemisphere ceiling, nor did it sufficiently integrate the ceiling into the immigration law as a whole. The result, completely unforeseen and unintended, has been considerable hardship for intending immigrants from this hemisphere who until 1968 enjoyed the privilege of unrestricted immigration. It is the express purpose of this legislation to correct the situation.[4]

The 1976 amendments extended a slightly modified version of the seven-category preference system, as well as the 20,000 per-country limit, equally to both hemispheres under the separate ceilings of 170,000 for the Eastern Hemisphere and 120,000 for the Western Hemisphere. It also allowed for the adjustment of status of Western Hemisphere natives, and provided that Cuban refugees who adjust their status to that of permanent resident alien will not be charged to the Western Hemisphere ceiling.

The only provision of any real controversy in the Immigration and Nationality Act Amendments of 1976 was the extension of the 20,000 per-country limit to Mexico. Prior to this Act, which went into effect January 1, 1977, immigration from all independent countries in the Western Hemisphere had been numerically limited only by the overall ceiling of 120,000 immigrant visas exclusive of immediate relatives, with no per-county limitations. Mexican immigration under the Western Hemisphere ceiling has exceeded 20,000 every year since the ceiling went into effect on July 1, 1968 (Table 4).

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[4] H. Rept. No. 94–1553, 94th Cong., 2d sess., Sept. 15, 1976, pp. 3–4.

TABLE 4.—MEXICAN IMMIGRATION, FISCAL YEARS 1966–76

	Total	Western Hemisphere ceiling	Eastern Hemisphere ceiling	Numerically exempt
1966	45,163	NA	NA	NA
1967	42,371	NA	NA	NA
1968	43,563	NA	NA	NA
1969	44,623	31,933	18	12,672
1970	44,469	27,044	20	17,405
1971	50,103	31,695	15	18,393
1972	64,040	41,694	13	22,333
1973	70,141	43,510	71	26,560
1974	71,586	45,156	91	26,339
1975	62,205	41,894	83	20,228
1976	57,863	39,314	145	18,404

NA signifies not applicable.

Source: U.S. Immigration and Naturalization Service, annual report, fiscal years 1966–76.

Because of this high demand, there had been support in the past for a higher per-country allocation for the contiguous countries. In fact, this would have affected only Mexico; Canadian immigration under the Western Hemisphere ceiling has never even approached 20,000. However, as the House Judiciary Committee stated, "During the 94th Congress, a general consensus has been reached that the 20,000 per-country limit should be extended to all countries of the world, including those geographically contiguous to the United States." [5] Included in this consensus was the administration, which in previous Congresses had backed a 35,000 allocation for the two contiguous countries. In the 94th Congress, the administration bill (H.R. 10323) included a 20,000 per-country limit for all Western Hemisphere countries, an approach defended as follows in a joint statement by the Departments of Justice and State:

> Based on a review of existing data, a uniform ceiling for each country . . . would be preferable. This would permit an equitable distribution of immigration from throughout the hemisphere and from throughout the world. Problems with illegal immigration will exist whether immigration from Mexico is limited to 20,000 or 35,000 per year or not at all. While permitting 35,000 immigrants a year from Mexico would ease their demand slightly, this would only increase the waiting lists and the demand throughout the rest of the hemisphere.[6]

This position was reversed by President Gerald Ford in his statement on signing the Immigration and Nationality Act Amendments of 1976 into law. At that time he voiced concern "about one aspect of the legislation which has the effect of reducing the legal immigration into this country from Mexico." Quoting further:

> The United States has a very special and historic relationship with our neighbor to the south. In view of this special status we have with the Mexican Government and the Mexican people, I will submit legislation to the Congress in January to increase the immigration quotas for Mexicans desiring to come to the United States.[7]

[5] H. Rept. No. 94–1553 (1976), p. 8.
[6] Quoted in H. Rept. No. 94–1553, p. 9.
[7] Weekly compilation of Presidential Documents, Oct. 25, 1976, p. 1548.

In August 1977, President Jimmy Carter also endorsed legislation pending before the 95th Congress which would increase the numbers of immigrant visas available annually to Mexico and Canada.[8]

Legislation enacted by the 95th Congress, Public Law 95–412,[9] completed the reform process which the 1965 amendments began. The Act of Oct. 5, 1978 established a single worldwide ceiling of 290,000 for the admission of immigrants, combining the existing separate ceilings of 170,000 and 120,000 on the Eastern and Western Hemispheres, respectively. The preference system is applied once under this single worldwide ceiling, as follows: First preference (unmarried sons and daughters of U.S. citizens) : 20 percent of the over-all 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 over-all 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 over-all limitation; fourth preference (married sons and daughters of U.S. citizens) : 10 percent of over-all 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-limitation, plus any numbers not required by the first four preference categories; sixth preference (skilled and unskilled workers in short supply) : 10 percent of over-all limitation; seventh preference (refugees) : 6 percent of over-all limitation; and nonpreference (other immigrants) : numbers not used by the seven preference categories.

Public Law 95–412 originated on the House side as legislation introduced by the Chairman of the House Judiciary Subcommittee on Immigration, Citizenship, and International Law. Quoting from the House report, "While no hearings were held specifically . . . during the 95th Congress, the concept of a worldwide ceiling has been under continuous consideration and review by the subcommittee for a number of years and has been discussed frequently in past hearings relating to Western Hemisphere immigration."[10] The State Department's views on the legislation were set forth in a letter from Assistant Secretary Douglas J. Bennett in part as follows:

> The Department has long believed that this step represented the ultimate goal to be achieved in perfecting the existing system of immigration and we continue to hold that belief. The 1965 and 1976 amendments to the Act were designed to establish the principle of uniformity of opportunity for immigration, without regard to place of birth. These two sets of amendments have had the effect of eliminating distinctions based upon country of birth. The proposal set forth in this bill would have the effect of eliminating the remaining distinction based upon hemisphere of birth and would create a single worldwide system under which all prospective immigrants would compete with all others on equal terms. Clearly, therefore, this proposal represents the ultimate step in eliminating distinctions based upon an individual's place of origin.[11]

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[8] Undocumented Aliens, H. Doc. No. 95–202, 95th Cong., 1st sess., Aug. 4, 1977, p. 6.
[9] Act of Oct. 5, 1978 ; 92 Stat. 907.
[10] H. Rept. No. 95–1206, 95th Cong., 2d sess., May 18, 1978, p. 4.
[11] Ibid., pp. 11–12.

The bill passed the House on July 18, 1978 by a vote of 396–20, and passed the Senate by voice vote on September 20, 1978. Quoting Senator Edward Kennedy:

> The establishment of a worldwide ceiling corrects an anomaly in the law, and is a logical step in consequence of the major immigration reforms Congress enacted in 1965—which I served as floor manager at the time.
>
> In the long-term, this reform makes more flexible the provisions of the preference system, and in the short-run it has the likely effect of allowing the use of more nonpreference visas next year for the backlog in the Western Hemisphere and the use of more conditional entry visas for Indochina refugees—a need that is extraordinarily urgent in Southeast Asia today. All this will not involve, however, any increase in the total annual immigration authorized under the law.[12]

It is of interest that, while the concept of a single worldwide ceiling originally developed in the context of the concern about the inequitable treatment of the Western Hemisphere, the principal issue leading to its enactment in 1978 was the short-run consideration referred to by Senator Kennedy, the freeing up of seventh preference refugee visa numbers unused by the Western Hemisphere for refugees from the Eastern Hemisphere.

Public Law 95–412 also established the Select Commission on Immigration and Refugee Policy, a 16-member body instructed to study and evaluate "existing laws, policies and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and the Congress as are appropriate." Quoting from the House report:

> The committee believes that it is appropriate that the law establishing a worldwide ceiling, and thus completing the process of immigration law reform which began with the enactment of the 1965 amendments, should also create a Select Commission to study immigration law and policy. The purpose of the Commission is to help pave the way for future development in immigration and refugee law and policy in order to meet the specific needs of our time and of the time to come.[13]

Senator Kennedy, now Chairman of the Senate Committee on the Judiciary, indicated the importance he placed upon the formation of the Select Commission as follows:

> Regarding the establishment of a Select Commission on Immigration and Refugee Policy, I have long urged the formation of a high level commission to a take a thorough look at the immigration and nationality statutes. The time is past due for us to approach the revision of our antiquated immigration law like we have approached the revision of the criminal code—to dump the old law, and start anew. To do this, we need to have an objective and thorough study of current

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[12] Congressional Record [daily ed.], Sept. 20, 1978; S15599.
[13] H. Rept. No. 95–1206 (1978), pp. 7–8.

immigration law and practice—a review that is beyond the capacity and scope of a single agency of the executive branch or a committee of Congress, and which must involve a broad spectrum of opinion and groups concerned with immigration reform.[14]

Other Legislation

A brief summary of legislation amending the Immigration and Nationality Act follows in chronological order by Congress. The legislation is primarily of a technical rather than a broad policy nature. It ranges in scope from legislation correcting certain deficiencies in the Immigration and Nationality Act, such as that which evolved from legislation introduced by Representative Elizabeth Holtzman (D.–N.Y.) to remedy the absence of adequate authority for the exclusion and deportation of Nazi war criminals (Public Law 95–549); to housekeeping measures, albeit of a symbolic nature in the case of the repeal of the "coolie trade" laws (Public Law 93–461).

A. 91ST CONGRESS (1969–70)

One of the more important enactments of the past decade was Public Law 91–225, approved April 7, 1970 (84 Stat. 116). It created new nonimmigrant categories for the temporary admission of foreign fiances and fiancees ("K" nonimmigrants), and international executives ("L" nonimmigrants). It also liberalized the terms applying to the entry of nonimmigrant temporary workers of distinguished merit ("H–1" nonimmigrants) by allowing them to enter temporarily to perform services which may be permanent in nature; and limited the applicability of the 2-year foreign residence requirement for "J" nonimmigrant exchange visitors wishing to adjust their status.

Public Law 91–136, approved December 5, 1969 (83 Stat. 283), repealed the provision in the Immigration and Nationality Act that citizenship may not be acquired through naturalization during a period of 60 days preceding a general election. Public Law 91–313, approved July 10, 1970 (84 Stat. 413), was a housekeeping measure amending the Immigration and Nationality Act to provide that cash received as security on bonds be deposited in the Treasury rather than the Postal Savings System, which had been abolished in 1966.

B. 92D AND 93D CONGRESSES (1971–74)

Public Law 92–584, approved October 27, 1972 (86 Stat. 1289), amended the naturalization provisions relating to the retention of derivative U.S. citizenship acquired by a child born abroad to a U.S. citizen parent and an alien parent, by reducing the U.S. residence requirement from 5 to 2 years to occur between the child's 14th and 28th birthday.

Public Law 93–461, approved October 20, 1974 (88 Stat. 1387), repealed the "coolie trade" laws enacted in 1862 and 1871 (8 U.S.C. 331–339) to protect oriental aliens from exploitation. The laws had been of no practical effect for years and, in the words of the House Judiciary Committee report, served as "a disparaging reminder of a past historical period."[15]

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[14] Congressional Record [daily ed.], Sept. 20, 1978: S15599–S15600.
[15] H. Rept. 93–1347, 93d Cong., 2d sess., Sept. 11, 1974, p. 2.

C. 94TH CONGRESS (1975–76)

Public Law 94–484, approved October 12, 1976 (90 Stat. 2243), the Health Professions Educational Assistance Act of 1976, included amendments to the Immigration and Nationality Act tightening the restrictions on foreign medical graduates (FMG's) seeking entry both on a temporary basis, primarily as "J" exchange visitors, and on a permanent basis in cases where labor certification is required. This legislation, which originated in the Senate Labor and Public Welfare Committee, reflected a policy decision essentially outside the immigration field, to the effect that there is no longer an overall shortage of doctors in this country necessitating their importation on a widescale basis. It also reflected a desire to ensure that broadly similar standards would be applied to domestic and foreign medical graduates.

Provisions of Public Law 94–571, approved October 20, 1976 (90 Stat. 2703), relating to the Western Hemisphere are discussed above. Additionally, the law amended the Immigration and Nationality Act to require that, if a country has the maximum total of 20,000 immigrant visas made available to it in a given year, in the following year visas will be made available to that country according to the percentages assigned to each preference category, in order to ensure equitable distribution. It also modified the third and fifth preferences, and amended the labor certification provision to provide that labor certification for teachers and aliens in the arts and sciences could only be denied if there are equally qualified persons in the United States.

D. 95TH CONGRESS (1977–78)

Legislative activity relating to immigration was unusually heavy during the 95th Congress, particularly in comparison to the preceding years of the past decade. The Immigration and Nationality Act was amended by provisions contained in nine different enactments, summarized below in the chronological order of their enactment.

Public Law 95–83, approved August 1, 1977 (91 Stat. 383) included minor amendments to the 1976 provisions of the Immigration and Nationality Act relating to the admission and exclusion of foreign medical graduates (FMG's) as immigrants and nonimmigrants. Public Law 95–105, approved August 17, 1977 (91 Stat. 844), included an amendment changing the name of the State Department's Bureau of Security and Consular Affairs to the Bureau of Consular Affairs, and the title of its top official from Administrator to Assistant Secretary of State for Consular Affairs. The provisions of Public Law 95–412, approved October 5, 1978 (92 Stat. 907), relating to the worldwide ceiling and to the establishment of a Select Commission on Immigration and Refugee Policy are discussed above.

Public Law 95–417, approved October 5, 1978 (92 Stat. 917), removes the statutory prohibition on the approval of more than two petitions filed by one person on behalf of alien adopted children, provides for uniform procedures for the admission to the United States of adopted or prospective adoptive alien children of U.S. citizens, and expedites the naturalization process for certain adopted alien children.

Public Law 95–426, approved October 7, 1978 (92 Stat. 963), includes an amendment relating to travel documentation of aliens and citizens.

Public Law 95–432, approved October 10, 1978 (92 Stat. 1046), eliminates the U.S. residency requirement as a condition of citizenship for children born abroad of one citizen and one noncitizen parent, and repeals certain expatriation sections which have been declared unconstitutional or whose application has been severely limited by U.S. Supreme Court decisions.

Public Law 95–549, approved October 30, 1978 (92 Stat. 2065), in title I amends the Immigration and Nationality Act to exclude from admission into, and to deport from, the United States all aliens who persecuted any person on the basis of race, religion, national origin, or political opinion, under the direction of the Nazi Government of Germany. Title II contains temporary provisions relating to Indochinese refugees.

Public Law 95–579, approved November 2, 1978 (92 Stat. 2474), provides for a waiver of the English literacy requirement for naturalization for anyone over 50 who has been living in the United States for periods totalling 20 years following lawful admission for permanent residence. Public Law 95–582, approved November 2, 1978 (92 Stat. 2479), provides for the seizure and forfeiture of vehicles used to illegally transport aliens into the United States, and is also referred to in the following section.

VII. ILLEGAL IMMIGRATION AND REFUGEES, 1971–79

The pattern of immigration, and the policy considerations relating to it, in the seventies resemble in some respects the fifties following the enactment of the Immigration and Nationality Act of 1952. In both decades, the entry of aliens outside the qualitative and quantitative restrictions of the basic law—both illegally, as undocumented aliens, and legally as refugees—were increasingly the dominant pattern of immigration and the basis for the major issues confronting the Congress. The development and consideration during this period of the issues of illegal or undocumented aliens, beginning in 1971; and the admission of refugees, foreshadowed by hearings and a bill by Senator Kennedy in 1969 (S. 3202, 91st Cong.), and later intensified with the fall of South Vietnam in 1975, are discussed below.

Illegal Immigration

After 10 years of relatively low apprehension figures, INS began reporting rising numbers of apprehended deportable aliens in fiscal year 1965, increasing sharply to 1,033,427 in fiscal year 1977. This is just under the all-time high of 1,089,583 apprehensions in fiscal year 1954.

In 1971, Congress again began struggling with the problem of how best to reduce the numbers and adverse impact of illegal or undocumented aliens, but has not yet arrived at an agreement on how to remedy the problem. In fact, positions appear to have hardened over the passage of time, and the complexity of the issue has become increasingly apparent. Legislation relating to the issue has received only limited action since the passage by wide margins of remedial legislation by the House of Representatives in the 92d and 93d Congresses.

As background, illegal aliens are aliens who have violated the immigration law, hence the designation "illegal." Most enter the United States surreptitiously, bypassing inspection. A smaller number enter the United States legally, generally as nonimmigrants, and violate the terms of their admission, usually by overstaying and accepting unauthorized employment.

The phrase "illegal alien" is a popular expression, rather than a term defined in the Immigration and Nationality Act. It replaced the more colloquial term "wetback" which was widey used throughout the fifties. In the past several years, the term "illegal alien" has increasingly been replaced by "undocumented alien," out of sensitivity to the concerns of the Mexican Government and others who find the designation "illegal alien" objectionable because of the connotation of criminality. Other synonomous terms are illegal immigrant, undocumented worker, and deportable alien.

The number of illegal or undocumented aliens in the United States is not known. INS currently estimates the illegal population as ranging

from 3 to 5 million. The problem is generally agreed to be primarily an economic one, both in its causes and its effects. The primary, though not the only, effects of illegal immigration are believed to occur in the labor market. There is increasing disagreement about the nature and extent of these effects in such areas as the displacement of U.S. workers, and the impact on wages and working conditions. There is also disagreement as to whether the effects are primarily negative. With regard to causes, the major impetus behind the illegal migration to this country is generally seen to be the economic imbalance between the United States and the countries from which the aliens come. They come here primarily to obtain employment and to escape poverty for themselves and their families.

In addition to concern about the economic implications, increasing attention is being focused on the foreign policy implications of the problem, particularly as it relates to Mexico. While immigration was reportedly a major topic of conversation between President Carter and President Portillo in their meeting in Mexico in February 1979, no agreement was apparently reached beyond the willingness of the Mexican Government to regard the problem as one shared by the two countries.

It should be noted that, while illegal or undocumented aliens are widely believed to be predominantly Mexican, evidence shows they are by no means solely from Mexico. As Chairman Peter Rodino of the House Judiciary Committee, and formerly of the subcommittee with jurisdiction over immigration, noted as far back as 1972.

> When we first commenced these hearings it seemed that the problem was focused on the Mexicans and the illegal alien was the Mexican.
>
> It was the judgment of this Member, as the chairman of this committee, that as we went on it wasn't just the Mexican; that illegal aliens come from every area. We must remember that the visitor who overstays is also an illegal alien.[1]

Probably the least controversial aspect of the illegal or undocumented alien issue is that it represents such a widespread violation of the immigration law that the viability of the law is called into question. In the words of the House Judiciary Committee in 1975, "This wholesale violation of the law disrupts the legal and orderly flow of aliens into the United States, and threatens the integrity of our system of immigration." [2]

The provisions of the Immigration and Nationality Act relating specifically to illegal or undocumented aliens are summarized below. The law includes criminal sanctions for illegal entry. Under section 275 (8 U.S.C. 1325), any alien who enters the United States without examination by INS or through misrepresentation or fraud, is guilty of a misdemeanor punishable by up to 6 months' imprisonment and a $500 fine or both. A second offense is a felony, punishable by not more than 2 years' imprisonment and/or a $1,000 fine. Section 276 (8 U.S.C. 1326) provides that an alien who was previously deported

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[1] U.S. House Committee on the Judiciary, Subcommittee No. 1, "Illegal Aliens," part 4, Hearings, 92d Cong., 2d sess., 1972, p. 1117.
[2] H. Rept. 94–506, 94th Cong., 1st sess., Sept. 24, 1975, p. 5.

and who enters without permission from the Attorney General is guilty of a felony punishable by not more than 2 years' imprisonment, and/or a fine of $1,000.

Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) defines the smuggling, harboring, transporting, or encouraging of illegal entrants as felonies, punishable by a fine not exceeding $2,000 and by imprisonment for a term not exceeding 5 years, or both for each alien involved; it also provides for the seizure and forfeiture of vehicles used in illegal transportation. However, the law specifically exempts the employment of illegal entrants from the penalties attached to harboring. Section 274(a)(4) contains the following proviso: "*Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

Aliens who accept employment or otherwise violate the conditions of their admission are subject to deportation under section 241(a)(9) of the Act (8 U.S.C. 1251(a)(9)), which provides that an alien shall be deported if he "was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which its was changed pursuant to section 248, or to comply with the conditions of any such status." Aliens who accept unauthorized employment are also prohibited from adjusting their status from that of nonimmigrant to that of permanent resident alien (immigrant) while remaining in this country (sec. 245(c); 8 U.S.C. 1255c).

Recent Congressional Action

Legislation pertaining to the control of illegal or undocumented aliens has been receiving serious attention by the Congress since 1971. Chief among the legislative approaches to the problem has been the proposed establishment of penalties for the employment of illegal aliens. Particularly in recent years, this approach has appeared frequently in combination with some form of "amnesty," or adjustment to legal status for illegal or undocumented aliens who meet specified eligibility criteria. While these provisions have not been enacted, several others have, as indicated in the discussion of recent Congressional action below.

Extensive investigative and legislative hearings on the problem of illegal aliens were held during the 92d Congress, beginning in 1971, by the House Judiciary Subcommittee with special jurisdiction over immigration matters, then under the chairmanship of Representative Peter W. Rodino, Jr. Quoting from a 1975 House Judiciary Committee report, "The basic conclusion reached by the majority of the members of the subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor and the economy, and to assure the orderly entry of immigrants into this country." [3]

These hearings formed the basis for a series of bills prohibiting the knowing employment of illegal aliens, and establishing a graduated three-step series of administrative, civil, and criminal penalties for employers violating this prohibition. The basic rationale for this approach was explained as follows during the 94th Congress by the House Judiciary Committee:

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[3] Ibid., p. 3.

> The committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.
>
> The committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor.[4]

Legislation embodying this approach received the continuous support of the Nixon and Ford administrations. Bills were passed by the House during the 92d Congress (H.R. 16188) and the 93d Congress (H.R. 982). However, they received no Senate action. Generally speaking, the opponents of these and subsequent related bills have argued that employer penalties would unduly and unjustly burden U.S. employers, would be difficult and expensive to enforce, would lead to discrimination against Mexican-Americans, and would result in the separation of families.

In a related area, legislation was enacted in the 93d Congress[5] amending the Farm Labor Contractor Registration Act of 1963 to establish criminal penalties, in addition to the existing sanction of registration revocation, for certain farm labor contractors who knowingly engage the services of illegal aliens.

A bill identical to the House-passed H.R. 982 of the 93d Congress was introduced at the beginning of the 94th Congress, and hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law. A clean bill, H.R. 8713, was reported to the House on September 24, 1975,[6] but received no further action by the House. H.R. 8713 differed from earlier versions of the House Judiciary illegal alien bill most notably in the inclusion of a provision allowing for the regularization of status ("amnesty") for certain illegal aliens who had been in the country since July 1, 1968, as well as a provision intended to prevent employment discrimination against those of foreign appearance who are legally entitled to work.

A related bill was introduced in the 95th Congress by the chairman of the House Judiciary Subcommittee on Immigration, Citizenship and International Law, Representative Joshua Eilberg, as H.R. 1663, but received no House action. Reportedly this was due to the fact that in the 95th Congress, the House Judiciary Committee had determined to wait for conclusive Senate action before moving again on the increasingly controversial legislation.

The key bill on the Senate side during the 94th Congress was S. 3074, introduced by Sen. James O. Eastland, Chairman of the Senate Judiciary Committee and of its Subcommittee on Immigration and Natu-

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[4] Ibid., p. 6.
[5] Act of Dec. 7, 1974, Public Law 93–518; 88 Stat. 1652.
[6] H. Rept. 94–506 (1975).

ralization. This omnibus immigration legislation included graduated civil penalties for the knowing employment of illegal aliens, an injunctive remedy, and a provision allowing certain aliens who entered the country illegally prior to July 1, 1968, to establish a record of lawful admission. The bill would also have modified the temporary alien worker ("H–2") provision of the Immigration and Nationality Act, to allow for entry under certain conditions for permanent as well as temporary work. The Senate Subcommittee on Immigration and Naturalization held hearings on S. 3074, but did not report it to the full committee. Other major Senate legislation in this area during the 94th Congress was S. 561, introduced by Senator Edward Kennedy, also a Member of the Senate Judiciary Subcommittee on Immigration.

Legislation enacted by the 94th Congress, the Immigration and Nationality Act Amendments of 1976 (Public Law 94–571), includes a provision prohibiting aliens who have entered the country legally as nonimmigrants, and who have subsequently violated the terms of their admission by accepting unauthorized employment, from adjusting their status to that of permanent resident alien while in this country. The provision is aimed at deterring tourists, foreign students, and other nonimmigrants from working illegally.

On January 6, 1975, President Gerald Ford established a Cabinet-level Domestic Council Committee on Illegal Aliens, chaired by Attorney General Edward Levi. In its report dated December 1976, the Domestic Council Committee concluded that the major impact of illegal aliens seemed to be in the labor market, and recommended enactment of legislation establishing penalties for the knowing employment of illegal aliens. The Domestic Council Committee concluded that prevention of illegal entry was by far the most desirable enforcement policy. It also concluded that a massive deportation of illegal aliens presently in the United States would be "both inhumane and impractical," and recommended enactment of a permanent provision allowing for the regularization of status of certain illegal aliens who have been in the United States since July 1, 1968, similar to that contained in S. 3074 of the 94th Congress.

The problem continued to receive extensive study by the Carter administration, principally under the direction of Attorney General Griffin Bell, INS Commissioner Leonel Castillo, and Secretary of Labor Ray Marshall. On Aug. 4, 1977, President Carter submitted a message to the Congress outlining "a set of actions to help markedly reduce the increasing flow of undocumented aliens in this country and to regulate the presence of the millions of undocumented aliens already here" (H. Doc. 95–202). President Carter proposed civil penalties for the employment of illegal aliens, increased Southwest border enforcement, continued cooperation with major source countries, permanent resident status for eligible aliens who had been here continuously since 1970, and a 5-year temporary resident status program for aliens who had been here continuously since Jan. 1. 1977. The President also indicated there would be a review of the existing temporary alien worker program as well as of our overall immigration policy. In the meantime, he indicated support of pending legislation to increase the annual limitation on Mexican and Canadian immigration from 20,000 each to 50,000 allocated on the basis of demand.

The administration bill, entitled the "Alien Adjustment and Employment Act of 1977," was introduced in the House in the 95th Congress as H.R. 9531 by Judiciary Committee Chairman Peter W. Rodino (by request) on Oct. 12, 1977; and in the Senate as S. 2252 by Judiciary Committee Chairman James O. Eastland, with Senators Edward M. Kennedy, Lloyd Bentsen, and Dennis DeConcini as cosponsors (by request), on Oct. 28, 1977. The bill contained provisions implementing the President's proposals relating to employer penalties, and permanent and temporary adjustment of status for certain aliens. INS estimated that 765,000 aliens might be eligible for permanent adjustment on the basis of continuous residence since entry prior to Jan. 1, 1970, and that as many as 5 million might be eligible for temporary adjustment for a 5-year period on the basis of continuous residency since Jan. 1, 1977.

The administration bill did not receive action during the 95th Congress beyond the Senate Judiciary Committee hearings on S. 2252 in May 1978. However, the Immigration and Nationality Act was amended to provide for the seizure and forfeiture of vehicles used to illegally transport aliens into the United States. This amendment was contained in H.R. 12393, enacted as Public Law 95–582. It originated as S. 3093, a bill introduced by Senators Walter Huddleston and Dennis DeConcini, which was reported by the Senate Judiciary Committee (S. Rept. 95–1276) and passed by the Senate with amendments.

Another enactment in the 95th Congress of relevance to the illegal/undocumented aliens issue was Public Law 95–412. As noted in the preceding section, this law created a 16-member Select Commission on Immigration and Refugee Policy, which is to report to the President and the Congress on its administrative and legislative recommendations relating to the admission of immigrants and refugees. The issue of illegal/undocumented aliens is expected to be a major concern of the Commission.

Admission of Indochinese Refugees, 1975–79*

All refugees are admitted to the United States under the authority of the Immigration and Nationality Act, as amended. The law provides specifically for the conditional entry of 17,400 refugees under the seventh preference category, with an opportunity to obtain immigrant status after 2 years residence (sec. 203(a)(7); 8 U.S.C. 1153 (a)(7)). Eligibility for seventh preference entry is limited to refugees who have fled from Communist countries or the Middle East because of persecution or who have been uprooted by natural disasters.

Because of the numerical and other limitations on the seventh preference category, another provision of the Immigration and Nationality Act, the parole provision (sec. 212(d)(5); 8 U.S.C. 1182 (d)(5)), has also been used for the admission of groups of refugees, including Hungarians, Cubans, and Indochinese. The parole provision authorizes the Attorney General to parole any alien into the United States temporarily, at his discretion and under conditions he prescribes, in emergencies or for reasons in the public interest. While parole is not admission for permanent residence, under certain

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*A more detailed treatment of this subject will be contained in a forthcoming Senate Judiciary Committee print.

circumstances a parolee may adjust his status to that of an alien lawfully admitted for permanent residence (i.e., an immigrant).

Additionally, aliens in the United States on a temporary basis may seek asylum here on the grounds that they would be subject to persecution on their return home (8 C.F.R. 108). The Attorney General is also given discretionary authority to withhold the deportation of an alien on persecution grounds (sec. 243(h); 8 U.S.C. 1253(h)).

Since the fall of Vietnam and Cambodia in spring 1975, approximately 200,000 Indochinese refugees have entered the United States as refugees under the provisions summarized above. Because of the limited number of seventh preference conditional entry visas available, most have entered under a series of parole programs authorized by the Attorney General. Legislation has been enacted allowing eligible Indochinese parolees to adjust to permanent resident status.[7]

The authorization of these parole programs has proved to be a very cumbersome procedure. Members of Congress have been concerned with the virtually unlimited discretion open to the Attorney General in authorizing parole. While traditionally, the Attorney General authorizes parole only upon a recommendation of the Secretary of State and after consultation with the Congress, this consultation is not a statutory requirement. Further, Attorney General Griffin Bell has indicated on numerous occasions that he is personally uncomfortable with the use of the parole provision for the mass admission of refugees, a purpose for which it was not originally intended. Concern has also been expressed about the fact that refugees admitted under the parole provision are admitted outside the numerical restrictions of the law, and that in general our refugee policy is not sufficiently integrated with our overall immigration policy.

Resettlement of the Indochinese refugees has been proceeding under the Indochinese refugee program, authorized by the Indochina Migration and Refugee Assistance Act of 1975, as amended. The program is administered by the Department of Health, Education, and Welfare. Program activities include reimbursement to State and local governments for cash and medical assistance provided to the Indochinese refugees, as well as funding for eductional and employment training programs.

The Indochina refugee program was originally scheduled to expire in 1977. It was extended on a 4-year phaseout basis by Public Law 95–145. Subsequently, chiefly because of administrative difficulties and because refugees were still entering the United States in large numbers, the phaseout was suspended by Public Law 95–549, under an amendment worked out by Senator Kennedy and others. The Indochinese refugee program is authorized at the full funding level through the duration of fiscal year 1979.

By the end of the 95th Congress a general consensus had developed that the refugee provisions of the Immigration and Nationality Act were totally inadequate as the basis for a fair and coherent refugee policy. Following the general provisions of a refugee bill introduced by Senator Kennedy in the 94th Congress (S. 2751), as well as legislation introduced on the House side, representatives of the executive

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[7] Act of Oct. 28, 1977, Public Law 95–145; 91 Stat. 1223; and Act of Oct. 5, 1978; Public Law 95–412; 92 Stat. 907.

branch and the Judiciary Committees of Congress consulted in developing a bill to establish a new and more equitable policy governing the admission and treatment of refugees.

On March 9, 1979, a draft administration bill was jointly introduced by Senator Kennedy in the Senate (S. 643), and in the House by Judiciary Committee Chairman Peter Rodino and Representative Elizabeth Holtzman, Chairwoman of the Subcommittee on Immigration, Refugees, and International Law (H.R. 2816). See appendix III for an outline of the provisions of this legislation.

APPENDIX I

BACKGROUND MATERIAL ON THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

On March 22, 1979, President Carter announced the membership of the Select Commission, thereby formally constituting it under the terms of the legislation that created it (Public Law 95-412). The membership of the Select Commission is as follows:

Four Members appointed by the President

Hon. Reubin Askew, Chairman	Former Governor of Florida
Joaquin Otero	Vice President International Railway Clerks Union (AFL-CIO)
Judge Cruz Reynoso	California Court of Appeals
Rose Matsui Ochi	Executive Assistant to Mayor Tom Bradley Los Angeles, California

Senate Members

Edward M. Kennedy	(Mass.)
Dennis DeConcini	(Ariz.)
Charles McC. Mathias, Jr.	(Md.)
Alan K. Simpson	(Wyo.)

House Members

Peter W. Rodino, Jr.	(N. J.)
Elizabeth Holtzman	(N. Y.)
Robert McClory	(Ill.)
Hamilton Fish, Jr.	(N. Y.)

Cabinet Members

Cyrus R. Vance	Secretary of State
Griffin B. Bell	Attorney General
F. Ray Marshall	Secretary of Labor
Joseph A. Califano, Jr.	Secretary of Health, Education and Welfare

[Excerpts from the Congressional Record, Senate, Sept. 20, 1978]

SENATE ACTION ON BILL CREATING SELECT COMMISSION

IMMIGRATION AND NATIONALITY ACT AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

The bill was read a third time.

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

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

[Excerpts from Public Law 95-412, 95th Congress]

An Act

To amend section 201(a), 202(c) and 203(a) of the Immigration and Nationality Act, as amended, and to establish a Select Commission on Immigration and Refugee Policy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201(a) of the Immigration and Nationality Act is amended to read as follows:

. . . SEC. 4. (a) There is established a Select Commission on Immigration and Refugee Policy (hereinafter in this section referred to as the "Commission") which shall be composed of—

(1) four members appointed by the President, one of whom shall be designated by the President as Chairman;

(2) the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Health, Education, and Welfare;

(3) four members appointed by the Speaker of the House of Representatives from the membership of the House Committee on the Judiciary; and

(4) four members appointed by the President pro tempore of the Senate from the membership of the Senate Committee on the Judiciary.

(b)(1) A majority of the Commission shall constitute a quorum for the transaction of its business, but the Commission may provide for the taking of testimony and the reception of evidence at meetings at which there are present not less than four members of the Commission.

(2) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $100 for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses,

5 USC 5701 *et seq.*

when away from his usual place of residence, in accordance with chapter 57 of title 5, United States Code. Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, when away from his usual place of residence, in accordance with chapter 57 of title 5, United States Code.

Study and evaluation. Recommendations to President and Congress.

(c) It shall be the duty of the Commission to study and evaluate, in accordance with subsection (d), existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate.

(d) In particular, the Commission shall—

(1) conduct a study and analysis of the effect of the provisions of the Immigration and Nationality Act (and administrative interpretations thereof) on (A) social, economic, and political conditions in the United States: (B) demographic trends; (C) present and projected unemployment in the United States; and (D) the conduct of foreign policy;

(2) conduct a study and analysis of whether and to what extent the Immigration and Nationality Act should apply to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the other territories and possessions of the United States;

(3) review, and make recommendations with respect to the numerical limitations (and exemptions therefrom) of the Immigration and Nationality Act on the admission of permanent resident aliens;

(4) assess the social, economic, political, and demographic impact of previous refugee programs and review the criteria for, and numerical limitations on, the admission of refugees to the United States;

(5) conduct a comprehensive review of the provisions of the Immigration and Nationality Act and make legislative recommendations to simplify and clarify such provisions; ...

(6) make semiannual reports to each House of Congress during the period before publication of its final report (described in paragraph (7)); and

Report to President and Congress.

(7) make a final report of its findings and recommendations to the President and each House of Congress, which report shall be published not later than September 30, 1980.

Compensation.

(e)(1) The Commission is authorized to appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions without regard to the civil service laws, rules, and regulations. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission, and such detail shall be without interruption or loss of civil service status or privilege.

(2) Staff members of the Committee on the Judiciary of the Senate or of the Committee on the Judiciary of the House of Representatives may be detailed to serve on the staff of the Commission by the chairman of the respective committee. Staff members so detailed shall serve on the staff of the Commission without additional compensation except that they may receive such reimbursement of expenses incurred by them as the Commission may authorize.

(f) The Commission may call upon the head of any Federal department or agency to furnish information and assistance which the Commission deems necessary for the performance of its functions, and the heads of such departments and agencies shall furnish such assistance and information, unless prohibited under law, without reimbursement.

(g) The Commission is authorized to make grants and enter into contracts for the conduct of research and studies which will assist it in performing its duties under this section. Grants and contracts.

(h) The Commission shall cease to exist upon the filing of its final report, except that the Commission may continue to function for up to sixty days thereafter for the purpose of winding up its affairs. Termination.

(i) There is authorized to be appropriated the sum of $700,000 to carry out the provisions of this section. Appropriation authorization.

(j) Notwithstanding any other provision of this Act, no payment, or authorization to make payments or to enter into contracts under this Act, shall be effective except to such extent, or in such amounts, as are provided in advance in appropriations Acts. ...

Approved October 5, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1206 (Comm.. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 124 (1978):
July 18, considered and passed House.
Sept. 20, considered and passed Senate.

APPENDIX II

THE IMMIGRATION AND NATIONALITY ACT -- QUESTIONS AND ANSWERS

The basic United States law governing immigration and naturalization is contained in the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 et seq.). The following questions and answers have been prepared to explain the way in which the Immigration Act as amended through the end of 1978 regulates the entry of aliens for permanent and temporary residence in the United States, and other major provisions of the law. Emphasis is placed on subjects which have been of particular interest to the Congress in recent years.

(1) What is the difference between an alien, an immigrant, and a nonimmigrant, as the terms are used in the Immigration and Nationality Act?

The Immigration and Nationality Act defines an alien as "any person not a citizen or national of the United States," and sets forth the conditions under which aliens may enter this country. A basic distinction is made between immigrants and nonimmigrants. Immigrants are those aliens who are lawfully admitted for permanent residence. Nonimmigrants are granted temporary admission for such purposes as tourism or temporary business trips. Fewer immigrants than nonimmigrants are admitted, and the conditions of their admission are more stringent.

Once they are admitted, immigrants are subject to fewer restrictions than nonimmigrants. For example, while some nonimmigrants are admitted for the express purpose of temporary employment, most nonimmigrants -- including all tourists -- are prohibited from legally accepting employment. Immigrants, on the other hand, may freely accept and change employment. All nonimmigrants are required to leave the country at the end of their allotted time. Immigrants, in contrast, are admitted permanently and may apply for U.S. citizenship through the naturalization process.

(2) What are the numerical restrictions on immigration? How many immigrants are admitted annually?

Numerically restricted immigration is limited to 290,000 a year. Under this worldwide ceiling, each independent country is restricted to a maximum of 20,000 immigrant visas, a number reached in recent years only by Cuba, Korea, Mexico, and the Philippines. Territories and possessions of independent countries are limited to 600 immigrant visas annually.

Additionally, there are several categories of immigrants which are exempt from numerical restrictions. Most exempt entrants are the immediate relatives of U.S. citizens, defined by the law to include the children and spouses of U.S. citizens, and the parents of U.S. citizens aged 21 or over. Congress has also passed special legislation to allow specific groups such as the Cuban and Indochinese refugees to obtain immigrant status outside the numerical limits.

Statistics follow on the number of immigrants admitted over the ten-year period fiscal 1968-1977:

1968 ... 454,448
1969 ... 358,579
1970 ... 373,326
1971 ... 370,478
1972 ... 384,685
1973 ... 400,063
1974 ... 394,861
1975 ... 386,194
1976 ... 398,613
1976, TQ 103,676
1977 ... 462,315

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(3) What is the preference system, and how does it work?

Immigrant visas available under the worldwide ceiling of 290,000 are distributed according to a seven-category preference system which gives priority to family members, those with needed skills, and refugees, as follows:

> First preference (unmarried sons and daughters of U.S. citizens): 20 percent of the over-all 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 over-all 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 over-all limitation;
>
> Fourth preference (married sons and daughters of U.S. citizens): 10 percent of over-all 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 over-all limitation, plus any numbers not required by the first four preference categories;
>
> Sixth preference (skilled and unskilled workers in short supply): 10 percent of over-all limitation;
>
> Seventh preference (refugees): 6 percent of over-all limitation;
>
> Nonpreference (other immigrants): numbers not used by the seven preference categories.

Immigrant visas are made available under the preference system to the various countries on a first-come, first-served basis, not to exceed 20,000 per country a year. However, if a country has the maximum total of 20,000 made available to it in a given year, in the following year visas will be

made available to that country according to the percentages assigned each preference category, in order to insure equitable distribution.

(4) What are the different categories of nonimmigrants, and how many are admitted?

Nonimmigrants are aliens admitted for a specified period of time and for a specific purpose, and all are required to leave at the end of their authorized stay. The Immigration and Nationality Act defines 12 different categories of nonimmigrants, as follows: (A) officials of foreign governments, (B) temporary visitors for business or pleasure (tourists), (C) aliens in transit through the United States, (D) alien crewmen, (E) treaty aliens, (F) alien students, (G) international organization aliens, (H) temporary workers, (I) representatives of foreign information media, (J) exchange visitors, (K) fiancees and finances of U.S. citizens, and (L) intracompany transferees.

By far the greatest number of nonimmigrants enter as tourists. Of the 8,036,916 nonimmigrants admitted in fiscal year year 1977, 5,697,318 were tourists, or temporary visitors for pleasure ("B-2" nonimmigrant visa classification), and 684,118 were temporary visitors for business ("B-1" nonimmigrant visa classification). Other categories of particular interest in recent years are "F" foreign students, who accounted for 171,004 of the FY 1977 nonimmigrant entries; "H" temporary workers, who accounted for 46,675 FY 1977 entries; and "J" exchange visitors, who accounted for 71,603 FY 1977 entries.

(5) What provision is made for the admission of temporary workers?

The principal nonimmigrant category providing for the entry of temporary alien workers at the request of U.S. employers is the "H" temporary worker category (Sec. 101(a)(15)(H); 8 U.S.C. 1101(a)(15)(H)). It consists of four subsections: (i) workers of distinguished merit and ability, (ii) other temporary workers entering to perform work which is itself temporary in nature, provided similarly skilled U.S. workers are not available ("H-2" workers), (iii) trainees, (iv) and the spouses and children of the above. The "H-2" provision, as it is commonly referred to, is the most widely used, and is administered by the Department of Justice in consultation with the Department of Labor.

The largest temporary workers program operating under the authority of the H-2 provision is the so-called BWI (British West Indies) program, under which seasonal agricultural workers from the Caribbean islands enter, principally for employment on the East Coast as sugar cane cutters and apple pickers. The number of BWI workers admitted annually has been in the general vicinity of 12,000 since 1960, ranging from 9,000 to 15,000. This is a much lower number than was admitted under the Mexican Bracero Program, authorized first by treaty and then by an amendment to the Agricultural Act of 1949 during the period 1943-1964. Annual admissions of seasonal agricultural workers from Mexico under this program exceeded 400,000 during the second half of the 1950s.

(6) How are refugees admitted to the United States?

All refugees are admitted to the United States under the authority of the Immigration and Nationality Act. The law provides specifically for the conditional entry of 17,400 refugees under the seventh preference category, with an opportunity to obtain immigrant status after two years residence (Sec. 203(a)(7); 8 U.S.C. 1153(a)(7)). Eligibility for seventh preference entry is limited to refugees who have fled from Communist countries or the Middle East because of persecution or who have been uprooted by natural disasters.

Because of the numerical and other limitations on the seventh preference category, another provision of the Immigration and Nationality Act, the parole provision (Sec. 212(d)(5); 8 U.S.C. 1182(d)(5)), has also been used for the admission of groups of refugees, including Hungarians, Cubans, and Indochinese. The parole provision authorizes the Attorney General to parole any alien into the United States temporarily, at his discretion and under conditions he prescribes, in emergencies or for reasons in the public interest. While parole is not admission for permanent residence, under certain circumstances a parolee may adjust his status to that of an alien lawfully admitted for permanent residence (i.e., an immigrant).

Additionally, aliens in the United States on a temporary basis may seek asylum here on the grounds that they would be subject to persecution on their return home (8 C.F.R. 108). The Attorney General is also given discretionary authority to withhold the deportation of an alien on persecution grounds (Sec. 243(h); 8 U.S.C. 1253(h)).

(7) What is a commuter alien, or "green-card commuter"?

Commuter aliens, sometimes referred to as "green-card commuters", are aliens who have been admitted as immigrants, for permanent residence, and who live in either Canada or Mexico and commute to the United States for daily or seasonal employment. The number of commuters was reported at the end of FY 1978 at 57,268, of whom 49,290 were Mexican. The card used by the commuter to enable him to pass freely across the U.S. border as an immigrant legally entitled to work in this country is no longer the green border crossing identification card once used, but the alien registration receipt card (Form I-151 or the more recent Form I-551) issued by the U.S. Immigration and Naturalization Service (INS) to immigrants. The legality of the commuter status has been challenged in the courts, but was upheld by the U.S. Supreme Court in Saxbe v. Bustos, 419 U.S. 65 (1974).

(8) What is an illegal or undocumented alien?

Illegal aliens are aliens who have violated the immigration law. The phrase is a popular expression, rather than a term defined in the Immigration and Nationality Act. It generally refers to two categories of immigration law violators. Most illegal aliens enter the United States illegally, bypassing inspection. A smaller number enter the United States legally, usually as nonimmigrants, and violate the terms of their admission, usually by overstaying and accepting unauthorized employment. The term "illegal alien" is disliked by some, partly because of the connotation of criminality. Synonomous terms are undocumented alien, undocumented worker, illegal immigrant, and deportable alien.

The number of illegal or undocumented aliens in the United States is not known. The Immigration and Naturalization Service (INS) currently estimates the illegal population as ranging from three to five million. There were 1,033,427 apprehensions in fiscal year 1977, of which an unknown number were multiple apprehensions of the same people.

(9) What provisions of the Immigration and Nationality Act apply specifically to illegal, or undocumented aliens?

Under section 275 (8 U.S.C. 1325), any alien who enters the United States without examination by INS or through misrepresentation or fraud, is guilty of a misdemeanor punishable by up to six months' imprisonment and/or a $500 fine. A second offense is a felony, punishable by not more than two years' imprisonment and/or a $1,000 fine. Section 276 (8 U.S.C. 1326) provides that an alien who was previously deported and who enters without permission from the Attorney General is guilty of a felony punishable by not more than two years' imprisonment, and/or a fine of $1,000.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324) defines the smuggling, harboring, transporting, or encouraging of illegal entrants as felonies, punishable by a fine not exceeding $2,000 and/or by imprisonment for a term not exceeding five years, for each alien involved; it also provides for the seizure and forfeiture of vehicles used in illegal transportation. However, the law specifically exempts the employment of illegal entrants from the penalties attached to harboring. Section 274(a)(4) contains the following proviso: "Provided, however, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

Aliens who accept employment or otherwise violate the conditions of their admission are subject to deportation under Sec. 241(a)(9) of the Act (8 U.S.C 1251(a)(9)), which provides that an alien shall be deported if he "was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to Sec. 248, or to comply with the conditions of any such status." Aliens who accept unauthorized employment are also prohibited from adjusting their status from that of nonimmigrant to that of permanent resident alien (immigrant) while remaining in this country (Sec. 245(c); 8 U.S.C. 1255c).

(10) What other criteria exist for the admission of aliens, and for their remaining in the United States?

The Immigration and Nationality Act sets forth 33 grounds for exclusion of aliens. All aliens must satisfy admitting officials that they are not excludable under these provisions unless the provisions are waived or otherwise declared inapplicable (e.g., in the case of parole). The Attorney General is given discretionary authority to waive most of the provisions as they apply to nonimmigrants, but relatively few may be waived for immigrants. The grounds for exclusion relate generally to personal qualifications, including health, economic and occupational status, and literacy; misconduct, including criminal behavior, immorality, potentially subversive activities or affiliations, and draft evasion; and formalities in application for entry, including documentary requirements.

The Immigration and Nationality Act also includes a list of 19 grounds for deportation, many of which are related to the grounds for exclusion. The vast majority of deportable aliens are aliens who entered illegally without inspection. Most are granted voluntary departure rather than being prosecuted under the penalty provisions for illegal entry, or undergoing formal deportation procedures.

Three of the grounds for exclusion which have been of particular interest to the Congress recently are those relating to labor certification, the admission of aliens likely to become public charges, and the admission of members or affiliates of the Communist party. These are discussed below.

(11) What is labor certification?

Labor certification refers to Sec. 212(a)(14) (8 U.S.C. 1182(a)(14), one of the 33 grounds for exclusion itemized by the Immigration and Nationality Act. It is limited in applicability to would-be immigrants seeking entry under the occupational preferences (third and sixth), and to aliens seeking to enter as nonpreference immigrants who will be employed in the United States. Aliens seeking to enter as immigrants under these classifications may do so only if the Secretary of Labor certifies that there are not sufficient "able, willing, qualified, and available" U.S. workers, and that the alien's admission will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The purpose of the labor certification provision is to protect U.S. workers from adverse competition from alien labor. It has been criticized on the grounds that it is unduly cumbersome to administer; that it does not

apply to the majority of immigrants who enter as relatives, or to refugees; and that many aliens entering with labor certification change occupations shortly after entry.

(12) What provision is there in the Immigration and Nationality Act to insure that immigrants will be self-supporting, or provided for by relatives, and will not require public assistance?

The Immigration and Nationality Act provides for the exclusion of aliens who are "likely at any time to become public charges" (Sec. 212(a)(15); 8 U.S.C. 1182(a)(15)). It also provides for the deportation of an alien who has become a public charge within five years after entry, unless the reasons for this are affirmatively shown to have arisen after entry (Sec. 241(a)(8); 8 U.S.C. 1251(a)(8)). In order to establish that he is not likely to become a public charge, an alien seeking admission may be required to provide assurance of financial support, in the form of an affidavit of support, from a resident of the United States. However, court decisions have generally established that such affidavits of support are not legally binding on the U.S. resident sponsors. According to various administrative and judicial decisions, in order for an alien to be deportable under the public charge provision, there must be a liability for payment, a demand for payment, and a refusal or omission to pay. These conditions are not generally present in cases where an alien legally participates in a public service or benefit program.

Alien eligibility requirements for participation in the major Federal public assistance programs are set forth in the laws and/or regulations establishing and governing those programs, rather than in the Immigration

and Nationality Act. Aliens lawfully admitted for permanent residence and refugees are eligible for most major public assistance programs, including the Supplemental Security Income (SSI) program, Aid to Families with Dependent Children (AFDC), Medicaid, and the food stamp program. Nonimmigrants and illegal aliens are not eligible for participation in these programs.

(13) May aliens who are members of the Communist Party and affiliated organizations come to the United States?

The Immigration and Nationality Act, in Sec. 212(a)(28) (8 U.S.C. 1182 (a)(28)), provides for the exclusion of aliens who are members of proscribed political organizations, primarily the Communist Party and affiliated groups. This provision may be waived in the case of aliens seeking to enter as nonimmigrants, if such a waiver is sought by the Secretary of State and approved by the Attorney General. An exemption is possible in the case of an alien seeking entry as an immigrant if he shows that his membership was involuntary or qualifies as a defector.

In recent years, waivers for nonimmigrants have been sought and approved in the vast majority of cases. This trend was reinforced by the passage in 1977 of an amendment to the State Department's basic enabling legislation, requiring the Secretary of State to recommend that the Attorney General grant a waiver unless the Secretary determines it would be contrary to the security interests of the United States, and so certifies to the Congress. The Immigration and Nationality Act also provides for the exclusion, without the possibility of a waiver, of any alien believed to be seeking entry to engage in activities which would be prejudicial to the public welfare (Sec. 212 (a)(27); 8 U.S.C. 1182(a)(27)), or who is believed likely to engage in subversive activities after entry (Sec. 212(a)(29); 8 U.S.C 1182(a)(29)).

(13) How does an immigrant become a citizen?

The process whereby an immigrant becomes a citizen is known as naturalization, the subject of title III of the Immigration and Nationality Act. In most cases, an applicant for naturalization must be an alien lawfully admitted for permanent residence (immigrant), who is at least 18, and who has resided in the United States continuously for at least five years. He must also be of good moral character; believe in the principles of the Constitution of the United States; and be able to speak, read, and write simple English, unless exempt because of age and length of residence. There are exceptions to these requirements for special classes, such as children, veterans, and the spouses of U.S. citizens.

(14) What are the principal agencies involved in administering the Immigration and Nationality Act?

Major responsibility for administering the immigration law rests with the U.S. Immigration and Naturalization Service (INS), within the Department of Justice, and the State Department's Bureau of Consular Affairs. State Department activities encompass most of the overseas functions, including the issuance of visas by consular officers. INS inspects all entering aliens at the U.S. border and airports, and issues alien registration receipt cards (Form I-151 or the more recent Form I-551) to immigrants, and the arrival-departure card (Form I-94) to nonimmigrants. Domestic enforcement of immigration laws as well as many of the service functions relating to benefits fall within the jurisdiction of INS, frequently in cooperation with the State Department. Important roles are also played by the Department of Labor,

in employment-related admissions; and by the Department of Health, Education, and Welfare's Public Health Service, in the medical examination of aliens who apply for admission to the U.S.

(15) What have been the major amendments to the Immigration and Nationality Act since its enactment in 1952?

While the structure of the Immigration and Nationality Act has remained basically the same since 1952, the immigration provisions were significantly changed by the Act of October 3, 1965 (P.L. 89-236; 79 Stat. 911). These amendments abolished the 40-year-old national origins quota system as the primary control on U.S. immigration, replacing it with an annual ceiling on Eastern Hemisphere immigration of 170,000 and a 20,000 per country limit. Within those restrictions, immigrant visas were distributed on a first-come, first-served basis according to a seven-category preference system. The 1965 amendments also provided for a ceiling on Western Hemisphere immigration for the first time in our history, limiting total immigration from other countries in this Hemisphere to 120,000 a year.

The Immigration and Nationality Act Amendments of 1976 (P.L. 94-571; 90 Stat. 2703) extended the 20,000 per-country limit and a slightly modified version of the seven-category preference system equally to the Western Hemisphere. The preference system and the per-country limits were applied to the two hemispheres under the separate ceilings of 170,000 for the Eastern Hemisphere, and 120,000 for the Western Hemisphere. Legislation enacted in 1978 (P.L. 95-412; 92 Stat. 907) combined the separate ceilings on the two hemispheres in a single worldwide ceiling of 290,000 with a single preference system.

APPENDIX III

BACKGROUND MATERIAL ON THE REFUGEE ACT OF 1979

On March 9, 1979, legislation was introduced in both the Senate and the House of Representatives to overhaul United States refugee policy and programs. In the Senate the "Refugee Act of 1979" is S. 643, and in the House it is H.R. 2816.

The following is the joint statement issued at the time.

LEGISLATION TO OVERHAUL U. S. REFUGEE POLICY

The Chairmen of the House and Senate Committees on the Judiciary, Congressman Peter Rodino and Senator Edward M. Kennedy, and Chairwoman of the House Subcommittee on Immigration, Refugees, and International Law, Congresswoman Elizabeth Holtzman, today announced they will introduce major legislation next Tuesday to end discriminatory laws regarding the treatment and admission of refugees to the United States.

In a joint statement, they noted the Administration's bill was drafted in consultation with Congress and was formally submitted yesterday by Secretary of State, the Attorney General and the Secretary of Health, Education, and Welfare.

The bill establishes the first comprehensive United States refugee resettlement and assistance program. Briefly, it accomplishes four basic objectives:

First, it repeals the current law's discriminatory treatment of refugees by providing a new definition of a refugee that both recognizes the plight of homeless people all over the world, as well as accords refugee admissions the same immigration status given all other immigrants.

Second, it raises the annual limitation on regular refugee admissions from 17,400 to 50,000. This is accomplished without really increasing overall annual immigration to the United States in recent years.

Third, the bill provides an orderly but flexible procedure to meet emergency refugee situations and any other situations of special concern to the United States, if the resettlement needs of the homeless people involved cannot be met within the regular 50,000 ceiling.

Fourth, it provides for federal support of the refugee resettlement process -- and extends coverage to all refugees entering the Unted States.

Senator Kennedy said,

"For many years, the American people have responded generously and compassionately to the needs of homeless people and I share the view of many that our national policy of welcome to refugees has served our country and traditions well. The basic purpose of the bill we will introduce Tuesday is to update the law -- to help insure greater equity in our treatment of refugees and displaced persons -- and to establish a more orderly procedure for their admission into the United States in reasonable numbers."

Representative Rodino said,

"I am pleased that the Administration has presented to the Congress proposed refugee legislation which I will introduce in the House next Tuesday, along with the Chairwoman of the Subcommittee on Immigration, Refugees, and International Law, Elizabeth Holtzman. This legislation has been long sought by my Committee on the Judiciary and it will establish for the first time in our nation's history a comprehensive and coordinated refugee policy. It will also clearly define Congress' role in establishing that policy and will allow an immediate response to refugee emergencies that arise around the world."

Representative Holtzman said,

"I believe the introduction of this legislation is an important first step in responding to an international problem of staggering proportions. It is also a humanitarian gesture which is long overdue. My Subcommittee on Immigration, Refugees, and International Law has already begun hearings on the refugee issue and will begin promptly to focus on the specifics of the legislation Chairman Rodino and I will introduce Tuesday. Having only recently returned from two weeks in Indochina where I inspected some sixteen facilities housing over 130,000 refugees, I cannot overstate the importance of the United States developing a humane and coherent approach to the problem."

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By Mr. KENNEDY:

S. 643. A bill to amend the Immigration and Nationality Act to revise the procedures for the admission of refugees, to amend the Migration and Refugee Assistance Act of 1962 to establish a more uniform basis for the provision of assistance to refugees, and for other purposes; to the Committee on the Judiciary.

REFUGEE ACT OF 1979

Mr. KENNEDY. Mr. President, I am pleased to introduce today a bill that establishes for the first time a comprehensive U.S. refugee resettlement and assistance program, which concludes a personal goal of mine for many years—reforming the discriminatory and outdated refugee provisions of the Immigration and Nationality Act of 1952.

I am introducing this bill—as jointly submitted by the Secretary of State, the Attorney General, and the Secretary of HEW—not simply by request but with enthusiasm and strong support. It reflects the close working relationship I and others in Congress have had with administration officials in drafting this important legislation. It also reflects the essential elements of a bill (S. 2751) I introduced in the 95th Congress—and in nearly every Congress since 1969—reforming our Nation's refugee policies and practices.

Mr. President, the Immigration Act of 1965, for which I served as floor manager in the Senate, repealed the discriminatory national origins quota system and commenced needed steps to reform basic policy governing one of the oldest themes in our Nation's history.

Since then, while some additional reform measures have been enacted, much more needs to be done. The bill I am introducing today accomplishes one of the most important reforms of our immigration law that has long been needed—the law governing the admission and resettlement of refugees in the United States.

The bill accomplishes four basic objectives:

First, it repeals the current law's discriminatory treatment of refugees by providing a new definition of a refugee that both recognizes the plight of homeless people all over the world, and accords refugee admissions the same immigration status given all other immigrants.

Second, it raises the annual limitation on regular refugee admissions from 17,400 to 50,000. This is accomplished without really increasing overall annual immigration to the United States in recent years.

Third, the bill provides an orderly but flexible procedure to meet emergency refugee situations and any other situations of special concern to the United States, if the resettlement needs of the homeless people involved cannot be met within the regular 50,000 ceiling.

Fourth, it provides for Federal support of the refugee resettlement process—and extends coverage to all refugees entering the United States.

Mr. President, there are several other features of the bill that are important, and which are outlined in the section-by-section analysis I shall ask to be printed in the RECORD.

Hearings on this bill are scheduled to begin tomorrow, March 14, by the Committee on the Judiciary in room 2228, Dirksen Senate Office Building. We will hear testimony from the executive branch, led by former Senator Dick Clark, who is now the President's Coordinator for Refugee Affairs. We will also receive testimony from representatives of the American Council of Voluntary Agencies, representatives of State and local agencies, and others.

Mr. President, over many years, the American people have responded generously and compassionately to the needs of homeless people, and I share the view of many that our national policy of welcome to refugees has served our country and traditions well. The basic purpose of the bill I introduce today is to update the law—and to help insure greater equity in our treatment of refugees and displaced persons and to establish a more orderly procedure for their admission into the United States in reasonable numbers.

Mr. President, I ask unanimous consent that the text of the bill and the section-by-section analysis be printed at this point in the RECORD.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 643

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "Refugee Act of 1979."

TITLE I—PURPOSE

The Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this country of refugees of special concern to the United States, and transitional assistance to refugees in the United States. The Congress further declares that it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.

The objective of this Act is to provide a permanent and systematic procedure for the admission to this country of refugees of special concern to the United States, and to provide comprehensive and uniform provisions for temporary and transitional assistance to those refugees who are admitted.

TITLE II—ADMISSION OF REFUGEES

SEC. 201. (a) Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding after paragraph (41) the following new paragraph:

"(42) The term 'refugee' means any person who is outside any country of his nationality or, in the case of a person having no nationality, is outside any country in which he last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion."

(b) Chapter 1 of Title II of the Immigration and Nationality Act is amended by adding after section 206 (8 U.S.C. 1156) the following new sections:

"ANNUAL ADMISSION OF REFUGEES

"SEC. 207. (a)(1) Subject to the provisions of paragraph (2), the number of refugee admissions granted in any fiscal year shall not exceed 50,000, to be made available in accordance with a determination made by the President regarding the number of admissions to be allocated to each group or class of refugees the President determines to be of special concern to the United States. Prior to the start of the fiscal year, the President shall report to the Committees on the Judiciary of the Senate and the House of Representatives regarding the foreseeable number of refugees who will be in need of resettlement during the fiscal year and the anticipated allocation of refugee admissions during the fiscal year.

"(2) The number of refugees who may be admitted under this section may exceed 50,000 in any fiscal year if the President determines, prior to the beginning of the fiscal year and after consultation by the designated representatives of the President with the Committees on the Judiciary of the Senate and the House of Representatives, that admission of a specific number of refugees in excess of 50,000 is justified by humanitarian concerns or is otherwise in the national interest, based upon the foreseeable number of refugees of special concern to the United States who will be in need of resettlement. These additional admissions shall be allocated among groups or classes of refugees of special concern to the United States in accordance with a determination made by the President. In the course of the consultation provided for in this paragraph, the designated representatives of the President shall furnish the

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Committees on the Judiciary a description of foreseeable numbers of refugees who will be in need of resettlement during the coming fiscal year and an explanation of the reasons for believing that the admission of more than 50,000 refugees of special concern to the United States is in the national interest.

"(3) Subject to the numerical limitation established pursuant to paragraph (1) or (2), the Attorney General may, in his discretion and pursuant to such regulations as he may prescribe, admit for lawful permanent residence any refugee who is not firmly resettled in any foreign country, is within a group or class of refugees determined to be of special concern to the United States, and is admissible as an immigrant under this Act, except for the fact that he does not meet the requirements of paragraphs (14), (15), (20), (21), (25), or (32) of section 212(a).

"(b)(1) Not more than five thousand of the refugee admissions authorized under subsection (a) in any fiscal year may be made available by the Attorney General, in his discretion and under such regulations as he may prescribe, to adjust to that of a lawful permanent resident the status of any alien who—

"(A) makes application for such adjustment;

"(B) has been physically present in the United States for a period of at least two years prior to application for such adjustment; and

"(C) is a refugee, is not firmly resettled in any foreign country, and is admissible as an immigrant under this Act at the time of his examination under this paragraph, except for the requirements of paragraphs (14), (15), (20), (21), (25), or (32) of section 212(a).

"(2) When an alien has been granted adjustment of status to that of a lawful permanent resident under paragraph (1), his spouse and child may also be granted such status, in the discretion of the Attorney General and under such regulations as he may prescribe, if such spouse or child makes application for such status and is admissible as an immigrant except for the fact that he does not satisfy the requirements of paragraphs (14), (15), (20), (21), (25), or (32) of section 212(a).

"(3)(A) Upon approval of an application pursuant to paragraph (1), the Attorney General shall record the alien's admission to the United States for lawful permanent residence as of the date, as established by the alien to the satisfaction of the Attorney General, that he became a refugee in the United States: *Provided*, that such date shall not be more than two years prior to the date of approval of such application.

"(B) Upon approval of an application pursuant to paragraph (2), the admission of the spouse or child of a refugee shall be recorded as of the same date as that of the refugee.

"ADMISSION OF EMERGENCY SITUATION REFUGEES

"SEC. 208. (a) If the President determines, after consultation by the President's designated representatives with the Committees on the Judiciary of the Senate and the House of Representatives, that (1) an unforeseen emergency refugee situation exists; (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest; and (3) that the admission into the United States of these refugees cannot be accomplished under section 207, the President may fix a number of refugees to be admitted into the United States in response to the emergency refugee situation. In the course of the consultation provided for in this subsection, the designated representatives of the President shall furnish the Committees a description of the unforeseen emergency refugee situation, an estimate of the number of refugees to be admitted under this section, and an estimate of the cost of their resettlement.

"(b) The admissions authorized by subsection (a) shall be allocated among groups or classes of refugees of special concern to the United States in accordance with a determination made by the President.

"(c) Subject to the numerical limitation established pursuant to subsection (a), the Attorney General may conditionally admit into the United States, pursuant to such regulations as he may prescribe, any alien who is a refugee within a group or class designated pursuant to subsection (b) and who is not firmly resettled in any foreign country.

"SPOUSES AND CHILDREN OF REFUGEES

"SEC. 209. A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of any alien who qualifies for admission under section 207 or 208 shall, if not otherwise entitled to admission under such section, be entitled to the same admission status as such alien if accompanying, or following to join, such alien, and upon the spouse's or child's admission into the United States, such admission shall be charged against the numerical limitation established in accordance with the section under which the alien qualifies for admission. A spouse or child who is admitted for lawful permanent residence in accordance with this section shall be required to establish admissibility to the United States as an immigrant except for the requirements of paragraphs (14), (15), (20), (25), or (32) of section 212(a).

"GRANTING OF IMMIGRANT STATUS TO EMERGENCY SITUATION REFUGEES

"SEC. 210. (a) Notwithstanding any numerical limitation specified in this Act, any alien who has been admitted into the United States conditionally under section 208 or 209:

"(1) whose admission has not been terminated by the Attorney General pursuant to such regulations as he may prescribe;

"(2) who has not acquired permanent resident status; and

"(3) who has been physically present in the United States for at least two years.

shall, at the end of such two years, return or be returned to the custody of the Service for inspection and examination for admission into the United States as an immigrant in accordance with the provisions of sections 235, 236, and 237.

"(b) Any alien who, pursuant to subsection (a), is found, upon inspection by an immigration officer or after a hearing before a special inquiry officer, to be admissible as an immigrant under this Act at the time of his inspection and examination except for the fact that the alien does not meet the requirements of paragraphs (14), (15), (20), (21), (25), or (32) of section 212(a) shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival."

SEC. 202. Section 211 of the Immigration and Nationality Act (8 U.S.C. 1181) is amended—

(a) by inserting in subsection (a) after the words "Except as provided in subsection (b)" the following: "and subsection (c)"; and

(b) by adding a new subsection (c) at the end thereof to read as follows:

"(c) The provisions of subsection (a) shall not apply to an alien whom the Attorney General admits to the United States for lawful permanent residence under Section 207.".

SEC. 203. (a) Section 201(a) of the Immigration and Nationality Act (8 U.S.C. 1151 (a)) is amended to read as follows:

"SEC. 201. (a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, and aliens who come within the provisions of sections 207, 208, and 209, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand.".

(b) Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended—

(1) by striking out "and the number of conditional entries" in subsection (a);

(2) by striking out "(8)" in subsection (a) and inserting in lieu thereof "(7)";

(3) by striking out "or conditional entries" and "and conditional entries" in subsection (e);

(4) by striking out "20 per centum in subsection (e) (2 and inserting in lieu thereof "26 per centum";

(5) by striking out paragraph (7) of subsection (e);

(6) by striking out "(7)" in paragraph (8) of subsection (e) and inserting in lieu thereof "(6)"; and

(7) by redesignating paragraph (8) of subsection (c) as paragraph (7).

(c) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended—

(1) by striking out "or their conditional entry authorized, as the case may be," in subsection (a);

(2) by striking out "20 per centum" in subsection (a) (2) and inserting in lieu thereof "26 per centum";

(3) by striking out paragraph (7) of subsection (a);

(4) by striking out "and less the number of conditional entries and visas available pursuant to paragraph (7)" in subsection (a)(8);

(5) by striking out "or to conditional entry under paragraphs (1) through (8)" in subsection (a)(9) and inserting in lieu thereof "under paragraphs (1) through (7)";

(6) by redesignating paragraphs (8) and (9) of subsection (a) as paragraphs (7) and (8);

(7) by striking out "(7)" in subsection (d) and inserting in lieu thereof "(6)"; and

(8) by striking out subsections (f), (g), and (h).

(d) Sections 212(a)(14), 212(a)(32), and 244(d) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14), 1182(a)(32), 1254 (d)) are amended by striking out "section 203(a)(8)" and inserting in lieu thereof "section 203(a)(7)".

(e) Subsection (h) of section 243 of the Immigration and Nationality Act (8 U.S.C. 1253) is amended to read as follows:

"(h) The Attorney General is authorized to withhold the deportation or return of any alien (other than an alien described in section 241(a)(19)), subject to such terms and conditions as he may prescribe, to any country where such alien's life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group of political opinion."

(f) Section 5 of the Act of October 5, 1978 (P.L. 95-412) is amended by striking out "September 30, 1980" and inserting in lieu thereof "the effective date of the Refugee Act of 1979."

(g) Any reference in any law to section 203(a)(7) of the Immigration and Nationality Act shall be deemed a reference to section 207.

SEC. 204. Any alien determined to be eligible for admission for lawful permanent residence under section 207(b)(1) of the Immigration and Nationality Act who acquired that status under the provisions of the Immigration and Nationality Act prior to the effective date of this Act may, upon application, have his admission for permanent residence recorded as of the date, as established by the alien to the satisfaction of the Attorney General, that he became a refugee in the United States: *Provided*, That such date shall not be more than two years prior to the date of approval of such application. Upon application, the admission for lawful permanent residence of the spouse

or child of such refugee, if eligible for the lawful permanent residence under section 207(b)(2) of the Immigration and Nationality Act, may be recorded as of the same date as the date recorded for the refugee.

TITLE III—TEMPORARY AND TRANSITIONAL ASSISTANCE TO REFUGEES

SEC. 301. (a) Section 2(b) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(b)) is amended to read as follows:

"(b)(1) There are hereby authorized to be appropriated such amounts as may be necessary from time to time—

"(A) for contributions to the activities of the United Nations High Commissioner for Refugees for assistance to refugees under his mandate or persons in behalf of whom he is exercising his good offices;

"(B) for assistance to or in behalf of refugees designated by the President (by class, group, or designation of their respective countries of origin or areas of residence) when the President determines that such assistance will contribute to the foreign policy interests of the United States;

"(C) for payments to appropriate public or nonprofit, private agencies to aid in the placement, resettlement, and care of refugees;

"(D) for projects and programs to assist adult refugees in gaining skills and education necessary to become employed or otherwise self-reliant, including facility in English, vocational and technical training, professional refresher training and other recertification services, and social and employment services;

"(E) for payments to state and local agencies for projects to provide special educational services (including facility in English) to refugee children in elementary and secondary schools;

"(F) for child welfare services, including foster care maintenance payments and services and health care, furnished in any of the first twenty-four months during any part of which the refugee is in the United States or, in the case of a child who enters the United States unaccompanied by a parent or other close adult relative (as defined by the President), until the month after such child attains age eighteen (or such higher age as the State's child-welfare services plan prescribes for the availability of such services to any other child in that State), if later; and

"(G) for income maintenance and medical assistance, except that if a refugee is eligible for aid or assistance under a State plan approved under part A of title IV or under title XIX of the Social Security Act, or for supplementary security income benefits (including State supplementary payments) under the program established under title XVI of that Act, funds authorized under this subsection shall only be used for the non-Federal share of such aid or assistance, or for such supplementary payments.

"No payment shall be made under paragraph (C), (D), (E), or (G) with respect to aid or services, furnished directly or through a project or program, to a refugee who entered the United States more than twenty-four months prior to receiving such aid or services, other than a Cuban refugee who entered the United States before October 1, 1978.

"(2) As used in this section, the term 'refugee' has the same meaning as that prescribed by paragraph (42) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(42))."

(b) Subsection (a) of this section shall not be considered a law enacted on or after February 7, 1972, for purposes of section 15(a)(1)(A) of the Act of August 1, 1956, as amended (22 U.S.C. 2680(a)(1)(A)).

SEC. 302. Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(c)) is amended by striking out "25,000,000" in paragraph (2) and inserting in lieu thereof "$50,000,000".

TITLE IV—EFFECTIVE DATE

SEC. 401. (a) Except as provided in subsection (b), this Act shall become effective on October 1, 1979.

(b) The repeal of subsections (g) and (h) of section 203 of the Immigration and Nationality Act, made by section 203(c)(8) of this Act, shall not apply with respect to any individual who before the effective date of this Act was granted a conditional entry under section 203(a)(7) of the Immigration and Nationality Act (and under section 202(e)(7) of the Immigration and Nationality Act, if applicable), as in effect immediately before such date, nor shall it apply to any alien paroled into the United States before the effective date of this Act who is eligible for the benefits of section 5 of the Act of October 5, 1978 (P.L. 95-412).

THE PROPOSED REFUGEE ACT OF 1979—MEETING THE NEED FOR A COMPREHENSIVE LONG-TERM POLICY ON REFUGEES

(Prepared by the Department of State)

The basic provisions of the propcsed Refugee Act of 1979 and the need for its prompt enactment into law can best be understood by first reviewing the current state of the law and the problems that have arisen under existing statutory provisions.

Under the present law there are two ways refugees may enter the United States. The first is under section 203(a)(7) of the Immigration and Nationality Act, which provides for the conditional entry of 17,400 persons. These people must be examined by an Immigration Officer in a non-Communist or non-Communist dominated country. They must show that they have fled from a Communist or Communist-dominated country, or a country in the Middle East, and that they fear to return to that country because they have been, or fear they will be, persecuted there on account of race, religion, or political opinion.

The second way refugees may currently enter the United States is under section 212(d)(5) of the Act, which gives the Attorney General discretionary authority to parole, for emergent reasons or reasons deemed strictly in the public interest, any alien applying for admission into the United States. Through a legal fiction, an alien who has been paroled into the United States is deemed to be in the same legal position as an alien who is still at the border seeking admission.

The law as it stands does not work well in many circumstances. The 17,400 conditional entry numbers are always oversubscribed. At the same time, because of the ideological and geographical limitations, many refugees from countries in the Western Hemisphere are precluded from using the conditional entry provision. As a result, the section 212(d)(5) parole authority must be and has been resorted to repeatedly over the past 23 years.

Although portions of the legislative history suggest that the parole power was originally intended for individual cases, it has been used to admit sizeable refugee groups over the years, including the well-known Hungarian, Cuban and Indochinese refugee groups. Though not required by law, a procedure for the exercise of the parole power has developed. This procedure usually is initiated by a recommendation of the Secretary of State, after which the Attorney General consults with appropriate members of the House and Senate Judiciary Committees. Such consultations have been repeated and frequent, most recently with regard to refugees from Indochina, the Soviet Union and South America. In recent years both the Congress and the Executive Branch have become increasingly dissatisfied with this use of the parole power as a sporadic short-term reaction to impending disasters. Thus, the Administration and Congress have seen a need for a comprehensive long-term policy on the admission and resettlement of refugees. Building on Congressional initiatives last session, the proposed Refugee Act of 1979 represents the Administration's views on the most appropriate way to provide such a policy.

The proposed Act defines the term "refugee" in substantial conformity with the definition contained in the United Nations Convention and Protocol Relating to the Status of Refugees, thereby removing the ideological and geographical limitations of the present conditional entry provision. However, because the total number of refugees far exceeds the capacity of the United States to provide resettlement opportunities, the bill provides that refugee admission numbers will be allocated by Presidential determination among groups of refugees who are of special concern to the United States.

The proposed Act has two distinct procedures for the admission of regugees: one for what has become the more or less predictable "normal flow" of refugees each year, another for unforeseen emergency group admissions. The normal flow provision allows the admission of up to 50,000 of special concern anually, with the President to decide on the allocation of the numbers. There is also authority for the President, before the beginning of the fiscal year, to adjust the normal flow limit to a fixed higher number, after consultation with the Congress, should he determine that the higher number is necessary in the national interest based on his review of foreseeable resettlement needs. The authority to use the emergency group admission procedure is also vested in the President. However, the use of this second procedure is limited to unforeseen refugee emergencies, again following consultations with the Congress. Under the group admission provision the President must determine that the higher number is not possible under the normal flow of provisions and is justified by grave humanitarian concerns or is otherwise in the national interest.

The advantages of the two admission procedures in the proposed Act can be readily perceived when compared with existing law. The normal flow provisions will in effect replace the conditional entry procedure. The antiquated ideological and geographical limitations of the conditional enry provision will be eliminated. The unrealistically low 17,400 anual limitation will be replaced by a 50,000 figure which is more in accord with the nation's recent experience. However, the Administration proposal will provide additional, but carefully structured, flexibility by enabling the President to exceed the figure of 50,000 if he specifies the extra numbers needed prior to the beginning of the fiscal year, after consulting with Congress regarding the need for the additional admissions. This latter provision will avoid any situation in which the Executive Branch foresees a need to admit more than 50,000 refugees in the next fiscal year, but because of a rigid numerical limitation must strain the statutory framework by declaring an "emergency" in order to justify admitting the number in excess of 50,000 under the group admission procedures.

The emergency group admission provisions will essentially replace the use of the Attorney General's parole authority to admit large groups of refugees. However, it might be more accurate and descriptive to say that the group admission provisions will be filling a void which the repeated stretching of the parole authority never successfully filled. Under the Administration proposal the United States, for the first time, will have clearly stated statutory procedures and criteria for the emergency group admission of refugees. For the first time the important role of the Congress will be recognized by statute, in that consultation with the cognizant congressional committees will be required before a group admission is authorized. Moreover, the type of information to be

furnished the committees is specified in the draft bill in order to ensure that such consultations are productive. Finally, the use of the group admission procedures will be limited to unforeseen emergencies, as compared to the previous practice of a dire emergency, but simply because they could not be accommodated under the unrealistically low ceiling on conditional entry numbers.

This legislative proposal has a special urgency attached to it because the current parole program for Indochinese refugees expires on May 1, 1979. Without new legislation the continued stopgap use of the parole authority will be required to cope with the increasing flow of refugees of special concern to the United States.[1]

Another significant feature of the proposed legislation is elimination of the two-year conditional status for normal flow refugees. The conditional provision has not effectively served its original purposes of allowing additional time to screen admitted refugees and avoid permanent admission of ineligible aliens. In fact, we have in most instances been able to perform thorough screening before a refugee enters, and virtually no refugees have been returned because they were found ineligible during the two-year review.

At the same time, the conditional status has in many instances impeded a refugee's ability to secure a desired job or otherwise to become a full member of his new community. And the two-year review has generated paperwork far out of proportion to the benefits of the added screening. For these reasons, under the proposed legislation, normal flow refugees enter as lawful permanent residents from the day of their admission.

In keeping with the Administration's comprehensive approach to refugee policy the proposed Refugee Act of 1979 also contains provisions aimed at establishing a more uniform basis for the provision of assistance to refugees coming to and already in the United States. These provisions are set forth as amendments to the Migration and Refugee Assistance Act of 1962. That Act contains the basic authority under which assistance is furnished to Cuban and Indochinese refugees coming to and already in the United States. Besides broadening the provisions so that they apply equally to all refugees, the amendments made by this portion of the draft bill make few substantive changes from current administrative practice under the Act. These amendments reflect the experience gained by the departments and agencies involved in the administration of refugee assistance since the original enactment of the Migration and Refugee Assistance Act of 1962. One major substantive addition, however, is the establishment of express limitations on the period for which the Federal government will pay the full cost (rather than applying the generally applicable Federal-State cost sharing rules) of cash and medical assistance under programs authorized by the Social Security Act. The draft bill will specify that, except for unaccompanied refugee children, the Federal government will bear the full cost of new refugees for only the first two years after their arrival in the United States. After that, States will be expected to provide whatever assistance would be available to any other of its residents, with the same allocation of cost between the Federal and State governments.

Specific assistance programs authorized under the draft bill are as follows:

Payments to public or to private voluntary agencies for their work in the placement and resettlement of refugees;

Funding for projects to aid refugees in securing employment;

Support for special educational services, particularly training in English, through the elementary and secondary education system;

Use of funds for child welfare services; and

Funding for cash and medical assistance.

The Administration and Congress are very much concerned both with the nation's immediate refugee needs and with the need for a sensible and sound long-term solution, weighing the role of the legislative and executive branches. The prompt enactment of the Refugee Act of 1979 will help provide that long-term solution and ease immediate refugee needs. Prompt action is required because the refugee problem shows no signs of simply fading away. The fact is that the problem is growing at an alarming rate and, notwithstanding some success in our extensive diplomatic efforts to persuade other nations to accept larger numbers of refugees, the United States will soon be called upon to accept more refugees. At present our response must be that we are limited to the conditional entry process and a fully subscribed parole program which expires on May 1, 1979.

Section-by-Section Analysis of the "Refugee Act of 1979"

Title I sets forth the purpose of the bill, which is to provide a permanent and systematic procedure for the admission to this country of refugees of special concern to the United States, and to provide comprehensive and uniform provisions for assistance to those refugees who are admitted.

Section 201(a) of the bill provides a new refugee definition which will be added to the Immigration and Nationality Act. This definition basically conforms to that used under the United Nations Convention and Protocol Relating to the Status of Refugees, and eliminates the geographical and ideological restrictions now applicable to conditional entrant refugees under section 203(a)(7) of the Immigration and Nationality Act.

Section 201(b) of the bill adds new sections 207, 208, 209, and 210 to the Immigration and Nationality Act. These sections deal with admission procedures for refugees.

Proposed section 207(a)(1) provides for a normal flow not to exceed 50,000 refugees per year except as provided in section 207(a)(2). The admission numbers will be allocated to groups of refugees of special concern to the United States, as determined by the President. (In recent years, the refugees who have been of special concern to the United States have included Cubans, Soviets, Eastern Europeans, and Indochinese.)

The President will report annually to the Judiciary Committees of the Congress regarding the foreseeable numbers of refugees in need of resettlement during the coming fiscal year and regarding the estimated allocation of refugee admission numbers.

Section 207(a)(2) provides for the 50,000 admission level to be raised if the President determines that a specified higher number is justified by humanitarian concerns or is otherwise in the national interest based upon the foreseeable numbers of refugees of special concern to the United States who will be in need of resettlement during the coming fiscal year. This determination must be made before the beginning of the fiscal year and only after consultation by the President's designees with the House and Senate Judiciary Committees. Allocation of these additional numbers by group or class will be made by the President in the same manner as described in section 207(a)(1) for the 50,000.

The 50,000 annual numbers will be obtained by reallocating to refugees 20,000 numbers from the worldwide limitation of 290,000. (17,400 of these numbers are currently allocated to conditional entrants under section 203(a)(7), which the bill eliminates.) In addition, 30,000 numbers will be added over and above the current worldwide limitation. As a result, total immigration subject to numerical limitation will be 320,000 annually, except in those years when refugee admissions are increased by Presidential determination.

Under proposed section 207(a)(3), normal flow refugees will be admitted as lawful permanent residents; the present two-year conditional period will be eliminated. Applicants for refugee admission would be required to establish that they meet the refugee definition, that they have not become firmly resettled in any foreign country, and that they are admissible as immigrants under the Act except for the labor certification requirements of section 212(a)(14) of the Immigration and Nationality Act, the public charge provisions of section 212(a)(15) of the Act, the immigrant visa requirements of section 212(a)(20) and (21) of the Act, the literacy requirements of section 212(a)(25) of the Act, or the provisions of section 212(a)(32) of the Act pertaining to alien physicians.

Proposed section 207(b) provides that up to 5,000 of the 50,000 normal flow refugee admission numbers may be used to adjust the status of refugees present in the United States under provisions other than section 207, 208, or 209 (such as asylees or visitors whose home government has changed during their absence and who would be subject to persecution if they are returned). Applicants must establish that they have been here for two years, that they meet the refugee definition and that they are not firmly resettled in any foreign country. Such adjustment of status would be without regard to the labor certification requirements of section 212(a)(14) of the Immigration and Nationality Act, the public charge provisions of section 212(a)(15) of the Act, the immigrant visa requirements of section 212(a)(20) and (21) of the Act, the literacy requirements of Section 212(a)(25) of the Act, or the provisions of section 212(a)

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[1] A good illustration of what the practical effect of the proposed Act would be may be drawn from the unfolding history of the Indochinese refugees. Following the fall of South Vietnam in the spring of 1975, 133,000 Indochinese were paroled into the United States within a few months. In 1976, 11,000 Indochinese were paroled in the United States, followed by 15,000 in 1977 and 7,000 in the first half of 1978. We are now in the final stages of the most recent parole program which authorized the entry of an additional 25,000 Indochinese refugees between June of 1978 and May 1, 1979, augmented by an additional parole of 21,875 announced in December, 1978. Even though it became apparent soon after the initial 1975 parole program that a steady, fairly predictable stream of refugees would be leaving Indochina for the foreseeable future, the Executive Branch was forced to wait repeatedly until the number of refugees in the countries of first asylum reached crisis proportions and then declare an "emergency" which required yet another special parole program. If the proposed Act had been in effect since 1975, the emergency group admission provisions would have been employed only for the initial mass exodus of 1975. The succeeding periodic "emergencies" would have been handled under the normal flow provisions without the need for repeated ad hoc consultations with Congress in an atmosphere of crisis. Upon enactment of the Administration's proposal, our future efforts to deal with the Indochina refugee situation will be greatly rationalized and facilitated. The President will have the authority to set the number of normal flow admissions for Indochinese refugees in advance of each fiscal year. If our estimates indicate a high flow of Indochinese and other refugees of special concern to the United States, such that the national interest requires admission of more than 50,000 in a given year, the President may, after consultation with the Congress, adjust admissions to a fixed higher number. Should an unforeseen emergency create the need for more admissions than provided for under the annual normal flow estimate, the group admission procedures will be available.

(32) of the Act pertaining to alien physicians. Aliens would have the opportunity to establish that their adjustment of status should operate retroactively to the date, not more than two years prior to approval of the application, upon which they became refugees within the United States. Spouses and children of refugees adjusted under this provision would also qualify for adjustment.

Proposed section 208 provides procedures for the admission of refugees in unforeseen emergency situations. If the President determines, following consultation with the Judiciary Committees, that an emergency refugee situation exists, that admission of refugees in response to the situation is justified by grave humanitarian concerns or is otherwise in the national interest, and that admission cannot be accomplished under section 207, he may fix a number of refugees to be admitted. Allocation of those admissions will be in accordance with a Presidential determination. Thereafter, the Attorney General will admit to the United States conditionally emergency situation refugees who establish that they meet the refugee definition and that they are not firmly resettled in any foreign country.

Proposed section 209 allows the spouse and children of a refugee admitted for lawful permanent residence or admitted conditionally under the bill to qualify for the same admission status as the principal alien if not so entitled in their own right. Such spouse or child would be charged against the appropriate refugee numerical limitation.

Proposed section 210(a) provides lawful permanent resident status for any conditionally admitted refugee who has been physically present in the United States at least two years, who has not otherwise acquired lawful permanent resident status, and whose conditional entry has not been terminated by the Attorney General. Under proposed section 210(b) the conferring of such lawful permanent resident status shall be without regard to the labor certification requirement of section 212(a)(14) of the Immigration and Nationality Act, the public charge provisions of section 212(a)(15) of the Act, the immigrant visa requirements of section 212(a)(20) and (21) of the Act, the literacy requirements of section 212(a)(25), or the provisions of section 212(a)(32) of the Act pertaining to alien physicians. Aliens who are found inadmissible to the United States will be dealt with in exclusion proceedings in accordance with the provisions of sections 235, 236, and 237 of the Immigration and Nationality Act. The foregoing procedures are basically a completion of the inspection process which was begun at the time of the alien's conditional admission into the United States. They require no application on the part of the alien and no fee. Once granted, the lawful permanent resident status operates retroactively to the date of the alien's arrival in the Untied States. Therefore, in terms of eligibility for naturalization the conditional entrant refugee is not disadvantaged by the waiting period.

In connection with its administration of the benefits to be provided under Title III of this bill, the Department of Health, Education, and Welfare has asked that aliens admitted as refugees carry documentation that provides evidence of their refugee status and shows their date of admission to this country. The INS will work with HEW to provide the necessary identification administratively, for both normal flow and emergency situation refugees; it is not necessary to include such provisions in the legislation itself.

Sections 202 and 203 of the bill provide various conforming amendments to the Immigration and Nationality Act. In addition, section 213(e) revises the provisions of section 243(h) of the Act, relating to withholding of deportation based on fear of persecution, to allow the Attorney General to withhold the deportation of aliens who are in exclusion, as well as deportation, proceedings.

The Attorney General's parole authority under section 212(d)(5) of the Immigration and Nationality Act would remain unchanged. Once the bill takes effect, however, the Attorney General will not use his authority with respect to refugees unless he determines that compelling reasons in the public interest related to the individual refugee require that that refugee be paroled into the United States, rather than be admitted in accordance with proposed sections 207 or 208.

Section 204 of the bill contains a "rollback" provision. This allows any alien who is eligible for retroactive lawful permanent resident status under proposed section 207(b) of the Act, but who has already obtained lawful permanent resident status under other sections of the law that do not provide for retroactivity, to have his admission for lawful permanent resident status recorded as of the date when he became a refugee in the United States.

Title III of the bill contains amendments to the Migration and Refugee Assistance Act of 1962, the underlying source of authority for funding special activities and assistance for Cuban and Indochinese refugees in the United States, as well as for assistance provided overseas.

Section 301 of the bill would amend section 2(b) of the Act. Subparagraphs (A) and (B) preserve, with minor technical changes, the authorities for overseas assistance now appearing in sections 2(b)(1) and 2(b)(2) of the Act.

Subparagraphs (C) through (G) authorize funding for various kinds of assistance and services to refugees in the United States. While these are generally within the scope of the existing law and would not affect our continuing commitment with respect to Soviet refugees, the amendments would serve to clarify the activities intended to be funded, and the limits on that funding.

More specifically:

Subparagraph (C) would authorize payments to public or to private voluntary agencies with respect to their work in connection with the placement, resettlement, and care of refugees;

Subparagraph (D) would provide funding authority for projects to aid refugees in securing employment and other short-term projects to increase their self-reliance—English as a second language, vocational training, refresher training for professionals, services to assist refugees in attending recertification within the United States, and other such employment and social services;

Subparagraph (E) would authorize support for special educational services, including particularly training in English, and other educational services, through the elementary and secondary education system;

Subparagraph (F) would allow the use of funds for child welfare services for two years after the arrival of the refugee child, or, in the case of a child who enters the United States unaccompanied by a parent or other close relative, until the child reaches age 18 (or whatever higher age may be specified in the State's child welfare services plan);

Subparagraph (G) would authorize funding for cash and medical assistance during the first two years following the refugee's arrival in the United States. If the refugee's family were eligible for assistance under the State's program of Aid to Families with Dependent Children (part A of title IV of the Social Security Act) or for medical assistance under the State's Medicaid program (title XIX of the Social Security Act), funds under this authority would only be used for the non-Federal share of those programs.

Funding under this title for refugees within the United States (other than unaccompanied children) would be limited to the first two years after the refugee's entry into the country. That limitation would not apply to Cuban refugees who entered the United States prior to October 1, 1978; they are subject to the currently effective 6-year phase-down. All Cuban refugees entering after that date, however, would be subject to the provisions of this draft bill and treated in the same way as all other refugees.

Paragraph (2) specifies that the term "refugee" will have the same meaning as in paragraph (42) of section 101(a) of the Immigration and Nationality Act, added by section 201 of this bill—the definition derived from the Protocol and Convention Relating to the Status of Refugees.

Section 301(b) is a technical provision making it clear that this legislation does not disturb the requirement for annual authorizing legislation established by the act that furnishes basic authority for the Department of State.

Section 302 amends section 2(c) of the 1962 Act, which establishes the Emergency Refugee and Migration Assistance Fund. It raises the authorized funding level from $25,000,000 to $50,000,000, in order to assure that adequate amounts would be available from the Emergency Fund if needed for an admission of refugees in response to an emergency refugee situation, under section 208 of the Immigration and Nationality Act.

Section 401 provides that the Act will take effect on October 1, 1979. It also contains a savings clause that preserves the rights of those aliens who had been admitted conditionally under section 203(a)(7) of the Immigration and Nationality Act, or paroled into the United States under section 212(d)(5) of the Act, before the effective date.

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REFUGEE ACT OF 1979

Mr. KENNEDY. Mr. President, last week I introduced major legislation (S. 643) to reform the refugee provisions of our immigration law, and to establish a U.S. refugee resettlement and assistance policy.

Hearings were held on this bill before the Judiciary Committee last week, receiving testimony from former Senator Dick Clark, who is now the President's Coordinator for Refugee Affairs in the Department of State, as well as statements from representatives of the American Council of Voluntary Agencies and State and local agencies involved in refugee resettlement programs.

Mr. President, our Nation has a proud record of accomplishment in offering a helping hand to refugees. And I believe our national policy of welcome to the homeless has served our country and our traditions well.

But we need to do this job better—to resettle refugees more humanely, and with greater planning and reduced costs.

For too long our policy toward refugee assistance has been ad hoc, with refugees being admitted in fits and starts, and after long delays and great human suffering, because our existing immigration law is inadequate, discriminatory, and totally out of touch with today's needs.

The Refugee Act (S. 643) will update our law governing the admission and resettlement of refugees. It will help insure greater equity in our treatment of refugees. It will rationalize and put in the statute how we treat all refugees, and make our law conform to the United Nations Convention and Protocol relating to the status of refugees—which we signed in 1969.

As the Washington Post concluded in a recent editorial,

> This new legislation would establish for the first time a comprehensive United States approach to refugee resettlement and assistance. Its aim is to ensure that American refugee policy serves both the general national interests of the United States and the specific personal requirements of thousands of individuals in distress. Few bills worthier of support are likely to come before Congress this year.

Mr. President, I ask unanimous consent to have printed in the RECORD, for the benefit of my colleagues in studying the proposed legislation, the Washington Post editorial and the prepared statement of the Honorable Dick Clark, which was presented at the Judiciary Committee hearing last week.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TESTIMONY OF DICK CLARK BEFORE THE SENATE JUDICIARY COMMITTEE

Mr. Chairman, I want to take this opportunity to thank the Secretary of State for being here today with me—and for being so supportive of our efforts to improve our refugee policies and programs. In seeking solutions to the current refugee crisis, he and the President had the wisdom and foresight to see that bold steps were necessary. Cy's views were instrumental in creating an office of U.S. Coordinator and devising comprehensive legislative proposals.

I would also like to mention what a pleasure it is to present our refugee policy and introduce our legislation before your committee, Mr. Chairman. Your interest and diligent efforts on the part of refugees around the world have been an inspiration for all of us. I hope that our common interest in improving our programs and alleviating human suffering will lay a solid basis for cooperation. In particular, I look forward to hearing your views on the proposed legislation before you, the Refugee Act of 1979. This bill represents the Administration's views on the most appropriate framework for a comprehensive and long-term policy on admitting and resettling refugees in the United States.

I think it is appropriate at this point to introduce to you the people accompanying me today, who have all played important roles in putting together this bill. They are Michael Egan, Associate Attorney General; Peter Bell, Deputy Under Secretary of HEW for International Affairs; and Frank Sieverts, Deputy Assistant Secretary of State for Refugee and Migration Affairs.

The United States has long distinguished itself by an active concern for refugees. Throughout our history we have helped citizens of other nations uprooted by wars and disasters. We have welcomed those who have fled from persecution on account of race, religion, or political opinion. We have helped them learn a new language, acquire new skills, and settle into new homes. In turn, these refugees have enriched our national life, mailing remarkable contributions to their new homeland. The United States must continue to offer assistance to those who flee persecution.

Furthermore, refugee programs are an important element in our foreign policy. The refugee crisis is a pervasive problem that strains the resources of the international community. In offering assistance, we can ease the pressures on friendly governments in Southeast Asia created by the arrival of refugees from Vietnam, Laos, and Cambodia. Elsewhere, our programs support the victims of conflicts while the search for peace continues. Our aid to refugees offers a beacon of hope to people fleeing repression in Eastern Europe, and it figures in our relations with the Soviet Union. In addition, our aid sets an example for other countries and reinforces our position as a nation of leadership and humanitarian concern.

Until now, we have carried out our refugee programs through what is essentially a patchwork of different programs that evolved in response to specific crises. The resulting legislative framework is inadequate to cope with the refugee problem we face today. It was originally designed to deal with people fleeing communist regimes in Eastern Europe or repressive governments in the Middle East in the immediate post-war period and the early Cold War years. This framework still assumes that most refugees admitted to the United States come from these two geographic areas, or from communist-dominated countries.

The current law assumes that refugee problems are extraordinary occurrences. It provides for only a very limited number of refugees to enter the United States each year, on a conditional basis. But it also recognizes the Attorney General's power to parole additional individuals into the United States in case of unusually urgent humanitarian circumstances.

In recent years, we continually have seen dramatic conflicts and internal developments force new groups of people to flee for their lives. The numbers of refugees are growing on every continent. While the plight of the boat people in Southeast Asia presents today's most dramatic case, it must not blind us to the hardships of refugees fleeing oppression and persecution in Eastern Europe, Africa, the Middle East, and Latin America. To deal successfully with these difficult challenges, our policies and programs must recognize

that refugee problems unfortunately have become a regular feature of our world.

If we are to respond to this unprecedented refugee situation, our refguee policy must expand the definition of refugees beyond the present reliance in immigration law on narrow geographic and ideological criteria. Human suffering recognizes no such distinctions.

Let me give you an indication of the magnitude and diversity of different refugee populations we face today.

The UNHCR estimates that there are more than two million refugees in Africa, some fleeing racism, some civil war, some unspeakable human rights violations, and some religious persecution. These refugees generally do not face hostility in their countries of asylum, and they hope to return home eventually.

The more than 200,000 Indochinese now in camps in Southeast Asia are in a desperate situation. Most of them have limited possibilities for local resettlement because of traditional animosities, and already grave economic and population problems in their countries of first asylum. Others still in Laos, Cambodia and Vietnam will risk their lives in attempting to escape by land or sea. The unstable political climate in Indochina threatens to intensify the problem of large refugee populations in neighboring countries in Southeast Asia.

The Soviet Union is permitting greater numbers of Jews to emigrate, and a large portion of these is seeking entry into the United States.

Two hundred thousand Arakanese Muslims have fled from Burma to Bangladesh, and the arrangements are being made for the repatriation of those who wish to return.

There are chronic problems among Palestinian refugees.

The recently increased flow of political refugees from Cuba to the United States will add to the refugee population here and elsewhere in the hemisphere.

And finally, there are other groups of needy refugees in Latin America.

These examples demonstrate the scope and changing nature of the current refugee crisis. I'd like to add at this point that my staff has prepared a worldwide assessment of the refugee problem, which I am submitting for the record.

Until now, our refugee laws have hampered our ability to accommodate the demands for resettlement in the United States in anything but a makeshift way. The current law, as you know, restricts the number of admissions per year to an unrealistically low ceiling of 17,400. And those accepted are only granted conditional entry. They must be examined by an Immigration Officer in a non-Communist dominated country. And they must show that they have fled from a Communist or Communist-dominated country or a country in the Middle East.

These geographic and ideological criteria effectively exclude many refugees, particularly from the Western Hemisphere and Africa. As a result, over the past 23 years we have repeatedly had to deny needy refugees or resort to parole authority, which was originally intended only for extraordinary circumstances. Parole is granted at the discretion of the Attorney General, but a procedure has gradually developed that involves consultation with members of the House and Senate Judiciary Committee.

THE PROPOSED LEGISLATION: ADMISSION POLICY

The combination of conditional entry and parole procedures has become increasingly cumbersome and inadequate over the years. In both the Administration and Congress we have come to see the need for a comprehensive and long-term policy. Building on Congressional initiatives in the 95th Congress—including yours, Mr. Chairman—we feel that the proposed Refugee Act of 1979 represents the most appropriate way to provide such a policy.

The Bill makes several sweeping changes in the existing piecemeal approach to admissions. To begin with, it acknowledges the size and diversity of current refugee populations by extending the definition of refugee beyond narrow geographic and ideological criteria. It essentially adopts the definition of the UN Protocol Relating to the Status of Refugees, to which we are a party. It defines a refugee as someone outside his or her country who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on race, religion, nationality, membership of a particular social group, or political opinion. This definition corresponds more closely to the situation that we now face.

The bill also provides a more equitable way of determining who is eligible to be resettled in the United States from the pool of people who qualify as refugees. It authorizes the President to establish groups or categories of refugees to be admitted to this country—called "refugees of special concern." Among the factors considered in this determination are:

—Whether the refugees have cultural, historical, or especially family ties to the United States;

—Whether dire circumstances suggest the United States should immediately offer refuge to those who have no reasonable hope of resettling anywhere but the United States and whose lives are in danger;

—Whether we have a special responsibility because of previous U.S. political involvement with the refugee or his country of origin.

The next major change in our admission policy is a provision for more flexible procedures. Under our proposed bill, most refugees will fall in the more-or-less predictable "normal flow" of refugees each year. The normal flow provision allows the admission of up to 50,000 refugees. The President has the authority to allocate the numbers to specific groups or categories. He is also empowered to raise the total ceiling before the beginning of the fiscal year, after consultation with the Congress, if he determines that that foreseeable resettlement needs and the national interest warrant an increase. The President may also determine to admit fewer than 50,000 refugees in a given fiscal year—letting the unused numbers lapse.

In cases of unforeseen emergencies after the beginning of the fiscal year, the President can also invoke an emergency admission procedure after consultation with the Congress. Under this provision, the President must determine that the admission of the refugee is not possible under the normal flow provisions, and is justified by grave humanitarian concerns, or is otherwise in the national interest. The emergency group admission procedure will essentially replace the Attorney General's current authority to parole large groups of refugees into this country. Actually, it is intended to fill the gap that repeated stretching of parole authority never successfully accomplished. For the first time, it will also establish explicit criteria for emergency group admissions. And it will set a statutory requirement for Congressional consultation on such admissions.

Let's look at the history of Vietnamese refugees to compare the practical differences between the existing and proposed refugee admission policy.

Following the fall of South Vietnam in the spring of 1975, 133,000 Indochinese were paroled into the United States within a few months. In 1976, 11,000 Indochinese were paroled into the United States, followed by 15,000 in 1977 and 7,000 in the first half of 1978. We are now in the final stages of the most recent parole program, which authorized the entry of an additional 25,000 Indochinese refugees between June of 1978 and May 1, 1979, augmented by an additional parole of 21,875 announced in December 1978.

It became apparent soon after the initial 1975 parole program that a steady fairly predictable stream of refugees would be leaving Indochina for the foreseenable future. The Executive Branch, however, was put in the position of waiting repeatedly until the number of refugees in the countries of first asylum reached crisis proportions and then declaring an "emergency" which required yet another special parole program.

If the proposed Act had been in effect since 1975, the emergency group admission provisions would have been employed only for the initial mass exodus of 1975. In the succeeding period, situations which were previously termed "emergencies" would—with one exception—all have been handled under the normal flow provisions, without the need for repeated ad hoc consultations with Congress in an atmosphere of crisis. The one exception relates to the large increase in the number of "boat people" fleeing from Vietnam in the fall of 1978. This sudden jump—primarily after the beginning of the fiscal year—demonstrates the need for the continued flexibility of the emergency group admissions procedure.

RESETTLEMENT IN THE UNITED STATES

Now let's turn to the next step in the process—the way we offer resettlement assistance to refugees once they arrive in the United States. Like our policy on refugee admission, our domestic assistance program also evolved in response to specific humanitarian crises around the world. The growth of domestic programs, through repeated statutory amendment, has resulted in a wide range of separate programs. Each has offered different services, although the common goal has clearly been to help the refugees become self-sufficient and contributing members of American society.

The following are some of the major programs—most of which have been funded by HEW:

The Cuban program has provided support to Cuban refugees in need of public assistance since 1961. Until fiscal 1978, this program offered full federal reimbursement to states for cash and medical assistance, extensive federal support for local educational systems attended by Cuban refugee children, and adult English and vocational training. Last year Congress approved a 6-year phasedown of federal reimbursement for these services.

The Indochinese program, dating from 1975, has provided essentially similar support. But it has only been renewed on a year-to-year basis.

For refugees other than Cuban or Indochinese, assistance is largely in the form of grants to voluntary agencies. About three quarters of these refugees are Soviet Jews, but this group also includes refugees from other places such as Chile, Lebanon, and Ethiopia. Until FY 1979, there was no special federal assistance to aid in their resettlement beyond the initial placement and resettlement grant that was given to the voluntary agencies. During fiscal 1979 up to $1,000 per refugee is being provided to voluntary agencies, which must match this grant with private resources, dollar for dollar. The per capita grants are intended to cover the same range of benefits as is available in the other two programs through the reimbursement of public and private agencies. Under this program, there is no special federal reimbursement to the states.

This individualized approach to refugee assistance served us reasonably well in the past, when the refugee flow came primarily from a limited number of countries in any

given year. But this approach is no longer adequate to deal with the increasing flow of refugees from every continent. We believe it is necessary to have a coherent domestic assistance program that can respond equally well to a wide range of circumstances across the globe, and to all refugees, regardless of nationality. This situation cries out for rationality. With a comprehensive refugee policy we can better meet our responsibilities to all refugees in a prompt and consistent manner.

Before outlining some of the key provisions in the new bill on domestic assistance, I would like to add that none of our programs would be possible without the generous participation of a number of voluntary resettlement agencies. From the beginning, our refugee programs have been based on the assumption that refugees will have a much easier time adjusting to life in this country if they are assisted primarily by the private and voluntary sector, rather than by public assistance alone. The voluntary agencies have provided a key link in the partnership between the government and the private sector. These agencies have responsibility for placing the refugee with a sponsor—often a church or synagogue. The sponsor arranges housing, helps with locating a job, and eases the transition into a totally new culture. The voluntary agencies offer the personalized attention and human care that contribute so much to a refugee's resettlement. They also provide an entree into social support networks that is sometimes beyond the reach of government agencies. We intend to build upon the experience of the voluntary agencies as we move toward a national refugee policy, as well as to strengthen their role in the resettlement process.

Our years of experience with domestic refugee programs have taught us important lessons that we have used in developing this legislation.

First, refugees have the greatest need for federal assistance in the early years of the resettlement process, if at all. At the same time, federal assistance eases the strain on state resources during the very time when refugees are most in need of help.

Second, there should be a time limit on federal support. To a degree, this encourages refugees to adapt quickly, and it notifies both public and private agencies that federal support for these programs will be of limited duration.

Third, and perhaps most important, the relationship between the federal government, state and local governments, and the national voluntary agencies must be preserved and strengthened. By working together closely, we believe we can best serve the needs of all refugees with the resources available.

We think Title III of the legislation before you represents a framework for the most effective domestic resettlement process. And it does so in a comprehensive yet flexible way, recognizing that all refugees have certain common needs and should be eligible for common benefits. All refugees are eligible for the following services during the first two years after their arrival, under the terms of the bill:

It provides grants to the public or voluntary agencies for the placement, care and resettlement of refugees.

It provides money for special project grants to assist adult refugees with English, vocational training, and social services.

It provides money for projects for special educational assistance for school-age refugee children.

It provides full federal support for a complete range of child welfare services for children who enter this country without the presence of a close adult relative. This support would be available until the child reaches age 18, or older if consistent with state practice. Other children would be eligible for such federally supported child welfare services during the first 24 months they are in this country.

It provides full federal reimbursement for cash and medical assistance provided by the states to needy refugees for 24 months following their arrival in this country.

Aside from the benefits provided by the legislation, refugees are also eligible for assistance such as Supplemental Security Income and food stamps, which are available to all qualified Americans through other appropriations under current law.

In our view, this legislation offers a sound approach to the tremendous challenge of resettling large and diverse groups of refugees in this country. It allows us to take into consideration their particular needs as well as our own resources in easing this often difficult transition. It recognizes our experience—that refugees are eager to become self-sufficient and contributing members of society. After the initial transition period, their participation in the work force is very high. And their needs for public assistance are usually limited and temporary in nature. They contribute in an incalculable way to the economic, social and cultural richness of the country.

BUILDING ON THE LEGISLATIVE FRAMEWORK

At this point, I would like to add that the success of our comprehensive refugee policy will depend on a number of factors. The most important is the legislation before you. This will provide a basic framework for all our efforts. For the first time, we will have the means and flexibility to respond to the challenges of the growing refugee situation. We will be able to improve our capacity based on long-term, realistic programs, rather than temporary, piecemeal measures.

But the legislation is only a beginning. At home we will continue to rely on the cooperation and assistance of state and local governments and particularly the voluntary agencies. For to a large extent, our ability to accept refugees in the United States depends on our ability to find specific resettlement opportunities throughout the country.

Overseas we also depend on a partnership with voluntary agencies, international organizations and other governments. The present refugee crisis is an international humanitarian problem. It ignores national boundaries, and it requires concerted efforts by the entire international community.

As in the past, we will continue our support for the refugee programs of international organizations, such as the United Nations High Commissioner for Refugees and the International Committee of the Red Cross. One of my tasks as U.S. Coordinator will be to review the international activities we help fund to see how they can be strengthened.

The U.N. High Commissioner for Refugees received $145 million in contributions from member states in 1978. The U.S. contribution of $44 million was about one-third of the total. The UNHCR programs affect refugees worldwide, from the reception and care of refugees in areas of first asylum through resettlement in third countries, or voluntary repatriation. One program of particular importance to the United States is the High Commissioner's operation of the camps for Indochinese refugees and extensive efforts to find them resettlement opportunities in other countries. Another important program is for refugees throughout Africa.

Certain of the humanitarian relief efforts of the International Committee of the Red Cross are also of benefit to refugees. For this reason we have decided to make a major increase in our contribution to this organization, particularly to support projects in southern Africa. The International Committee on European Migration plays important roles in arranging for the transportation of refugees, including those from Indochina, and in finding settlement opportunities, particularly in South America. The UN Relief and Works Agency is responsible for providing the essential support services to camps of Palestinian refugees. While the quality of the programs of these agencies is generally high, we should work to improve their capacity for planning and managing and should urge them to expand their access to funds from other sources.

Some overseas programs we run ourselves. AID, for example, has managed and overseen significant programs designed to assist refugees in southern Africa and facilitate their eventual resettlement. And the Department of Justice, State, and Health, Education and Welfare, with significant support from the Cuban community in the United States, have managed the movement of refugees from Cuba to the United States.

Other governments also play a significant role in care and resettlement of refugees. Some run major programs of their own; the work of the Federal Republic of Germany on behalf of ethnic Germans from Eastern Europe is a notable example. France, Australia, and Canada have resettled many Indochinese refugees. Others are strong supporters of international agencies and their programs. Some governments inevitably play a major role because of their geographic location—the countries of Southeast Asia and southern Africa immediately come to mind. Each refugee problem calls for a different solution, and various states contribute in different ways.

Despite the participation of many other governments and international agencies, the U.S. share of the current refugee problem entails a substantial financial burden. Therefore among the most crucial elements of our refugee policy we must include strenuous diplomatic activity to alleviate the causes of refugee migration and equally strenous activity to get other governments to assume a greater share of the burden. Increased emphasis on this aspect of our work means different types of activity:

Encouraging other governments to work with us in finding political solutions to regional political disputes that are causing refugees to flee;

Exerting diplomatic influence, in cooperation with other governments, to induce repressive states to moderate their practices;

Working with the international agencies, such as the UN High Commissioner for Refugees, to improve their programs and management of resources, and urging other governments to give tehir full support to these ends; and,

Encouraging other governments to carry their own fair share of the burden, in terms both of providing resettlement opportunities and making financial contributions to international efforts.

FACING PRIORITY NEEDS

In the next year, there are five principal ways we can improve our refugee programs. I am committed to implementing these steps:

We must pass legislation that meets the needs I have outlined: giving us a fair and workable definition of refugees, making realistic provision for the admission of larger numbers of refugees, and regularizing our domestic programs.

We need to strengthen the management of our refugee programs—first by coordinating the planning efforts by the different departments and then by overseeing the operation of specific programs.

We must put a higher priority in our foreign policy on refugee issues. This means greater efforts to get other governments to carry their fair share of the burden, and earlier and more persistent attention to the

conflict, strife and persecution that give rise to refugee problems.

We have to ensure that the international agencies, such as the UN High Commissioner for Refugees, improve their own capacity to plan for and manage the large programs that have become a tragic characteristic of our time.

Finally, we need to assure ourselves that the work of the voluntary agencies goes forward effectively and efficiently.

This obviously adds up to a difficult challenge. Achieving these goals will depend on cooperation from everybody involved in U.S. refugee efforts, including the Congress. In the short period I have been serving as U.S. Coordinator for Refugee Affairs, I have been struck by the widespread support for these objectives, as well as the willingness to contribute the necessary ideas and hard work. I look forward to working with this committee and hearing your views on our refugee programs and legislation.

[From the Washington Post, Mar. 12, 1979]

ACTION ON REFUGEES

The moment is right for a change in the 27-year-old basic law setting the terms on which the United States fulfills one of its primary obligations to the international community and to its own ideals—taking in refugees. Downtown, the president has the necessary commitment, and the relevant executive-branch departments, especially State and Justice, have finally achieved the necessary consensus. On Capitol Hill, Sen. Edward Kennedy's ascent to the chairmanship of the Justice Committee eliminates a longstanding Senate bottleneck; and an essentially like-minded Elizabeth Holtzman now holds the key House Judiciary subcommittee chairmanship—Chairman Peter Rodino is supportive, too. They were consulted in the drafting of the new refugee bill the administration is submitting now.

The bill would alter the post-World War II era definition of refugee, one which favored people fleeing communist countries (and the Middle East), and install a more universal standard based on uprootedness rather than ideology. The reason for this is not that henceforth the United States should trim its hospitality to refugees from communist regimes, which still, after all, generate large numbers of refugees. The reason is that, in recent decades, Americans have sharpened their sensitivity to the plight of refugees created by other lands. It is a sad comment on the turbulence of contemporary politics that the refugee condition, stemming from a deep conflict between individuals and their homeland regimes, is as pervasive as it is. The United States, with its tradition of openness and its global political involvements, cannot fail to adjust its definition of refugee to these dismal new circumstances.

The new bill would not simply open the gates, though it likely will be attacked—disingenuously—on those grounds. A basic annual quota of 50,000 refugees would be set. This is about double the number of refugees who will arrive this year anyway; it is somewhat more than the 30-year average; it is barely 10 percent of regular legal immigration and a tiny fraction of the illegal flow. In other words, the numbers are nominal. Realistic studies show, moreover, that the economic burden imposed by arriving refugees is more than compensated for by the contribution they eventually make to their adopted land. The new bill would regularize financing of the federal share of the resettlement process.

The most controversial part of the new legislation will probably be its proposals for dividing power between the president and Congress when it comes to responding to emergency flows of refugees over the 50,000 line. These flows are inherently difficult to plan for but, once they happen, the uprooted people, adrift and often destitute, must be cared for expeditiously. If these two requirements, especially the second, are heeded, it should be possible to find a formula combining acceptable measures of executive flexibility and congressional control.

This new legislation would establish for the first time a comprehensive United States approach to refugee resettlement and assistance. Its aim is to ensure that American refugee policy serves both the general national interests of the United States and the specific personal requirements of thousands of individuals in distress. Few bills worthier of support are likely to come before Congress this year.

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